



**DEPT. OF ENVIRONMENT AND ENERGY**

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Revised June, 2021

## **Corporate Guarantee for Closure and/or Post-Closure Care**

40 CFR § 264.151 (h)(1) A corporate guarantee, as specified in Sec. 264.143(f) or Sec. 264.145(f), or Sec. 265.143(e) or Sec. 265.145(e), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

### **Corporate Guarantee for Closure or Post-Closure Care**

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 a subsidiary”; or “an entity with which guarantor has a substantial business relationship, as defined in 40 CFR in 264.141(h) and 265.141(h) to the Nebraska Department of Environment and Energy (NDEE).*

#### Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.143(f), 264.145(f), 265.143(e), and 265.145(e).
2. *[Owner or operator]* owns or operates the following hazardous waste management facility(ies) covered by this guarantee: *[List for each facility: NDEE Identification Number, name, and address. Indicate for each whether guarantee is for closure, post- closure care, or both.]*
3. “Closure plans” and “post-closure plans” as used below refer to the plans maintained as required by subpart G of 40 CFR parts 264 and 265 for the closure and post-closure care of facilities as identified above.
4. For value received from *[owner or operator]*, guarantor guarantees to NDEE that in the event that *[owner or operator]* fails to perform *[insert “closure”, “post-closure care” or “closure and post-closure care”]* of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in subpart H of 40 CFR part 264 or 265, as applicable, in the name of *[owner or operator]* in the amount of the current closure or post-closure cost estimates as specified in subpart H of 40 CFR parts 264 and 265.

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 NDEE Director and to [owner or operator] that he intends to provide alternate financial assurance as specified in subpart H of 40 CFR part 264 or 265, 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 NDEE Director 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 NDEE Director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in subpart H of 40 CFR part 264 or 265, 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 or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to 40 CFR part 264 or 265.
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 subpart H of 40 CFR parts 264 and 265 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 NDEE Director and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the NDEE Directors approve(s), alternate closure and/or post-closure care coverage complying with 40 CFR 264.143, 264.145, 265.143, and/or 265.145.

*[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 NDEE Director and by [the owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in subpart H of 40 CFR part 264 or 265, as applicable, and obtain written approval of such assurance from the NDEE Director within 90 days after a notice of cancellation by the guarantor is received by an NDEE Director 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 NDEE or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 264.151(h) 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] \_\_\_\_\_

Signature of witness or notary: \_\_\_\_\_

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*Produced by: Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, NE 68509-8922; phone (402) 471-2186. To view this, and other information related to our agency, visit our web site at <http://dee.ne.gov>.*