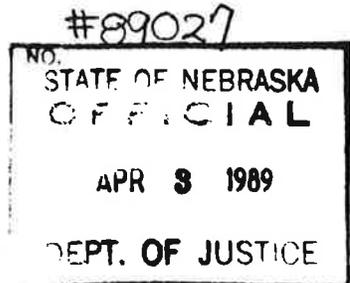


Linda Willard

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: March 29, 1989

SUBJECT: Financial Responsibility Requirements;
EPA Rule 43322 (53 FR 43322)

REQUESTED BY: Wallace M. Barnett, Jr.
State Fire Marshal

WRITTEN BY: Robert M. Spire, Attorney General
Fredrick F. Neid, Assistant Attorney General

This is in response to the request of Charlotte S. Centuori, Legal Counsel, for an opinion of this office concerning the validity and enforceability in this state of the guarantee and surety bond mechanisms referred to in 40 CFR 280.96(c) and 280.98(b), respectively.

The language of the draft guarantee and surety bond has been reviewed, and it is our conclusion that these financial responsibility mechanisms are valid and enforceable in the State of Nebraska. Further, the issuance of a guarantee in compliance with 40 CFR 280.96 is not subject to state insurance regulations because it does not appear to constitute the business of insurance in this state.

Accordingly, it is the opinion of this office that the guarantee mechanism specified in 40 CFR 280.96(c) and the surety bond mechanism specified in 40 CFR 280.98(b) would be valid and enforceable under the laws of this state, as long as they conform to other general requirements regarding form, execution, and consideration. We note, however, that this state's courts may not

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Mr. Wallace M. Barnett, Jr.
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have jurisdiction over claims filed in other courts, and we do not express an opinion on whether the mechanisms are valid or enforceable in other states.

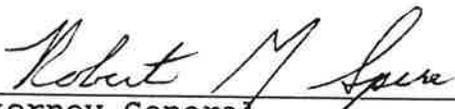
Sincerely,

ROBERT M. SPIRE
Attorney General



Fredrick F. Weid
Assistant Attorney General

APPROVED:



Attorney General