

CORPORATE GUARANTEE FOR CLOSURE AND/OR POST-CLOSURE CARE
Department of Environment and Conservation, Division of Solid Waste Management

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 on behalf of the [owner or operator] of [business address], which is [one of the following: “our subsidiary”; “a subsidiary of [name and address of common parent corporation], of which guarantor is subsidiary”; or “an entity with which guarantor has a substantial business relationship, as defined in Departmental Rule 0400-11-01-.03(3).”

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Departmental Rule 0400-11-01-.03.
2. [Owner or Operator] owns or operates the following solid waste management facility(ies) covered by this guarantee: [List for each facility: Tennessee Permit Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]
3. “Closure plans” and/or “post-closure plans” as used below refer to the plans maintained as required by Departmental Rule 0400-11-01-.03(2) for the closure and/or post-closure care of facilities as identified above.
4. The value received from [owner or operator], guarantor guarantees to the Tennessee Department of Environment and Conservation that in the event that [owner or operator] fails to perform [insert “closure,” “post-closure care” or “closure and/or post-closure care”] of the above facility(ies) in accordance with the closure or post-closure plans and other permit requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in Rule 0400-11-01-.03, in the name of [owner or operator] in the amount of the current closure and/or post-closure cost estimates.
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Commissioner that he intends to provide alternate financial assurance, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.
6. The guarantor agrees to notify the Commissioner by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.
7. Guarantor agrees that within 30 days after being notified by the Commissioner of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure and/or post-closure care, he shall establish alternate financial assurance as specified in Departmental Rule 0400-11-01-.03 as applicable, in the name of [owner or operator] unless [owner or operator] has done so.
8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure and/or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure and/or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to Rule 0400-11-01-.03.
9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of Rule 0400-11-01-.03 for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the Commissioner and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Commissioner approve(s), alternate closure and/or post-closure care coverage complying with Rule 0400-11-01-.03.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its “substantial business relationship” with its owner or operator]

Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the Commissioner.

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in Rule 0400-11-01-.03, as applicable, and obtain written approval of such assurance from the Commissioner within 90 days after a notice of cancellation by the guarantor is received by the Commissioner from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].
12. Guarantor expressly waives notice of acceptance of this guarantee by the Commissioner or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan(s) and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording provided by the Department as required in Department Rule 0400-11-01-.03.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:
