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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Environment and Conservation
Division:	Financial Responsibility Office
Contact Person:	O. J. Wingfield
Address:	8 th Floor, L & C Annex 401 Church Street Nashville, Tennessee 37243
Phone:	(615) 532-0877
Email:	O.J.Wingfield@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator
Address:	12 th Floor L&C Tower 401 Church Street Nashville, Tennessee 37243
Phone:	1-866-253-5827 (toll free) or (615) 532-0200 Hearing impaired callers may use the TN Relay Service at 1-800-848-0298.
Email:	Beverly.Evans@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Ruth Neff Conference Room – Side B 17 th Floor, L & C Tower		
Address 2:	401 Church Street		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	11/15/10		
Hearing Time:	1:00 p.m.	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

Additional Hearing Information:

The Department prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review at the Tennessee Department of Environment and Conservation's (TDEC's) Environmental Field Offices located as follows:

Memphis Environmental Field Office
8383 Wolf Lake Drive
Memphis, TN 38133
(901) 371-3000/ 1-888-891-8332

Cookeville Environmental Field Office
1221 South Willow Avenue
Cookeville, TN 38506
(931) 432-4015/ 1-888-891-8332

Jackson Environmental Field Office
1625 Hollywood Drive
Jackson, TN 38305
(731) 512-1300/ 1-888-891-8332

Chattanooga Environmental Field Office
Suite 550 - State Office Building
540 McCallie Avenue
Chattanooga, TN 37402-2013
(423) 634-5745/ 1-888-891-8332

Columbia Environmental Field Office
1421 Hampshire Pike
Columbia, TN 38401
(931) 380-3371/ 1-888-891-8332

Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, TN 37921-5602
(865)594-6035/ 1-888-891-8332

Nashville Environmental Field Office
711 R. S. Gass Blvd.
Nashville, TN 37243-1550
(615) 687-7000/1-888-891-8332

Johnson City Environmental Field Office
2305 Silverdale Road
Johnson City, TN 37601-2162
(423) 854-5400/1-888-891-8332

The "Draft" rules may also be accessed for review using <http://tn.gov/environment/rad/ppo/>

Draft copies are also available for review at the following address:

Tennessee Department of Environment and Conservation
Division of Financial Responsibility
8th Floor, L&C Annex
401 Church Street
Nashville, Tennessee 37243
(615) 532-0877

Office hours are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Tennessee Department of Environment and Conservation, Financial Responsibility Office; Attention: O.J. Wingfield 8th Floor, L & C Annex; 401 Church Street; Nashville, Tennessee 37243; telephone 615-532-0877 or fax 615-253-8334. However, such written comments must be received by 4:30 PM CST, November 17, 2010, in order to assure consideration. For further information, please contact O. J. Wingfield at the above address or telephone number or by e-mail at O.J.Wingfield@tn.gov.

[Link to the Commissioner's Red Line Version of Draft Rules](#)

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1200-02-10	Licensing and Registration
Rule Number	Rule Title
1200-02-10-.12	General Requirements for the Issuance of Specific Licenses

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://tn.gov/sos/rules/1360/1360.htm>)

Chapter 1200-02-10
Licensing and Registration

Amendment

Rule 1200-02-10-.12 General Requirements for the Issuance of Specific Licenses is amended by deleting it in its entirety and replacing it with following:

1200-02-10-.12 General Requirements for the Issuance of Specific Licenses

A license application will be approved if the Commissioner determines that:

- (1) The applicant has properly trained a sufficient number of personnel to use the material in question for the purpose required in accordance with these regulations in such a manner as to protect the public health and safety or property;
- (2) The applicant's proposed equipment, facilities and procedures are in good repair and working order and designed to protect the public health and safety or property;
- (3) The applicant satisfies all applicable requirements of these regulations;
- (4) The applicant or an existing licensee in any of the classes specified in subparagraph (a) of this paragraph and not otherwise specifically exempted by subparagraph (m) of this paragraph has provided financial assurance as herein specified. (See paragraph (6) of this Rule for definitions of terms used in this paragraph.)
 - (a) Classes of financial assurance:
 1. Major processors
 2. Waste handlers
 3. Ore refineries
 4. Former USAEC or USNRC licensed facilities
 5. Other persons with or applicants for a specific license as determined by the Commissioner.
 - (b) The financial assurance shall be filed with and maintained by the Commissioner, in a dollar amount determined by the Commissioner as necessary to provide for the protection of public health and safety in the event of abandonment, insolvency or other inability of the licensee to perform to the satisfaction of the Commissioner. The Commissioner shall consider the following in making his determination of the financial assurance requirements for each individual applicant or licensee:
 1. The probable extent of contamination through the use or possession of radioactive material at the facility or site and the probable cost of removal of such contamination to a level in conformance with prevailing national standards or guidelines. This consideration shall encompass all probable contaminating event associated with the licensee's methods or modes of operation;
 2. The amount of possible off-site property damage caused by operation of the facility or site;
 3. The cost of removal and disposal of sources of radiation, which are or would be generated, stored, processed or otherwise present at the licensed facility or site; and

4. The costs involved in reclaiming the property on which the facility or site is located. For purposes of this part, "reclaiming" shall mean return of the property to a condition or state such that the property no longer presents a public health or safety hazard or threat to the environment.
- (c) Each applicant or licensee of each facility to which it is applicable must file and maintain with the Director financial assurance for reclaiming the facility in accordance with the requirements of this subparagraph.
1. The applicant or licensee must choose from the financial assurance mechanisms as specified in subparagraph (d) of this paragraph. (NOTE: See also subparagraphs (e), (f) and (g) of this paragraph.)
 2. The applicant or licensee must file and maintain financial assurance in an amount at least equal to the current reclaiming cost estimate.
 - (i) Whenever the reclaiming cost estimate increases to an amount greater than the amount of financial assurance currently filed with the Commissioner, the licensee must, within 60 days after the increase, file additional financial assurance at least equal to this increase.
 - (ii) Whenever the current reclaiming cost estimate decreases, and upon the written request of the licensee, the Commissioner shall, provided the decrease is validated, reduce the amount of financial assurance required for the facility to the amount of the current reclaiming cost estimate. Upon such occurrence, the Commissioner shall, as appropriate considering the financial assurance mechanism(s) on file, either cause to be released to the licensee cash or collateral equal to this reduction or allow the licensee to substitute for the mechanism(s) on file a new mechanism(s) in the reduced amount.
 3. An applicant for a license must file the financial assurance instrument(s) before the license can be issued.
 4. The financial assurance must be maintained by the applicant or licensee until the Commissioner releases the licensee from the requirements of this subparagraph, as specified in this part, or until the Commissioner orders forfeiture of the financial assurance as provided in part 5 of this subparagraph.
 5. The Commissioner may order that any financial assurance filed by a licensee pursuant to this subparagraph be forfeited to the State if the Commissioner determines that the licensee has failed to perform reclaiming in a manner deemed acceptable by the Commissioner to assure health and safety from radiation hazards and other license requirements when required to do so. Any such forfeiture action shall follow the procedures provided in subparagraph (h) of this paragraph.
- (d) Mechanisms of financial assurance.
1. Surety Bond - An applicant or licensee may satisfy the requirements of subparagraph (c) of this paragraph by obtaining and filing a surety bond which conforms to the requirements of this part.
 - (i) The surety company issuing the bond must be licensed to do business as a surety in Tennessee.
 - (ii) The wording of the surety bond must be identical to the wording specified in part (j)1 of this paragraph.
 - (iii) The bond must guarantee that:
 - (I) Funds will be available to perform reclaiming in a manner deemed acceptable by the Commissioner to assure health and safety from

radiation hazards and other requirements of the license for the facility whenever required to do so.

- (II) The licensee will provide alternate financial assurance as specified in this paragraph and obtain the Commissioner's written approval of the assurance provided within 90 days of receipt by both the licensee and the Commissioner of a notice of cancellation of the bond from the surety.
 - (iv) Under the terms of the bond, the surety will become liable on the bond obligation when the licensee fails to perform as guaranteed by the bond. Following a determination by the Commissioner that the licensee has failed to so perform, under the terms of the bond the surety will perform reclamation to the satisfaction of the State as guaranteed by the bond or will forfeit the amount of the penal sum, as provided in part (c)5 of this paragraph.
 - (v) The penal sum of the bond must be in an amount at least adequate to provide the necessary financial assurance.
 - (vi) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the licensee and to the Commissioner. Cancellation may not occur, however, during the 180 days beginning on the date of receipt of the notice of cancellation by both the licensee and the Commissioner, as evidenced by the return receipts.
 - (vii) The surety will not be liable for deficiencies in the performance of reclaiming after the Commissioner releases the licensee from the financial assurance requirements as provided in part (c)4 of this paragraph.
2. Personal Bond Supported by a Letter of Credit - An applicant or licensee may satisfy the requirements of subparagraph (c) of this paragraph by filing his personal performance guarantee accompanied by collateral in the form of an irrevocable standby letter of credit. He must guarantee funds to perform reclaiming in accordance with acceptable practice for protection of health and safety and other requirements of the license for the facility. The irrevocable standby letter of credit supporting this guarantee must conform to the following requirements:
- (i) The institution issuing the letter of credit must be an entity which has the authority to issue letter of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.
 - (ii) The wording of the letter of credit must be identical to the wording specified in part (j)2 of this paragraph.
 - (iii) The letter of credit must be accompanied by a letter from the licensee referring to the letter of credit by number, issuing institution and date and providing the following information: The radioactive material license number, name and address of the facility and the amount of funds assured for reclaiming of the facility by the letter of credit. (NOTE: This letter from the licensee may also contain his personal performance guarantee.)
 - (iv) The letter of credit must be irrevocable and issued for a period of at least one (1) year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least 180 days before the current expiration date, the issuing institution notifies both the licensee and the Commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 180 days will begin on the date when both the licensee and the Commissioner have received the notice, as evidenced by the return receipts.
 - (v) The letter of credit must be issued in an amount at least adequate to provide the necessary financial assurance.

(vi) The Commissioner may draw on the letter of credit upon forfeiture as provided in part (c)5 of this paragraph. The Commissioner will also draw on the letter of credit if the licensee does not establish alternate financial assurance as specified in this paragraph and obtain written approval of such alternate assurance from the Commissioner within 90 days after receipt by both the licensee and the Commissioner of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date. The Commissioner may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Commissioner will draw on the letter of credit if the licensee has failed to provided alternate financial assurance as specified in this paragraph and obtain written approval of such assurance from the Commissioner.

3. Personal Bond Supported by Insurance - An applicant or licensee may satisfy the requirements of subparagraph (c) of this paragraph by filing his personal performance guarantee accompanied by collateral in the form of an insurance policy. He must guarantee funds sufficient to perform reclaiming in a manner deemed acceptable by the Commissioner for protection of health and safety and other requirements of the license for the facility. The insurance policy supporting this guarantee must conform to the following requirements:

(i) The insurer must be licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the State of Tennessee.

(ii) The insurance policy must be accompanied by a certificate of insurance whose wording is identical to the wording specified in part (j)3 of this paragraph.

(iii) The insurance policy must be for a face amount at least adequate to provide the necessary financial assurance. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(iv) The insurance policy must guarantee that funds will be available for reclaiming the facility whenever reclaiming is necessary.

(v) Upon forfeiture of financial assurance as provided in part (c)5 of this paragraph, the Commissioner will direct the insurer to pay the full face amount to the State.

(vi) The licensee must maintain the policy in full force and effect until the Commissioner releases the financial assurance mechanism as provided in this paragraph. Failure to pay the premium, without substitution of alternate financial assurance as specified in this paragraph, will constitute a significant violation of these regulations, warranting such remedy as the Commissioner deems necessary. Such violation will be deemed to begin upon receipt by the Commissioner of a notice of future cancellation, termination or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(vii) The policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the licensee and the Commissioner. Cancellation, termination or failure to renew may not occur, however, during the 180 days beginning with the date of receipt of the notice by both the Commissioner and the licensee, as evidenced by the return receipts. Cancellation, termination or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

- (I) The Commissioner deems the facility abandoned;
 - (II) The license is terminated or revoked or renewal is denied;
 - (III) Closure is ordered by the Commissioner or a court of competent jurisdiction;
 - (IV) The licensee is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or
 - (V) The premium due is paid.
- (viii) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.
4. Personal Bond Supported by Securities - An applicant or licensee may satisfy the requirements of subparagraph (c) of this paragraph by filing his personal performance guarantee accompanied by collateral in the form of securities. He must guarantee sufficient funds to perform reclaiming in accordance with acceptable practices for protection of health and safety and other requirements of the license for the facility. The securities supporting this guarantee must be fully registered as to principal and interest in such manner as to identify the State and the Department as holder of such collateral and to also identify that person filing such collateral. These securities must have a current market value at least adequate to provide the necessary financial assurance and must be included among the following types:
- (i) Negotiable certificates of deposit assigned irrevocably to the State.
 - (I) Such certificates of deposit must be automatically renewable and must be assigned to the State in writing and recorded as such in the records of the financial institution issuing such certificate.
 - (II) Such certificates of deposit must also include a statement signed by an officer of the issuing financial institution which waives all rights of lien which the institution has or might have against the certificate.
 - (ii) Negotiable United States Treasury securities assigned irrevocably to the State.
 - (iii) Negotiable general obligation municipal or corporate bonds which have at least an "A" rating by Moody's and/or Standard & Poor's rating services and which are assigned irrevocably to the State.
5. Personal Bond Supported by Cash - An applicant or licensee may satisfy the requirements of subparagraph (c) of this paragraph by filing his personal performance guarantee accompanied by cash in an amount at least adequate to provide the necessary financial assurance.
6. Corporate Financial Test of Self-Assurance for Reclaiming.
- (i) An applicant or licensee may satisfy the requirements of subparagraph (c) of this paragraph by demonstrating that it passes a financial test as specified in this part. To pass this test the applicant or licensee must meet the criteria of item (I) and either items (II) or (III) of this subpart as follows:
 - (I) Financial Ratios. The applicant or licensee must have:

- I. Two of the following three ratios: a ratio of total liabilities to net worth shall be less than 1.5; a ratio of the sum of net income plus depreciation, depletion, and amortization minus ten million dollars (\$10,000,000) to total liabilities shall be greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
 - II. Net working capital and tangible net worth each at least six (6) times the sum of the current closure and post-closure cost estimates and all other environmental financial assurance obligations covered by a financial test; and
 - III. Tangible net worth of at least \$10 million plus the dollar amount of the current closure and post-closure cost estimates and all other environmental financial assurance obligations covered by a financial test; and
 - IV. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and all other environmental financial assurance obligations covered by a financial test.
- (II) Corporate Bonds. The applicant or licensee must have:
- I. An outstanding corporate bond issuance of senior unsecured debt registered with the U.S. Securities and Exchange Commission (SEC); and
 - II. A bond issuance used to comply with the financial test requirements that is the most recent senior unsecured debt issued by the corporation and is outstanding for the duration of the fiscal year of the corporation for which the financial test is intended to serve as financial assurance; and
 - III. A rating of the submitted bond issuance by Standard and Poor's, or Moody's, or Fitch debt rating agencies of not less than "BBB" by Standard and Poor's, "Baa2" by Moody's, and "BBB" by Fitch. Ratings of "BBB-" by Standard and Poor's, "Baa3" by Moody's, and "BBB-" by Fitch are not acceptable to the Commissioner; and
 - IV. If a corporate applicant or licensee, using the financial test, has bond ratings by more than one rating agency, "all" of the ratings must be submitted to the Commissioner, and "all" of the ratings must meet the rating allowed by these regulations as listed in subitem III of this item.
- (III) Corporate Credit Rating. The applicant or licensee must have:
- I. A corporate credit rating that has been issued or confirmed by no more than one year prior to the date of the submission of the financial test;
 - II. A corporate credit rating of not less than the Standard and Poor's Long term debt rating of "BBB" and short term debt rating of "A-2", Moody's long term debt rating of "Baa2" and short term debt rating of "P-2", and Fitch's long term debt rating of "BBB" and short term debt rating of "F2";
 - III. Corporate credit long term ratings of "BBB-" by Standard and

Poor's, "Baa3" by Moody's and "BBB-" by Fitch are not acceptable to the Commissioner; and

- IV. If a corporate applicant or licensee, using the financial test, has a corporate credit rating by more than one rating agency, "all" of the ratings must meet the ratings allowed by these regulations as listed in subitems II and III of this item.
- (ii) If the applicant or licensee corporate bond ratings or corporate credit ratings made by rating agencies other than those listed in subpart (i), items (II) and (III) of this part the acceptability of such ratings for purposes of qualifying to use the Financial Test of Self-assurance shall be made by the Commissioner.
 - (iii) To demonstrate that the corporation meets this Corporate Financial Test, the applicant or licensee must submit the following items to the Commissioner:
 - (I) A letter signed by the applicant's or licensee's chief financial officer and worded as specified in part (j)4 of this paragraph;
 - (II) A copy of the independent certified public accountant's report on examination of the applicant's or licensee's financial statements for the latest completed fiscal year; and
 - (III) A special report from the applicant's or licensee's independent certified public accountant to the applicant or licensee stating that:
 - I. He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and
 - II. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted; and
 - (IV) A written statement or statements from the rating agency or agencies of all existing bond ratings or corporate credit ratings; and
 - (V) A Financial Test of Self-Assurance Guarantee Agreement for Reclaiming completed and signed by the Chief Financial Officer with the proper notarization, and with the original of the document being submitted to the Commissioner as an accompaniment to the Letter from the Chief Financial Officer.
 - (iv) An applicant or licensee wanting to use the financial test of self-assurance for the first time or an applicant or licensee previously disqualified from continuing to use the financial test but desiring to use the financial test of self-assurance again must demonstrate its qualification as evidenced in its year-end financials for two years prior to the beginning of the fiscal year in which it seeks to use the financial test. Subparts (i) through (iii) of this part must be submitted for each of the two years to evidence its qualification to use the financial test of self-assurance.
 - (v) After the initial submission of items specified in subparts (i), (ii) and (iii) of this part, and the approval of the submittals by the Commissioner, the applicant or licensee desiring to continue use of the financial test must send the same information, updated, to the Commissioner within 90 days after the close of each succeeding fiscal year.
 - (vi) If the applicant or licensee no longer meets the requirements of this part, as a direct result of its independently audit year end financials, the applicant or

licensee must send notice to the Commissioner of intent to establish alternate financial assurance as specified in this paragraph. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the applicant or licensee no longer meets the requirements. The applicant or licensee must provide the alternate financial assurance within 120 days after the end of such fiscal year.

- (vii) The Commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the applicant's or licensee's financial statements (see items (II) and (III) of subpart (iii) of this part). An adverse opinion or a disclaimer of opinion will be cause for disallowance.
- (viii) In evaluating the sufficiency of the documentation submitted to qualify to use the corporate financial test, the Commissioner may consider the following factors:
 - (I) Timely submission of the test denoting that the test can only be used as a financial instrument if submitted during the 90 day period following the end of the applicant's or licensee's fiscal year;
 - (II) Accuracy and validity of the financial data submitted in the test;
 - (III) Changes by the rating agencies in the rating systems and nomenclature that affect the determination of which ratings are acceptable to the Commissioner as listed in these regulations. In the event such changes are made by the rating agencies, the Commissioner may determine which corporate bond and corporate credit ratings are acceptable to coincide with the changes by the rating agencies;
 - (IV) Any other factors relating to split bond and credit ratings that significantly affect the applicant's or licensee's financial posture;
 - (V) Applicant's or licensee's failure to include in the test, the sum of all environmental financial assurance amounts for which the financial test serves as financial assurance in the United States and internationally; and
 - (VI) Any other items or concerns that affect the acceptability of the submitted financial test and its compatibility to other allowed financial assurance instruments.
- (ix) If the Commissioner disallows the use of the test, the applicant or licensee must provide alternate financial assurance as specified in this paragraph within 30 days after notification of the disallowance.
- (x) If the applicant or licensee determines at any time during its fiscal year, by sources internal or external to the corporation, that the corporation can no longer meet the financial test criteria, it shall notify the Commissioner in writing within 72 hours of such determination and shall establish an approved alternative financial assurance instrument within 30 days of such notification.
- (xi) The Commissioner may, based on a reasonable belief that the applicant or the licensee no longer meets the requirements of subparts (i), (ii), and (iii) of this part, require reports of financial condition at any time from the applicant or licensee. If the Commissioner finds, on the basis of such reports or other information, that the applicant or licensee no longer meets the requirements of subparts (i), (ii), and (iii) of this part, the applicant or licensee must provide alternate financial assurance as specified in this paragraph within 30 days after notification by the Commissioner that the applicant or licensee no longer meets the requirements to use the financial test of self-assurance.

- (xii) If the amount of any increase in financial assurance occurring, after the initial annual submittal of the financial test, would disqualify the applicant or licensee from using the financial test, based on current year to date financials, the applicant or licensee must provide an interim alternative financial assurance mechanism to the Commissioner. The interim financial assurance mechanism, in the amount of the increase, must be filed with the Commissioner within 30 days of such determination by the applicant or licensee or the Commissioner. The subsequent annual re-submittal of the Financial Test must include all environmental financial obligations including the amount provided by the interim financial instrument.
- (xiii) The applicant or licensee is no longer required to submit the items specified in subparts (i), (ii), and (iii) of this part when:
 - (I) An applicant or licensee substitutes alternate financial assurance as specified in this paragraph; or
 - (II) The Commissioner releases the applicant or licensee from the requirements of part 4 of subparagraph (c) of this paragraph.
- (xiv) An applicant or licensee may meet the requirements of subparagraph (c) of this paragraph by obtaining a written guarantee, hereafter referred to as "Corporate Parent Financial Test Guarantee Agreement." The guarantor must be the direct or higher-tier parent corporation of the applicant or licensee. The guarantor must meet the requirements for the applicant or licensee in subparts (i) through (xii) of this part and must comply with the terms of the corporate parent guarantee. The wording of the Corporate Parent Financial Test Guarantee Agreement must be identical to the wording specified in Rule 1200-02-10-.12(4)(j)5. A certified copy of the guarantee agreement must accompany the items sent to the Commissioner as specified in subpart (iii) of this part. The terms of the Corporate Parent Financial Test Guarantee Agreement shall provide that:
 - (I) If the applicant or licensee fails to perform reclaiming of the facility covered by the Corporate Parent Financial Test Guarantee Agreement whenever required to do so and in accordance with acceptable practices to protect health and safety and comply with other license requirements to the satisfaction of the Commissioner, the guarantor shall forfeit to the State monies in an amount equal to the current reclaiming cost estimate for the facility, as provided in subparagraph (c) of this paragraph as directed by the Commissioner.
 - (II) The Corporate Parent Financial Test Guarantee Agreement shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant or licensee and to the Commissioner. Cancellation may not occur, however, during the 180 days beginning on the date of receipt of the notice of cancellation by both the applicant or licensee and the Commissioner, as evidenced by the return receipts.
 - (III) If the applicant or licensee fails to provide alternate financial assurance as specified in this paragraph and obtain the written approval of such alternate assurance from the Commissioner within 90 days after receipt by both the applicant or licensee and the Commissioner of a notice of cancellation of the Guarantee from the Guarantor, the guarantor shall provide such alternative financial assurance in the name of the applicant or licensee before the expiration of the 90 days.
- (e) Use of Multiple Financial Mechanisms - In meeting the requirements of subparagraph (c) of this paragraph, an applicant or licensee may utilize more than one financial assurance mechanism per facility. These mechanisms are limited to personal bonds supported by letters of credit, insurance, securities or cash. The mechanisms must be as specified in subparagraph (d) of this paragraph, except that it is the combination of mechanisms, rather than the single mechanism,

which must provide financial assurance for the necessary amount.

- (f) Use of a Financial Mechanism for Multiple Facilities - An applicant or licensee may use a financial assurance mechanism specified in subparagraph (d) of this paragraph to meet the requirements of subparagraph (c) of this paragraph for more than one facility he owns or operates in Tennessee. If so, the mechanism submitted to the Commissioner must include a list showing, for each facility, the license number, name, address and amount of funds for reclaiming care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been filed and maintained for each facility.
- (g) Substituting Alternate Financial Assurance - In meeting the requirements of subparagraph (c) of this paragraph, a licensee may substitute alternate financial assurance meeting the requirements of this paragraph for the financial assurance already filed with the Commissioner for the facility. However, the existing financial assurance shall not be released by the Commissioner until the substitute financial assurance has been received and approved by him.
- (h) Procedures for Forfeiture of Financial Assurance.
 - 1. Upon the determination of abandonment, insolvency or other inability of the licensee to perform to the satisfaction of the Commissioner, a notice of non-compliance shall be served upon the licensee. Such notice shall be hand-delivered or forwarded by certified mail. The notice of non-compliance shall specify in what respects the licensee has failed to perform as required.
 - 2. If the Commissioner determines that the licensee has failed to perform as specified in the notice of non-compliance, or as specified in any subsequent compliance agreement which may have been reached by the licensee and the Commissioner, the Commissioner shall cause a notice of show cause meeting to be served upon the licensee. Such notice shall be signed by the Commissioner and either hand-delivered or forwarded by certified mail to the licensee. The notice of show cause meeting shall establish the date, time and location of a meeting scheduled to provide the licensee with the opportunity to show cause why the Commissioner should not pursue forfeiture of the financial assurance filed to guarantee such performance.
 - 3. If no mutual compliance agreement is reached at the show cause meeting, or, upon the Commissioner's determination that the licensee has failed to perform as specified in such agreement that was reached, the Commissioner shall order forfeiture of the financial assurance filed to guarantee such performance.
 - 4. The Commissioner shall order forfeiture of the financial assurance upon his determination that the procedures of this subparagraph have been followed. The Commissioner may, however, at his discretion, provide opportunity for the licensee to be heard before himself before issuing such order. Upon issuance a copy of the order shall be hand-delivered or forwarded by certified mail to the licensee. Any such order issued by the Commissioner shall become effective thirty (30) days after the receipt by the licensee.
 - 5. If necessary, upon the effective date of the order of forfeiture, the Commissioner shall give notice to the State Attorney General who shall collect the forfeiture.
 - 6. All funds from forfeited financial assurances shall be deposited in the State's radiation reclamation trust fund account for use by the Commissioner as set forth in Section 68-23-405 of the Act.
- (i) Incapacity of Applicants or Licensees, Guarantors, or Financial Institutions.
 - 1. An applicant or licensee must notify the Director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the applicant or licensee as debtor, within ten (10) days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in part (d)6 of this paragraph must make such a notification if he is named as debtor, as required under the

terms of the corporate guarantee.

2. An applicant or licensee who fulfills the requirements of this paragraph by obtaining a surety bond, letter of credit or insurance policy will be deemed to be without the required financial assurance in the event of bankruptcy of the issuing institution or a suspension or revocation of the authority of the institution issuing the surety bond, letter of credit or insurance policy to issue such instruments. The applicant or licensee must establish other financial assurance within thirty (30) days after such an event.

(j) Wording of the Instruments.

1. A surety bond guaranteeing funds for reclaiming as specified in part (d)1 of this paragraph, must be worded as follows except that the instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

SURETY BOND

Date bond executed: _____

Effective date: _____

Principal: (legal name and business address of applicant or licensee)

Type of organization: (insert "individual," "joint venture," "partnership" or "corporation")

State of incorporation: _____

Surety(ies): (Name(s) and business address(es))

License number, name, address and reclaiming cost for each facility guaranteed by this bond (list amounts separately):

\$ _____

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 Tennessee Department of Environment and Conservation (hereinafter called Department), 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 Tennessee Radiological Health Act, as amended, to have a license in order to receive, possess, store and use radioactive material at the facility identified above, and

WHEREAS said Principal is required to provide financial assurance for reclaiming as a condition of the license;

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform reclaiming, whenever required to do so, of each facility for which this bond guarantees funds for reclaiming, to the satisfaction of the Commissioner, Tennessee Department of Environment and Conservation in accordance with acceptable practices for protection of health and safety 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 in Rule 1200-02-10-.12(4), and obtain the written approval of such assurance from the Commissioner, within ninety (90) days after the date notice of cancellation is received by both the Principal and the Commissioner 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 Commissioner that the Principal has been found in violation of the reclaiming requirements of the Department, for a facility for which this bond guarantees funds for performance of reclaiming, the Surety(ies) shall forfeit the reclaiming cost amount guaranteed for the facility to the Department as directed by the Commissioner.

Upon notification by the Commissioner that the Principal has failed to provide alternate financial assurance as specified in Rule 1200-02-10-.12(4), and obtain written approval of such assurance from the Commissioner during the thirty (30) days following receipt by both the Principal and the Commissioner of a notice of cancellation of the bond, the Surety(ies) shall forfeit funds in the amount guaranteed for the facility(ies) to the Department as directed by the Commissioner.

The Surety(ies) hereby waive(s) notification of amendments to licenses, applicable laws, statutes, rules and regulations and agree(s) 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 of cancellation by certified mail to the Principal and to the Commissioner, provided, however, that cancellation shall not occur during the one hundred eighty (180) days beginning on the date of receipt of the notice of cancellation by both the Principal and the Commissioner, 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 Commissioner.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this SURETY 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 Rule 1200-02-10-.12(4)(j)1 as such regulation was constituted on the date this bond was executed.

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: \$ _____

2. A letter of credit, as specified in part (d)2 of this paragraph, must be worded as follows except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Commissioner
Tennessee Department of Environment and Conservation

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 (applicant's or licensee'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 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 the Tennessee Radiological Health Act, as amended."

This letter of credit is effective as of (date) and shall expire on (date at least one (1) year later), but such expiration date shall be automatically extended for a period of (at least one (1) year) on (date) and on each successive expiration date, unless, at least one hundred eighty (180) days before the current expiration date, we notify both you and (applicant's or licensee's name) by certified mail that we have decided not to extend this 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 one hundred eighty (180) days after the date of receipt by both you and (licensee's name), as shown on the signed return receipts. *****

Whenever this 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 forfeit the amount of the draft to the State of Tennessee in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Rule 1200-02-10-.12(4)(j)2 as such regulation was constituted on the date shown immediately below.

(Signature(s) and title(s) of official(s) of issuing institution) (Date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code").

3. A Certificate of insurance, as specified in part (d)3 of this paragraph must be worded as follows except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

CERTIFICATE OF INSURANCE FOR RECLAIMING

Name and Address of Insurer
(herein called the "Insurer"): _____

Name and Address of Insured
(herein called the "Insured") : _____

Facilities Covered: (List for each facility: The license number, name, address and the amount of insurance for reclaiming (these amounts for all facilities covered must total the face amount shown below))

Face Amount: \$ _____

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for reclaiming the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of Rule 1200-02-10-.12(4)(j)3, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulation is hereby amended to eliminate such inconsistency.

Whenever requested by the Commissioner, the Insurer agrees to furnish to the Commissioner a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in Rule 1200-02-10-.12(4)(j)3 as such regulation was constituted on the date shown immediately below.

(Authorized signature for Insurer)

(Name of person signing)

(Title of person signing)

Signature of witness or notary: _____

(Date)

4. A letter from the chief financial officer, as specified in part (d)6 of this paragraph must be worded as follows except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Part A

A letter from the chief financial officer, as specified in Rule 1200-02-10-.12(4) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to Commissioner]

I am the chief financial officer of [name and address of firm]. This letter is in support of the use of the financial test to demonstrate financial responsibility for Reclaiming as specified in Rules 1200-02-10-.12(4)

Fill in paragraphs (I) through (III) regarding facilities and associated reclaiming cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its License Number, name, address, and current reclaiming cost estimates and/or cost estimate for other environmental financial responsibility obligations covered by the financial test as appropriate.

- (I) The corporate applicant or licensee must complete subparagraph (a) of this paragraph or the corporate parent guarantor must complete subparagraph (b) of this paragraph.

(a) I. This firm identified above owns or operates the following facilities in Tennessee for which financial assurance for reclaiming is demonstrated through the financial test of self-assurance as specified in Rules 1200-02-10-.12(4). The current reclaiming cost estimate(s) covered by the test is/are shown for each facility: _____.

II. In Tennessee, this firm is the owner or operator of the following facilities, not listed in item I of this subparagraph through which it is demonstrating financial assurance through the use of a test equivalent or substantially equivalent to the financial test specified in Rules 1200-02-10-.12(4). The current cost estimate(s) covered by such a test are shown below for each facility by environmental program, permit number, and physical location: _____.

(b) I. This firm identified above guarantees, through the Corporate Parent Financial Test Guarantee specified in Rules 1200-02-10-.12(4), the reclaiming of the following facilities in Tennessee owned or operated by a wholly owned subsidiary of the corporate parent. The current cost estimates for reclaiming so guaranteed is/are shown for each facility: _____.

II. In Tennessee the firm identified above is the Corporate Parent Guarantor for the following facilities not listed in item I of this subparagraph for which it is demonstrating financial assurance through the use of a test equivalent or substantially equivalent to the Corporate Parent Financial Test Guarantee specified in Rules 1200-02-10-.12(4). The current cost estimate(s) covered by such a test are shown below for each facility by environmental program, permit number, and physical location: _____.

(II) The firm identified above is the [insert: corporate applicant or licensee or the corporate parent guarantor] of each of the following facilities not listed in subparagraph (I)(a) or (b) of this letter from the chief financial officer for which the financial test or a similar document of self-assurance serves in the United States and/or internationally as environmental financial assurance:

Identification #: _____
Name of Facility: _____
Physical Address of Facility: _____
Regulatory Environmental Program: _____
Amount of Financial Responsibility in Dollars: _____
Type Environmental Obligation: (reclaiming, closure, corrective action, etc.) _____
(Repeat as necessary)

(III) The firm identified above is the [insert: corporate applicant or licensee or the corporate parent guarantor] of each of the following waste management facilities for which financial assurance is not demonstrated to the Commissioner, another State, the U.S. Environmental Protection Agency, the Nuclear Regulatory Commission, nor any other national or international regulatory agency through the financial test of self-assurance or any other financial assurance mechanism:

Identification #: _____
Name of Facility: _____
Physical Address of Facility: _____
Regulatory Environmental Program: _____
Amount of Financial Responsibility in Dollars: _____
Type Environmental Obligation: (reclaiming, closure, corrective action, ,etc.) _____
(Repeat as necessary)

Is this firm required to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year? Yes ____ No _____. In order to use this test the corporate applicant or licensee or corporate parent providing the guarantee must file a Form 10K with the SEC annually.

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].

Part B

Financial Test of Self Assurance to provide financial assurance for reclaiming. In order to pass this financial test, the owner or operator must meet the requirement of Rule 1200-02-10-.12(4).

The Financial Test of Self-Assurance

- 1. Sum of all environmental financial assurance obligations listed in paragraphs (I) through (III) in Part A of this letter \$_____
- *2. Total liabilities (if any portion of your financial assurance obligations is included in your total liabilities, you may deduct 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 minus ten million dollars (\$10,000,000) \$_____
- *9. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) \$_____
- 10. Is line 3 at least \$10 million plus the dollar amount of all financial assurance covered, Line 1? Yes__ No__
- 11. Is line 3 at least 6 times line 1? Yes__ No__
- 12. Is line 7 at least 6 times line 1? Yes__ No__
- *13. Are at least 90% of assets located in the U.S.? If not, complete line 14. Yes__ No__
- 14. Is line 9 at least 6 times line 1? Yes__ No__
- 15. Is line 2 divided by line 4 less than 1.5? Yes__ No__
- 16. Is line 8 divided by line 2 greater than 0.1? Yes__ No__
- 17. Is line 5 divided by line 6 greater than 1.5? Yes__ No__

Complete lines 18 through 21 if you are submitting a Corporate Bond Rating, or Lines 22 and 23 if you are submitting a corporate credit rating to comply with the requirements for this Financial Test.

- 18. Date of issuance of SEC registered corporate bond-senior unsecured debt _____
- 19. Is the above bond issuance the most recent senior unsecured debt issuance? Yes__ No__
- 20. What is the maturity date of the bond listed on line 18? _____

21. List all debt ratings for this bond issue by rating agency(ies) and dates of Rating(s)

Agency _____ Date _____ Rating _____

Agency _____ Date _____ Rating _____

Agency _____ Date _____ Rating _____

Note: Rating agencies allowed are Standard and Poor's, Moody's and Fitch.

Current Corporate Debt Rating(s)

22. List all debt rating agencies for the entire corporate indebtedness

Rating agency name _____

Short term debt rating _____ Date of Rating _____

Long term debt rating _____ Date of Rating _____

(Repeat as necessary for each rating agency)

Note: Rating agencies allowed are Standard and Poor's, Moody's and Fitch.

23. Were the above corporate credit ratings made within 12 months prior to the date of submission of this financial test?

Yes__ No__

I hereby certify that the wording of this letter is identical to the wording specified in Tennessee Rule 1200-02-10-.12(4)(j)4 as such regulations were constituted on the date shown immediately below. I hereby certify that the above financial test has been completed in accordance with the instructions as listed herein and in accordance with the regulatory requirements governing the Corporate Financial Test as described in Rule 1200-02-10-.12(4) as applicable.

[Name of person signing] _____

[Title of person signing] _____

[Notary] _____

STATE OF _____

COUNTY _____

Before me personally appeared:

Who executed said instrument for the purpose therein expressed. Witness my hand and official seal this _____ day of _____, AD, 20_____.

Notary Public

My commission expires _____

* * * * *

5. Guarantee Agreements to Accompany Letter from the Chief Financial Officer

One of the following guarantees, as appropriate, shall be completed and submitted by an applicant or licensee or corporate parent using the Financial Test of Self-Assurance for Reclaiming, as specified in Rule 1200-02-10-.12(4). Subpart (i) of this part shall be submitted by an applicant or licensee using the Corporate Financial Test to assure reclaiming. Subpart (ii) of this part shall be submitted by a corporate parent using the Financial Test of Self-Assurance to guarantee reclaiming for a wholly owned subsidiary (the applicant or licensee). The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the parentheses deleted:

(i) Corporate Financial Test Guarantee Agreement for Reclaiming

CORPORATE FINANCIAL TEST GUARANTEE AGREEMENT FOR RECLAIMING

Guarantee made this [insert: date] by [insert: name of self guaranteeing entity of applicant or licensee], a business corporation organized under the laws of [insert: the name of the state] herein referred to as Guarantor, to the Commissioner, Tennessee Department of Environment and Conservation, beneficiary, on behalf of ourselves as [insert: applicant or licensee].

Recitals

- (1) The guarantor has full authority and capacity to enter into this guarantee under its bylaws, articles of incorporation, and laws of the State of [insert: guarantor's state or country of incorporation], its state of incorporation. Guarantor has approval from its Board of Directors to enter into this Corporate Financial Test Guarantee Agreement for Reclaiming.
- (2) The fiscal year of this firm ends on [insert: month and day]. This firm, [insert: name of applicant or licensee], has no parent company holding majority control of its voting stock. This firm, [insert: name of applicant or licensee], has not pledged majority control of its voting stock to any business entity as a condition of any loan or financial agreement.
- (3) This self-assurance guarantee agreement is being issued to comply with paragraph (4) of Rule 1200-02-10-.12 of the regulations promulgated by the Tennessee Department of Environment and Conservation, Division of Radiological Health.
- (4) This guarantee is issued to the Commissioner, Tennessee Department of Environment and Conservation on behalf of [insert: name of applicant or licensee], which [insert: owns and/or operates] the following radioactive materials management facility(ies) covered by this guarantee: [List for each facility: Tennessee Licensee Number, name and address]. List the total amount of financial assurance provided herewith by this guarantee].
- (5) Guarantor meets or exceeds criteria of the Financial Test of Self-Assurance in Rule 1200-02-10-.12(4)(d)6.
- (6) Guarantor agrees that if, at the end of any fiscal year before the termination of this guarantee, it fails to meet the criteria for using the Financial Test of Self-Assurance, it shall send, by certified mail, within ninety (90) days of the end of the fiscal year, notice to the Commissioner, Tennessee Department of Environment and Conservation that it intends to provide alternate financial assurance as specified in subparagraph (g) of Rule 1200-02-10-.12(4). Within one hundred twenty (120) days after the end of the fiscal year, the Guarantor shall establish such alternate financial assurance.
- (7) Guarantor agrees that if it is determined at any time, during its fiscal year, by sources internal or external to the corporation, that the corporation can no longer meet the criteria for using the Financial Test of Self-Assurance, it shall notify the Commissioner in writing within seventy two (72) hours of such determination and shall establish an approved alternative financial assurance instrument within thirty (30) days of such notification to the Commissioner.

- (8) Guarantor shall comply within thirty (30) days with the Commissioner's request for financial information to confirm that the Guarantor continues to meet or exceed the requirements for use of the Financial Test of Self-Assurance.
- (9) Guarantor, as well as its successors and assigns, shall remain bound jointly and severally under this agreement notwithstanding any amendments to the rules or statutes that impact the Radiological Health Program of the Tennessee Department of Environment and Conservation except wherein such regulatory or statutory amendments may impede the ability of the Guarantor to continue to meet the requirements necessary for continued use of the Financial Test of Self-Assurance. In which case, the Guarantor shall provide an alternative financial assurance instrument within thirty (30) days of such statutory or regulatory amendment.
- (10) Guarantor agrees that if it fails to provide alternative financial assurance as stipulated in items (6) and (7) of this agreement, the Guarantor shall, as directed by the Commissioner, fund a standby trust in the amount listed in item (4) of this agreement or forfeit such funds to the Commissioner. The trust shall be funded by no later than the date by which the alternate financial assurance is due.
- (11) Guarantor agrees that it shall be liable for all litigation cost incurred by the beneficiary, the Commissioner, Tennessee Department of Environment and Conservation, in any successful legal litigation to enforce the agreement against the Guarantor.
- (12) Guarantor agrees to remain bound under this guarantee for as long as it must comply with the applicable financial assurance requirements of paragraph (4) of Rule 1200-02-10-.12, except that the Guarantor may replace this agreement and the Financial Test of Self-Assurance by substituting an approved alternative financial assurance instrument. In which case, the Guarantor will remain bound by this agreement until the substitute financial instrument is approved by the Commissioner, Tennessee Department of Environment and Conservation.
- (13) Guarantor expressly waives notice of acceptance of this self-guarantee by the Commissioner, Tennessee Department of Environment and Conservation. The Guarantor also expressly waives notice of amendment or modification of financial assurance requirements for the Radiological Health Program of the Tennessee Department of Environment and Conservation.
- (14) Guarantor shall notify the Commissioner within ten (10) days following its filing to seek protection from creditors under Title 11 (Bankruptcy) U.S. Code and that it shall submit, within thirty (30) days of it filling, alternate financial assurance as approved by the Commissioner in the amount specified in item (4) of this document.

I hereby certify that the wording of this guarantee is identical to the wording specified in Tennessee Rule 1200-02-10-.12(4)(j)5(i) as such regulations were constituted on the date first above written.

Effective Date: _____

[Name of self-guarantor] _____

[Authorized signature for self-guarantor] _____

[Name of person signing] _____

[Title of person signing] _____

[Notary] _____

STATE OF _____

COUNTY OF _____

Before me personally appeared

Who executed said instrument for the purpose therein expressed. Witness my hand and official seal, this _____ day of _____ AD, 20_____.

Notary Public

My Commission expires _____

* * * * *

(ii) Corporate Parent Financial Test Guarantee Agreement for Reclaiming

CORPORATE PARENT FINANCIAL TEST GUARANTEE AGREEMENT FOR RECLAIMING

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert: name of State], herein referred to as guarantor. This guarantee is made to the Commissioner, Tennessee Department of Environment and Conservation on behalf of the [applicant or licensee] of [business address], which is "our subsidiary".

Recitals

- (1) Guarantor has full authority and capacity to enter into this corporate parent guarantee under its bylaws, articles of incorporation, and laws of the State of [insert: guarantor's state or country of incorporation], its state of incorporation. Guarantor has approval from its Board of Directors to enter this Corporate Parent Financial Test Guarantee Agreement.
- (2) The fiscal year of this firm end on [insert: month, day]. This firm [insert: name of Guarantor] has no parent company holding majority control of its voting stock. This firm, [insert: name of Guarantor], has not pledged majority control of its voting stock to any business entity as a condition of any loan or financial agreement.
- (3) This Guarantee is being issued to comply with paragraph (4) of Rule 1200-02-10-.12 of the Tennessee Department of Environment and Conservation, Division of Radiological Health.
- (4) This guarantee is issued to the Commissioner, Tennessee Department of Environment and Conservation on behalf of [insert: name of applicant or licensee] "our subsidiary" which [insert: owns and/or operates] the following radioactive materials management facility(ies) covered by this guarantee: [List for each facility: Tennessee License Number, name, and address. List the total amount of financial assurance provided herewith by this guarantee].
- (5) Guarantor meets or exceeds the criteria of the Financial Test in Rules 1200-02-10-.12(4)(d).
- (6) Guarantee 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 shall send within ninety (90) days, by certified mail, notice to the Commissioner that he intends to provide alternate financial assurance, as applicable, in the name of [applicant or licensee]. Within one hundred twenty (120) days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [applicant or licensee] has done so.
- (7) Guarantor agrees that if it is determined at any time, by sources internal or external to the corporation, that the corporation can no longer meet the applicable financial test criteria, it shall notify the Commissioner in writing within seventy-two (72) hours of such determination and shall establish an approved alternative financial assurance instrument within thirty (30) days of such notification.
- (8) Guarantor shall comply within thirty (30) days with the Commissioner's request for financial information to confirm that the Guarantor continues to meet or exceed the requirements for use of the financial Test of Self-Assurance.

- (9) Guarantor, as well as its successors and assigns, shall remain bound jointly and severally under this agreement notwithstanding any amendments to the rules or statutes that impact the Radiological Health Program of the Tennessee Department of Environment and Conservation except wherein such regulatory or statutory amendments may impede the ability of the Guarantor to continue to meet the requirements necessary for continued use of the Financial Test of Self-Assurance. In which case, the Guarantor shall provide an alternative financial assurance instrument within thirty (30) days of such statutory or regulatory amendment.
- (10) Guarantor agrees that if it fails to provide alternative financial assurance as stipulated in items 6 and 7 of this agreement, the Guarantor shall, as directed by the Commissioner, fund a standby trust in the amount listed in item 4 or forfeit such funds to the Commissioner. The trust shall be funded by no later than the date by which the alternate financial assurance is due.
- (11) Guarantor agrees that it shall be liable for all litigation cost incurred by the beneficiary, the Commissioner, Tennessee Department of Environment and Conservation, in any successful legal litigation to enforce the agreement against the Guarantor.
- (12) Guarantor shall remain bound under this guarantee for as long as it must comply with the applicable financial assurance requirements of paragraph (4) of Rule 1200-02-10-.12, except that the Guarantor may replace this agreement and the Financial Test of Self-Assurance by substituting an approved alternative financial assurance instrument. In which case, the Guarantor shall remain bound by this agreement until the substitute financial instrument is approved by the Commissioner, Tennessee Department of Environment and Conservation. The Guarantor also expressly waives notice of amendment or modification of financial assurance requirements for the Radiological Health Program of the Tennessee Department of Environment and Conservation.
- (13) Guarantor shall notify the Commissioner within ten (10) days following its filing to seek protection from creditors under Title 11 (Bankruptcy) U.S. Code and that it shall submit, within thirty (30) days of it filing, alternate financial assurance as approved by the Commissioner in the amount specified in item (4) of this document.

I hereby certify that the wording of this guarantee is identical to the wording specified in Tennessee Rule 1200-02-10-.12(4)(j)5(ii) as such regulations were constituted on the date first above written.

Effective Date: _____

(Name of guarantor) _____

(Authorized signature for guarantor) _____

(Name of person signing) _____

(Title of person signing) _____

Subscribed and sworn to before me this _____ day of _____, ____

Notary Public

My commission expires on the _____ day of _____, _____

* * * * *

- (k) Persons licensed at the time these financial assurance regulations become effective and upon notice by the Department must, within a period of ninety (90) days following such notice, provide the required financial assurance.
- (l) The Department may reevaluate, at any time, the adequacy of existing financial assurance and may require their adjustment by either increasing or decreasing the amount of financial assurance required so that adequate funds will be available.

- (m) Except that the following persons are exempt from the requirements of this paragraph:
1. State and local government agencies.
 2. Educational institutions accredited by the Southern Association of Colleges and Schools.
 3. Licensees of the State Licensing Board for the Healing Arts and those medical facilities possessing or utilizing radioactive materials for medical purposes when supervised by such licensees.
 4. Veterinarians possessing or utilizing radioactive materials in their veterinary practice.
 5. Persons possessing or utilizing radioactive materials for in vitro medical purposes.
 6. Persons possessing or utilizing only generally licensed quantities of radioactive materials.
- (5) The applicant or an existing licensee, for whom financial assurance is required and where it is intended that the licensed facility will eventually cease to operate while containing, storing or possessing radioactive sources on the premises and will require continuing and perpetual care or surveillance over the facility to protect public health, safety or welfare, shall deposit sums to a Perpetual Care Trust Fund maintained by the Commissioner in the name of the State.
- (a) The Commissioner shall consider the following in making his determination of the Perpetual Care Trust Fund deposits for each individual applicant or licensee.
1. The nature of the licensed radioactive material; including its radiotoxicity, half-life, chemical and physical form and containment;
 2. Size and type of facility to be decommissioned; and
 3. The anticipated cost to the State of perpetual care and surveillance.
- (b) The Department may reevaluate at any time the adequacy of a licensee's contributions to the existing Perpetual Care Trust Fund and may adjust by increasing or decreasing the rate of contribution or the specified amount required of a licensee so that the fund may be adequate in amount to meet perpetual care requirements of that licensee.
- (6) Definitions of terms used in paragraph (4) of this Rule:
- (a) "Commissioner" means the Commissioner of the Tennessee Department of Environment and Conservation or his designee.
- (b) "Current reclaiming cost estimate" means the most recent of the estimates prepared in accordance with parts (4)(c)1, 2, and 3 of this Rule.
- (c) "Parent corporation" means a corporation which directly owns at least fifty (50) percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.
- (d) The following terms are used in the specifications for the financial tests for financial assurance for reclaiming. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.
1. "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.
 2. "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.

3. "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.
4. "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.
5. "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.
6. "Net working capital" means current assets minus current liabilities.
7. "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.
8. "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 of royalties.

Authority: T.C.A. §§ 68-202-201 et seq., 68-202-401 et seq., and 4-5-201 et seq.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: September 20, 2010

Signature: _____

Name of Officer: Debra G. Shults

Title of Officer: Director

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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Filed with the Department of State on: _____

Tre Hargett
Secretary of State