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Bureau of Water - Geology Section
1000 S. W. Jackson, Ste. 420
Topeka, KS 66612-1367

PROCEDURE FOR DEMONSTRATING FINANCIAL ASSURANCE FOR A BRINE POND ASSOCIATED WITH A STORAGE FACILITY

Procedure #: UICLPG-30
(6/11)

Narrative:

Each owner or operator of any brine pond associated with storage facility shall establish and maintain financial responsibility for the decommissioning and abandonment of the brine pond to the Kansas Department of Health and Environment (KDHE). K.A.R. 28-45-124 and the brine pond permit establish the requirement for financial assurance.

Procedure:

Financial assurance shall be provided by one of the following mechanisms:

- Financial guarantee bond (requires standby trust)
- Performance bond (requires standby trust)
- Irrevocable standby letter of credit (requires standby trust)
- Financial test (does not require a standby trust)

Financial Guarantee Bond

The owner or operator may satisfy the requirement of this mechanism by submitting a Financial Guarantee Bond and standby trust agreement. In addition, the following apply:

1. 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 Treasury. Documentation for this requirement must be submitted.

2. The wording of the bond must be identical to the wording specified in the attached Financial Guarantee Bond format.

3. A standby trust fund must also be established. An originally signed duplicate of the standby trust agreement shall be submitted to KDHE with the financial guarantee bond. The wording of the standby trust agreement must be identical to the wording specified in the attached standby trust agreement format

4. The penal sum of the bond shall be in an amount at least equal to the highest of three current decommissioning and abandonment cost estimates. To document the penal sum determined, the three written cost estimates, in current dollars, of the cost of decommissioning and abandonment of the brine pond in accordance with the KDHE approved decommissioning and abandonment plan shall be submitted.

   A list of items to be considered when developing the decommissioning and abandonment cost estimate is attached. **In addition, the owner or operator shall annually submit three updated decommissioning and abandonment cost estimates, based on the currently KDHE approved decommissioning and abandonment plan, to account for inflation**. Whenever the current

decommissioning and abandonment cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either submit a modification to the bond increasing the penal sum to an amount at least equal to the highest of the three current decommissioning and abandonment cost estimates or obtain and submit other financial assurance approved by KDHE.

Performance Bond

The owner or operator may satisfy the requirement of this mechanism by submitting a Performance Bond and standby trust agreement. In addition, the following apply:

1. 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 Treasury. Documentation of this requirement must be submitted.

2. The wording of the bond must be identical to the wording specified in the attached Performance Bond format.

3. A standby trust fund must also be established. An originally signed duplicate of the standby trust agreement shall be submitted to KDHE with the performance bond. The wording of the standby trust agreement must be identical to the wording specified in the attached standby trust agreement format.

4. The penal sum of the bond shall be in an amount at least equal to the highest of three current decommissioning and abandonment cost estimates. To document the penal sum determined, the three written cost estimates, in current dollars, of the cost of decommissioning and abandonment of the brine pond in accordance with the KDHE approved decommissioning and abandonment plan shall be submitted.

   A list of items to be considered when developing the decommissioning and abandonment cost estimate is attached. **In addition, the owner or operator shall annually submit three updated decommissioning and abandonment cost estimates, based on the currently KDHE approved decommissioning and abandonment plan, to account for inflation.** Whenever the current decommissioning and abandonment cost estimate increases to an amount greater than the penal sum, the owner or operator within 60 days after the increase, shall either submit a modification to the bond increasing the penal sum to an amount at least equal to the highest of the three current decommissioning and abandonment cost estimates or obtain and submit other financial assurance approved by KDHE.

Irrevocable Standby Letter of Credit

The owner or operator may satisfy the requirement of this mechanism by submitting an Irrevocable Standby Letter of Credit and standby trust agreement. In addition, the following apply:

1. The issuing institution shall be an entity which has the authority to issue irrevocable standby letters of credit and whose irrevocable standby letter of credit operations are regulated and examined by a Federal and State agency. Documentation of this requirement must be submitted.

2. The wording of the irrevocable standby letter of credit must be identical to the wording specified in the attached Irrevocable Standby Letter of Credit format.

3. A standby trust fund must also be established. An originally signed duplicate of the standby trust agreement shall be submitted to KDHE with the Irrevocable Standby Letter of Credit. The wording of the standby trust agreement must be identical to the wording specified in the attached standby trust agreement format.

4. The irrevocable standby letter of credit must be issued in an amount at least equal to the highest of three current decommissioning and abandonment cost estimates. To document the sum determined, the three written cost estimates, in current dollars, of the cost of decommissioning and abandonment of the brine pond in accordance with the KDHE approved decommissioning and abandonment plan shall be submitted.

   A list of items to be considered when developing the decommissioning and abandonment cost estimate is attached. **The owner or operator shall annually submit three updated decommissioning and abandonment cost estimates based on the currently KDHE approved decommissioning and abandonment plan, to account for inflation.** Whenever the current decommissioning and abandonment cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, shall either submit a modification to the letter of credit increasing the letter of credit to an amount at least equal the highest of the three current decommissioning and abandonment cost estimates or obtain and submit other financial assurance approved by KDHE.

5. The irrevocable standby letter of credit shall be accompanied by a letter from the owner or operator referring to the irrevocable standby letter of credit by number, issuing institution, the KDHE permit number, name and address of the facility, and the amount of funds assured for the decommissioning and abandonment of the brine pond by the irrevocable standby letter of credit.

Financial Test

The owner or operator may satisfy the requirements of this mechanism by demonstrating that it passes a financial test as specified in this section. To pass this test the owner or operator must meet the criteria of either (I) or (II) listed below. In addition, the information required in (III) listed below must be submitted to KDHE to satisfy the requirements of this mechanism. An owner or operator that is a corporation and a subsidiary of the parent corporation may meet the financial test requirements by submitting from the parent corporation a corporate guarantee and for the parent corporation the information required for the financial test mechanism. The corporate guarantee form is attached. Definitions used are listed as follows:

Assets - means all existing and all probable future economic benefits obtained or controlled by a particular entity.

Current assets - means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

Liabilities - means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.
et working capital - means current assets minus current liabilities.

Net worth - means total assets minus total liabilities and is equivalent to owner's equity.

Parent Corporation - means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the owner or operator; the latter corporation is deemed a subsidiary of the parent corporation.

Tangible net worth - means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(I) The owner or operator must have:

(a) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(b) Net working capital and tangible net worth each at least six times the sum of the current decommissioning and abandonment cost estimate; and

(c) Tangible net worth of at least $10 million; and

(d) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current decommissioning and abandonment cost estimate, or

(II) The owner or operator must have:

(a) A current rating of his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(b) Tangible net worth at least six times the sum of the current decommissioning and abandonment cost estimate; and

(c) Tangible net worth of at least $10 million; and

(d) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current decommissioning and abandonment cost estimates.

(III) To demonstrate the financial test requirements are met, the owner or operator must submit the following:

1. A letter signed by the owner's or operator's chief financial officer and worded as specified in the attached letter from chief financial officer format.

2. A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

3. A special report from the owner or operator 's independent certified public accountant to the owner or operator stating that:

a. It has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited year-fiscal year with the amounts in such financial statements and in connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

b. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

Letter from Chief Financial Officer

[Address to: Secretary of Kansas Department of Health and Environment (KDHE)].

I am the chief financial officer of [name and address of firm.] This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified by KDHE.

[Fill out the following four paragraphs regarding brine ponds and associated cost estimates. If your firm has no brine ponds that belong in a particular paragraph, write "None" in the space indicated. For each brine pond include its KDHE permit number or other appropriate Identification Number, name, address and current decommissioning and abandonment cost estimate.]

1. This firm is the owner or operator of the following brine ponds for which financial assurance for decommissioning and abandonment is demonstrated through the financial test. The current decommissioning and abandonment cost estimate covered by the test is shown for each brine pond: _____.

2. This firm guarantees, through the corporate guarantee, the decommissioning and abandonment of the following brine ponds owned or operated by subsidiaries of this firm. The current cost estimate for decommissioning and abandonment so guaranteed is shown for each brine pond: _____.

3. In other states, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the decommissioning and abandonment of the following brine ponds through the use of a test equivalent or substantially equivalent to the financial test specified by KDHE. The current decommissioning and abandonment cost estimate covered by such test is shown for each brine pond: _____.

4. This firm is the owner or operator of the following brine ponds for which financial assurance for decommissioning and abandonment is not demonstrated to KDHE through the financial test or any other financial assurance mechanism or equivalent or substantially equivalent KDHE mechanisms. The current decommissioning and abandonment cost estimate not covered by such financial assurance is shown for each brine pond: _____.

   This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

   The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited year-end financial statements for the latest completed fiscal year, ended [date].

   [Fill in Alternative I if the criteria of Section (I) of the KDHE guidance is used. Fill in Alternative II if the criteria of Section (II) of the KDHE guidance is used.

Alternative I

1. (a) Current decommissioning and abandonment cost ..... _____

   (b) Sum of the company's financial responsibility under 40 CFR Parts 264 and 265, Subpart H, currently met using the financial test or corporate guarantee ..... _____

   (c) Sum of any other financial responsibilities met using the financial test or corporate guarantee (list the responsibilities)..... _____

   (d) Total of lines a, b and c ..... _____

2. Total liabilities [if any portion of the decommissioning and abandonment cost is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4 ..... _____

3. Tangible net worth ..... _____

4. Net worth ..... …… _____

5. Current assets ..... _____

6. Current liabilities ..... _____

7. Net working capital [line 5 minus line 6]..... _____

8. The sum of net income plus depreciation, depletion and amortization ..... _____

9. Total assets in U.S. (required only if less than 90% of firm's assets are located in U.S.) …. _____

Yes or No

---

10. Is line 3 at least $10 million? _____

11. Is line 3 at least 6 times line 1(d)? _____

12. Is line 7 at least 6 times line 1(d)? _____

13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14. _____

14. Is line 9 at least 6 times line 1(d)? _____

15. Is line 2 divided by line 4 less than 2.0? _____

16. Is line 8 divided by line 2 greater than 0.1? _____

17. Is line 5 divided by line 6 greater than 1.5? _____

Alternative II

1. (a) Current decommissioning and abandonment cost ……. _____

   (b) Sum of company's financial responsibilities under 40 CFR Part 264 and 265, Subpart H, currently met using the financial test or corporate guarantee ……. _____

   (c) Sum of any other financial responsibilities met using the financial test or corporate guarantee (list the responsibilities) …… _____

   (d) Total of lines a, b and c …… _____

2. Current bond rating of most recent issuance of this firm and name of rating service …… ……. _____

3. Date of issuance of bond…… _____

4. Date of maturity of bond…… _____

5. Tangible net worth [if any portion of the decommissioning and abandonment cost estimate is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line]…… _____

6. Total assets in U.S. (required only if less than 90% of firm's assets are located in U.S.) _____

Yes or No

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7. Is line 5 at least $10 million? _____

8. Is line 5 at least 6 times line 1(d)? _____

9. Are at least 90% of the firm's assets located in the U.S.? If not, complete line 10 _____

10. Is line 6 at least 6 times line 1(d)? _____

[Signature]
[Name]
[Title]
[Date]

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FINANCIAL GUARANTEE BOND

Date bond executed: _____

Effective date: _____

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

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

State of incorporation: _____

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

KDHE Permit Number, name, address, and decommissioning and abandonment amounts for each brine pond guaranteed by this bond [indicate decommissioning and abandonment amounts for each brine pond]:

Total penal sum of bond: $_____

Surety's bond number: _____

Know All Persons By These Presents, That We, the Principal and Surety(ies) hereto are firmly bound to the Kansas Department of Health and Environment (hereinafter called KDHE), in the above penal sum 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 sum "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 sum 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 sum.

Whereas said Principal is required, under the Underground Hydrocarbon Storage Wells and Associated Brine Ponds Regulations, Article 45, to have a permit in order to own or operate such brine pond identified above, and

Whereas said Principal is required to provide financial assurance for decommissioning and abandonment as a condition of the permit, 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 this obligation are such that if the Principal shall faithfully, before the beginning of decommissioning and abandonment of each brine pond identified above, fund the standby trust fund in the amount(s) identified above for the brine pond,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to begin decommissioning and abandonment is issued by the Secretary of KDHE or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified by KDHE, and obtain the Secretary of KDHE's written approval of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the Secretary of KDHE from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

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 Secretary of KDHE that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the brine pond(s) into the standby trust funds as directed by the Secretary of KDHE.

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 aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice by certified mail to the owner or Principal and to the Secretary of KDHE, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Secretary of KDHE, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Secretary of KDHE.

In Witness Whereof, The Principal and Surety(ies) have executed this Financial Guarantee 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).

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: $_____

Guarantee for Decommissioning and Abandonment

Guarantee made this _____ day of _____, 20____, by [name of guaranteeing entity], a business corporation organized under the laws of the State of _____, herein referred to as guarantor, to the Kansas Department of Health and Environment (KDHE), obligee, on behalf of our subsidiary [owner or operator] of [business address].

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified by KDHE.

2. [Owner or operator] owns or operates the following brine pond(s) covered by this guarantee: [List for each facility: KDHE permit Number, name and address. Indicate for each whether guarantee is for closure, post-closure case, or both.]

3. "Decommissioning and abandonment plan" as used below refers to the plans maintained as required by K.A.R. 28-45-127 and the KDHE issued permit for the decommissioning and abandonment of brine ponds as identified above.

4. For value received from [owner or operator], guarantor guarantees to KDHE that in the event that [owner or operator] fails to perform ["decommissioning and abandonment"] of the above facility(ies) in accordance with the decommissioning and abandonment plan and other requirements when required to do so, the guarantor will do so or fund a trust fund as specified by KDHE in the name of [owner or operator] in the amount of the adjusted decommissioning and abandonment cost estimates prepared as specified by KDHE.

5. Guarantor agrees that, if at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor will send within 90 days, by certified mail, notice to the Secretary of KDHE and to [owner or operator] that he intends to provide alternate financial assurance as specified by KDHE in the name of [owner or operator]. Within 30 days after sending such notice, the guarantor will establish such financial assurance if [owner or operator] has not done so.

6. The guarantor agrees to notify the Secretary of KDHE, by certified mail, of a voluntary or involuntary case under Title 11, U.S. Code, naming guarantor as debtor, within 10 days after its commencement.

7. Guarantor agrees that within 30 days after being notified by KDHE of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of decommissioning and abandonment, he will establish alternate financial assurance, as specified by KDHE, in the name of [owner or operator] if [owner or operator] has not done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the decommissioning and abandonment plan, the extension or reduction of the time of performance of decommissioning and abandonment or any other modification or alteration of an obligation of [owner or operator] pursuant to K.A.R. 28-45-124 or the KDHE issued permit.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of KDHE for the above listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail, to the Secretary of KDHE and to [owner or operator], such cancellation to become effective no earlier than 120 days after actual receipt of such notice by both KDHE and [owner or operator] as evidenced by the return receipts.

10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance and obtain written approval of such assurance from the Secretary of KDHE within 90 days after a notice of cancellation by the

guarantor is received by both the Secretary of KDHE and [owner or operator], guarantor will provide alternate financial assurance as specified by KDHE in the name of [owner or operator].

11. Guarantor expressly waives notice of acceptance of this guarantee by KDHE or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the decommissioning and abandonment plan.

Effective date: _____.

[Name of guarantor]
[Authorized signature for guarantor]
[Type name of person signing]
[Title of person signing]

Signature of witness or notary:

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ITEMS TO CONSIDER WHEN
DEVELOPING A COST ESTIMATE
FOR DECOMMISSIONING A BRINE POND

Tank Truck

Removal and disposal of brine

Equipment for demolition of brine pond and restoration of site.

Equipment and labor to plug any water or monitoring wells
Associated with the pond

Equipment and labor for any tests or inspections required by the permit

Supervision necessary to complete the decommissioning operations

db
plugging cost estimate

PERFORMANCE BOND

Date bond executed: _____

Effective date: _____

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

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

State of incorporation: _____

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

KDHE Brine Pond Permit Number, name, address, and decommissioning and abandonment amounts for each brine pond guaranteed by this bond [indicate decommissioning and abandonment amounts for each brine pond]:

Total penal sum of bond: $_____

Surety's bond number: _____

Know All Persons By These Presents, That We, the Principal and Surety(ies) hereto are firmly bound to the Kansas Department of Health and Environment [hereinafter called KDHE], in the above penal sum 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 sum "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 sum 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 sum.

Whereas said Principal is required, under the Underground Hydrocarbon Storage Wells and Associated Brine Ponds regulations, as amended, to have a permit for each brine pond identified above, and

Whereas said Principal is required to provide financial assurance for decommissioning and abandonment as a condition of the permit, 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 this obligation are such that if the Principal shall faithfully perform decommissioning and abandonment, whenever required to do so, of each brine pond for which this bond guarantees decommissioning and abandonment, in accordance with the decommissioning and abandonment plan and other requirements of the permit and other requirements of the permit as may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules and regulations may be amended.

Or, if the Principal shall provide alternate financial assurance as specified by KDHE, and obtain the Secretary of KDHE's written approval of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the Secretary of KDHE from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

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 Secretary of KDHE that the Principal has been found in violation of the decommissioning and abandonment requirements of K.A.R. 28-45-127, or the permit, for a brine pond which this bond guarantees performance of decommissioning and abandonment the surety(ies) shall either perform decommissioning and abandonment in accordance with the decommissioning and abandonment plan and other permit requirements or place the amount for decommissioning and abandonment into a standby trust fund as directed by the Secretary of KDHE.

Upon notification of KDHE that the Principal has failed to provide alternative financial assurance as specified by KDHE, and obtain written approval of such assurance from the Secretary of KDHE during the 90 days following receipt by both the Principal and the Secretary of KDHE of a notice of cancellation of the bond, the surety(ies) shall place funds in the amount guaranteed for the brine pond(s) into the standby trust fund as directed by the Secretary of KDHE.

The surety(ies) hereby waive(s) notification of amendments to decommissioning and abandonment plans, permits, 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 aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice by certified mail to the owner or operator and to the Secretary of KDHE, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Secretary of KDHE, as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Secretary of KDHE.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance 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).

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: $_____

STANDBY TRUST AGREEMENT

Kansas Department of Health and Environment
Underground Hydrocarbon Storage (UHS)
Financial Responsibility Requirement

TRUST AGREEMENT, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], the "Trustee".

Whereas, the Kansas Department of Health and Environment, "KDHE", an agency of the State of Kansas, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a brine pond associated with the underground storage of liquified petroleum gas (LPG) shall provide assurance that funds will be available when needed for decommissioning and abandonment of the brine pond, and

Whereas, the Grantor has elected to obtain [insert "a surety bond", "performance bond" or "a letter of credit"] and establish a standby trust to provide all or part of such financial assurance for the facility(ies) identified herein, and

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) "Facility" or "activity" means any brine pond or any other facility or activity that is subject to regulation under the Underground Hydrocarbon Storage Wells and Associated Brine Ponds Program.

Section 2. Identification of Facilities and Cost Estimates. This agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the KDHE Brine Pond Permit Number, name, address, and the current decommissioning and abandonment cost estimate, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of KDHE. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of a total of $ -0- which is acceptable to the Trustee. The property as described in Schedule B attached hereto and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earning and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by KDHE.

Section 4. Payment of Decommissioning and Abandonment. The Trustee shall make payments from the Fund as the Secretary of KDHE shall direct, in writing, to provide for the payment of the costs of decommissioning and

abandonment of the brine ponds covered by this Agreement. The Trustee shall reimburse the Grantor or other persons
as specified by the Secretary of KDHE from the Fund for decommissioning and abandonment expenditures in such amounts as the Secretary of KDHE shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Secretary of KDHE specifies in writing. Upon receipt, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing, which person of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advise is rendered or the share of which are sold by the Trustee. The Trustee may vote shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents to transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. Commencing after initial funding of the trust, the Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Secretary of KDHE a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Secretary of KDHE shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advise of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions.

The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Secretary of KDHE, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instruction by the Grantor to the Trustee shall be in writing signed by such persons as are designated in the attached Exhibit A, or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Secretary of KDHE to the Trustee shall be in writing, signed by the Secretary of KDHE or designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or KDHE hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or KDHE, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Secretary of KDHE, or by the Trustee and the Secretary of KDHE if the Grantor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Secretary of KDHE or by the Trustee and the Secretary of KDHE if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Secretary of KDHE issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of [insert name of State].

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

By: _____
(Signature of Grantor)

_____
(Title)

Attest: _____

_____
(Title)

(SEAL)

By: _____
(Signature of Trustee)

_____
(Title)

Attest: _____

_____
(Title)

(SEAL)

( ) This bank/institution has the authority to act as a trustee and its trust activities are examined and regulated by a State or Federal agency.

CERTIFICATE OF ACKNOWLEDGMENT

FOR

STANDBY TRUST FUND AGREEMENT

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 20_____, before me personally came

_____ to me known, who, being by
(owner or operator)

me duly sworn, did depose and say that she/he resides at

_____,
(address)

that she/he is _____ of _____
(Title) (corporation)

_____, the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

_____
(Notary Public)

(Seal)

S C H E D U L E A

Identification of Brine Ponds and Cost Estimates

Schedule A is referenced in the trust agreement dated _____ by and between:

_____, the "Grantor", and
(name of owner or operator)

_____, the "Trustee".
(name of trustee)

KDHE Brine Pond Permit Number _____
Name of facility _____
Address of facility _____
Current decommissioning and abandonment cost estimate _____
Date of estimate _____

KDHE Brine Pond Permit Number _____
Name of facility _____
Address of facility _____
Current decommissioning and abandonment cost estimate _____
Date of estimate _____

S C H E D U L E B

Standby Letter of Credit

Schedule B is referenced in the trust agreement dated _____ by and between _____, the "Grantor" and _____, the "Trustee".

With reference to the current decommissioning and abandonment cost estimates of _____ detailed in SCHEDULE A, _____ issued Irrevocable Letter of Credit No. _____, valid from _____ until _____, with possible one-year extensions. This Letter of Credit was established for the amount of _____,

and the beneficiary of SECRETARY OF THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT,

1000 SW Jackson Street, Suite 420, Topeka, Kansas 66612-1367.

A copy of the above referenced Irrevocable Letter of Credit No. _____ is attached to this STANDBY TRUST AGREEMENT.

db

UIC Procedure Std-trus.agr

S C H E D U L E B

Performance Bond

Schedule B is referenced in the Standby Trust Agreement dated _____ by and between

_____, the “Grantor”, and _____, the “Trustee”.

Funds drawn pursuant to the Performance Bond No. _____, whereby_____,

as surety, guarantees the payment by _____, of up to _____dollars

($_____) for the decommissioning and abandonment of the brine ponds described on Schedule A hereof

dated as of _____ as said Performance Bond may be amended, supplemented or otherwise

modified from time to time, and deposited in the fund established herewith.

db

UIC Procedure schedule B

S C H E D U L E B

Financial Guarantee Bond

Schedule B is referenced in the Standby Trust Agreement dated _____ by and between _____, the "Grantor", and _____, the "Trustee". Funds drawn pursuant to the Performance Bond No. _____, whereby _____ _____, as surety, guarantees the payment by _____, of up to _____dollars ($_____) for decommissioning and abandonment of the facilities described on Schedule A hereof dated as of _____ as said Financial Guarantee Bond may be amended, supplemented or otherwise modified from time to time, and deposited in the fund established herewith.

Irrevocable Standby Letter of Credit

Secretary
Kansas Department of Health and Environment
1000 S.W. Jackson Street, Suite 420
Topeka, Kansas 66612-1367

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. ___ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $_____, available upon presentation of:

(1) Your sight draft, bearing reference to this irrevocable standby letter of credit No. ____, and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of K.S.A. 55-1,117.

This irrevocable standby letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on such successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this irrevocable standby letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this irrevocable standby letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this irrevocable standby letter of credit is identical to the wording specified in UICLPG-30.

_____
Signature and Title of Official of Issuing Institution

Date:

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice of Documentation Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code."].