

APPENDIX D
to the Consent Decree in
Maine People's Alliance v. HoltraChem Mfg. Co., LLC,
No. 1:00-cv-00069-JAW (D. Me)

Form of Surety Bond

Financial Assurance - Payment Bond

[Letterhead of Bond Issuer]

PAYMENT BOND

Surety's Payment Bond Number: [insert number]
Date of Execution of Payment Bond: [insert date]
Effective Date of Payment Bond: [insert date]
Total Dollar Amount of Payment Bond: \$[insert dollar amount]

PRINCIPAL:

Legal Name: Mallinckrodt US LLC
Address: [insert address]
Contact Person(s)/Information: [insert name and contact information (phone, email)]

SURETY:

Legal Name: [insert name of surety providing the bond]
Address: [insert address]
Contact Person(s)/Information: [insert name and contact information (phone, email)]

BENEFICIARIES:

Legal Name: Penobscot Estuary Mercury Remediation Trust
c/o [Trustee Recipient]
Address/Contact Information: [insert address and contact information (phone, email)]

Legal Name: Penobscot Estuary Beneficial Environmental Projects Trust
c/o [Trustee Recipient]
Address/Contact Information: [insert address and contact information (phone, email)]

SITE INFORMATION:

Name and Location of Site: Penobscot River Estuary (the Site)
Agreement Governing Site Work: Consent Decree, dated [insert date], in Case No. 1:00-cv-00069-JAW (D. Me.), ECF No. __, between Mallinckrodt US LLC and Maine People's Alliance and Natural Resources Defense Council

KNOW ALL PERSONS BY THESE PRESENTS, THAT:

WHEREAS, said Principal is required, under the Consent Decree entered pursuant to the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901-6992, to fund the Penobscot Estuary Mercury Remediation Trust and the Penobscot Estuary Beneficial

Environmental Projects Trust as defined in the Consent Decree, and to fulfill its other obligations as set forth in the Consent Decree; and

WHEREAS, said Principal is required by the Consent Decree to provide financial assurance to ensure completion of its funding obligations.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Principal and Surety hereto are firmly bound to the Penobscot Estuary Mercury Remediation Trust and the Penobscot Estuary Beneficial Environmental Projects Trust (the Beneficiaries), in the above Total Dollar Amount of this Payment Bond, for the payment of which we, the Principal and Surety, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, subject to and in accordance with the terms and conditions hereof.

2. The conditions of the Surety's obligation hereunder are such that if the Principal shall promptly, faithfully, fully, and finally fulfill its obligations in accordance with the terms of the Consent Decree, the Surety's obligation hereunder shall be null and void; otherwise it is to remain in full force and effect.

3. Pursuant to and in accordance with the terms of the Consent Decree, and except as specifically provided in Paragraph 5 below, the Surety shall become liable on the obligation evidenced hereby only upon the Principal's failure to perform all or any portion(s) of its obligations, as defined in Paragraph 20(e) of the Consent Decree. At any time and from time to time upon notification by any Beneficiary that a drawdown has commenced, as specified in the Consent Decree, the Surety shall promptly (and in any event within 15 days after receiving such notification) pay to the Beneficiary funds up to the Total Dollar Amount of this Payment Bond in such amounts and to such person(s), account(s), or otherwise as the Beneficiary may direct. If the Surety does not render such payment within the specified 15-day period, the Surety shall be deemed to be in default of this Payment Bond and the Beneficiary shall be entitled to enforce any remedy available to it at law, in equity, or otherwise.

4. The liability of the Surety 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 Total Dollar Amount of this Payment Bond, but in no event shall the aggregate obligation of the Surety hereunder exceed the amount of said sum.

5. The Surety may cancel this Payment Bond only by sending notice of cancellation to the Principal and to the Beneficiaries, provided, however, that no such cancellation shall be effective during the 120-day period beginning on the date of receipt of the notice of cancellation by both the Principal and the Beneficiaries, as evidenced by return receipts. If after 90 days of such 120-day period, the Principal has failed to provide alternative financial assurance to the

Beneficiaries in accordance with the terms of the Consent Decree, the Beneficiaries shall have the right to draw upon the Total Dollar Amount of this Payment Bond.

6. The Principal may terminate this Payment Bond only by sending written notice of termination to the Surety and to the Beneficiaries, provided, however, that no such termination shall become effective unless and until the Surety receives written authorization for termination of this Payment Bond by both of the Beneficiaries, or if one of the Trusts has been terminated, by the remaining Beneficiary.

7. Any modification, revision, or amendment that may be made to the terms of the Consent Decree, or any extension of the Consent Decree, or other forbearance on the part of either the Principal or the Beneficiaries to the other, shall not in any way release the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors, or assigns from liability. The Surety expressly waives notice of any change, revision, or amendment to the Consent Decree or to any related obligations between the Principal and the Beneficiaries.

8. The Surety will immediately notify the Beneficiaries of any of the following events: (a) the filing by the Surety of a petition seeking to take advantage of any laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts; (b) the Surety's consent to (or failure to contest in a timely manner) any petition filed against it in an involuntary case under such bankruptcy or other laws; (c) the Surety's application for (or consent to or failure to contest in a timely manner) the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or the like of itself or of all or a substantial part of its assets; (d) the Surety's making a general assignment for the benefit of creditors; or (e) the Surety's taking any corporate action for the purpose of effecting any of the foregoing.

9. Any provision in this Payment Bond that conflicts with RCRA or any other applicable statutory or legal requirement shall be deemed deleted and provisions conforming to such statutory or legal requirement shall be deemed incorporated.

10. All notices, elections, consents, approvals, demands, and requests required or permitted shall be given in writing to (unless updated from time to time) the addressees shown on the first page of this Payment Bond, identify the Site, and provide a contact person (and contact information). All such correspondence shall be: (a) effective for all purposes if hand delivered or sent by (i) certified or registered United States mail, postage prepaid, return receipt requested or (ii) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, to the relevant address shown on the first page of this Payment Bond; and (b) effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one business day after being deposited with a nationally recognized overnight courier service as required above, or (iii) three business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, consent, approval, demand, or request sent.

11. The Surety hereby agrees that the obligations of the Surety under this Payment Bond shall be in no way impaired or affected by any winding up, insolvency, bankruptcy, or reorganization of the Principal or by any other arrangement or rearrangement of the Principal for the benefit of creditors.

12. No right of action shall accrue on this Payment Bond to or for the use of any person other than the Beneficiaries or the executors, administrators, successors or assigns of the Beneficiaries.

IN WITNESS WHEREOF, the Principal and Surety have executed this Payment Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby represent, warrant, and certify that they are authorized to execute this Payment Bond on behalf of the Principal and Surety, respectively.

FOR THE PRINCIPAL:

Date: _____

By [signature]: _____

Printed name: _____

Title: _____

State of **[insert state]**

County of **[insert county]**

On this **[insert date]**, before me personally came **[insert name of Mallinckrodt’s signatory]** to me known, who, being by me duly sworn, did depose and say that she/he is **[insert title]** of Mallinckrodt US LLC, the entity described in and which executed the above instrument; and that she/he signed her/his name thereto.

[Signature of Notary Public]

FOR THE SURETY:

Date: _____

By [signature]: _____

Printed name: _____

Title: _____

State of **[insert state]**

County of **[insert county]**

On this **[insert date]**, before me personally came **[insert name of Surety’s signatory]** to me known, who, being by me duly sworn, did depose and say that she/he is **[insert title]** of **[insert name of Surety]**, the entity described in and which executed the above instrument; and that she/he signed her/his name thereto.

[Signature of Notary Public]