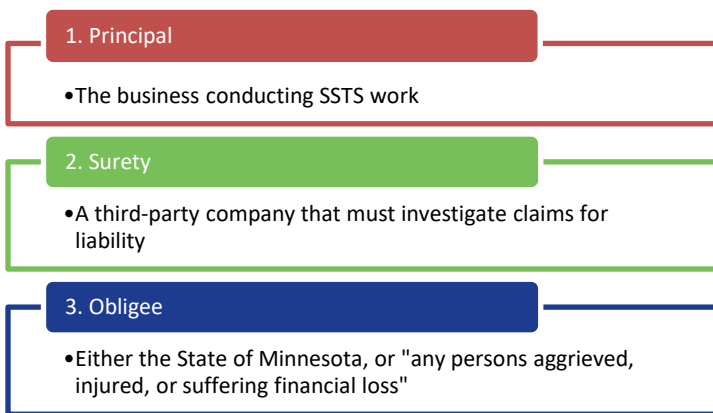


Surety bonds and septic systems

We receive plenty of questions about surety bonds. This fact sheet outlines the basics of Subsurface Sewage Treatment System (SSTS) surety bonds, the claim process, and tips for professionals, claimants, and local units of government in handling situations that involve SSTS surety bond claims.

What is a bond?

Figure 1 - The three parties in an SSTS surety bond contract



A surety bond is a three-way contract that represents a promise by the surety company to pay a customer (obligee) in the event the SSTS contractor (principal) fails to meet the obligations of a contract or comply with the underlying laws and ordinances that govern the industry.

The bond is a requirement for every SSTS license. Any organization that conducts SSTS design, installation, repair, maintenance, operation, or inspection must keep an original surety bond on file with the Minnesota Pollution Control Agency (MPCA). Because all licenses require a bond, and all work requires a license, all-legal SSTS work in Minnesota is protected by a surety bond.

Surety bonds have proven their value as a tool to resolve conflicts and improve accountability. They protect contractors from baseless claims and they protect aggrieved homeowners from contractors that are unwilling to accept responsibility for mistakes they have made.

The claim process

The MPCA advises bond obligees to first contact the contractor that completed the work before pursuing a bond claim. If the contractor does not respond or will not accept responsibility for the damage, the claimant should begin the claim process. The claim process begins when a potentially aggrieved party obtains details from the MPCA about the bond in effect when the work in question was completed. The MPCA provides claimants with contact information for the surety company and the elements of a valid claim. The claimant must submit a valid written claim seeking relief from the injury, which is described in Figure 2

Once a surety receives a claim, a claims representative will review the claim for validity. A surety is independent. It should not represent the interests of either party. The surety will notify the principal of any claim and provide the principal with information before requesting a response. The surety may ask the claimant for more information if a claim is not complete or the principal disputes the claim. The surety's responsibility is to perform a good faith investigation of every claim it receives and to determine each claim as valid, invalid, or disputed. Sureties that do not diligently investigate claims should be referred to the state licensing agency, the Minnesota Department of Commerce, for investigation:

Minnesota Department of Commerce
 Consumer Services Center
 651-539-1600
companylic.commerce@state.mn.us

Figure 2 - Elements of a valid SSTS surety bond claim

Proof of violation	Proof of injury
<p>Establish that a failure on the part of the principal violated a contract or code</p> <ul style="list-style-type: none"> • Context – identify the principal, bond number, date and type of work in question, and the date of the violation discovery • Narrative – describe how what occurred violated a contract or law (state code, local ordinance, etc.) • Supporting documentation – provide documentation of the work in question and the work that discovered the injury. Include a letter, documents, and pictures from the local authority, State, or another professional that specifies the violations 	<p>Establish that the principal's violation caused the injury</p> <ul style="list-style-type: none"> • Narrative – describe how the principal's actions were the cause of the injury. How did the work harm the obligee? • Quantification of loss – to what extent did the work harm the obligee? Examples include costs of replacement or repair or miscalculated property values • Supporting documentation – provide the basis for the calculation of the injury. This may include bids, service costs, consultant fees, and other expenses resulting from efforts to seek relief from the harm created by the principal

If the claim is valid

If the surety finds a claim to be valid, it will compel the principal to resolve the claim or it will pay the obligee for damages up to the maximum amount specified in the bond. All SSTS licenses must hold surety bonds with coverage of at least \$25,000. For work conducted before 2016, the minimum bond coverage was either \$10,000 or \$25,000, depending on the type of license held by the business.

An SSTS surety bond is not an insurance policy! If you are the principal and a valid claim is filed, you are responsible for resolving the matter. It is in your best interest to communicate with the surety when they notify you of a claim. You will be given the chance to dispute the matter or resolve the situation before the surety pays out. When a claim is paid, the principal is responsible for paying back the surety for both damages and the administrative and legal costs associated with the claim.

If the claim is invalid or is disputed by the principal

If the surety determines that a claim is invalid, it will decline the claim. If a principal disputes the claim and is prepared to defend itself, the obligee must bring suit against the contractor and/or the surety company to obtain a judgment against them and force payment. Disputed claims are most commonly resolved in conciliation court (small claims court), which has a claim limit of \$15,000. Larger claims must be brought in district (trial) courts.

What is the local governmental unit's role?

Local programs administer SSTS permitting and inspection programs, retain records, and enforce an ordinance. When a local program becomes aware of a dispute between a contractor and a customer, the program must be transparent and forthcoming with the information it has regarding the situation. Like sureties, local programs do not represent the interests of either party, but they do have a responsibility to provide information about any role they have played and any determinations they have made with regard to the dispute. Disagreements about periodically saturated soils are subject to the dispute resolution processes defined in local ordinance or Minn. R. ch. 7082.0700, subp. 5. Claimants and professionals must be able to access records and amended documents to support their claim or defense, which must be kept by local programs.

What is the Minnesota Pollution Control Agency's role?

The purpose of MPCA enforcement activities is to achieve compliance with state law, which is distinctively different from determining civil liability. Local units of government are often the first line of action for licensing enforcement activities because SSTS work is subject to local requirements. The MPCA investigates written complaints with sufficient evidence and retains the authority to impose sanctions or penalties on licensed businesses and certified individuals. MPCA enforcement documents may be used in claim investigations to determine proof of violation, but state enforcement is not necessary to pursue a valid bond claim. When state enforcement has taken place, there are limitations to the use of enforcement documents on both sides of a claim – the documents will not assign external liability, but will also not exonerate it. Corrective actions required by MPCA do not typically remedy harm to a claimant. When the MPCA does not pursue an enforcement action, that decision similarly does not exonerate the accused from civil liability.

Additional resources

SSTS Business License Surety Bond Form: <https://www.pca.state.mn.us/sites/default/files/wq-wwists3-22.doc>

Minnesota Commerce Department Complaints: <https://mn.gov/commerce/consumers/file-a-complaint/>

Minnesota Judicial Branch Conciliation Court: <http://www.mncourts.gov/Help-Topics/Conciliation-Court.aspx>

Minnesota Judicial Branch District Court: <http://www.mncourts.gov/Find-Courts.aspx>