

A corporate guarantee, as specified in Reg.22.1405 (g), 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 [either 264.141 (h) or 265.141 (h)]” to the Arkansas Department of Environmental Quality (ADEQ).

### **RECITALS**

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Reg.22.1405 (e).
2. [Owner or operator] owns or operates the following solid waste management facility(ies) covered by this guarantee: [List for each facility: Permit Number, AFIN, 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 Reg.22.1301 (c) and Reg.22.1302 (d) for the closure and post-closure care of facilities as identified above.
4. For value received from [owner or operator], guarantor guarantees to the Department 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 fully funded trust fund as specified in Reg.22.1405 (g)(3)(i)(B), as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in Reg.22.1402 and Reg.22.1403.
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 Director and to [owner or operator] that he intends to provide alternate financial assurance as specified in Reg.22.1405 (g)(4), 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 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 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 alternative financial assurance as specified in Reg.22.1405 (g)(5), as applicable, in the name of [owner or operator] unless [owner of 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 Regulation No. 22.
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 Chapter 14 of Regulation No. 22 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 Director and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Director approve(s), alternate closure and/or post-closure care coverage complying with Chapter 14 of Regulation 22. [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 Director and by [the owner or operator], as evidenced by return receipts.
11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in Chapter 14 of Regulation No. 22, as applicable, and obtain written approval of such assurance from the Director within 90 days after a notice of cancellation by the guarantor is received by the Director from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator], within 30 days.
12. Guarantor expressly waives notice of acceptance of this guarantee by the Department 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 APC&EC Regulation 22.1405 (g) 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: \_\_\_\_\_

**RCRA SUBTITLE D FINANCIAL ASSURANCE CHECKLIST**

**CORPORATE GUARANTEE  
GUARANTOR'S INFORMATION**

Facility Name: \_\_\_\_\_ Permit No. \_\_\_\_\_

FINANCIAL TEST: An owner or operator with the financial assets to absorb the costs of closure, post-closure care, and corrective action may comply with financial assurance requirements by using the financial test.

GUARANTEE COVERS:  Closure  Post-Closure Care  Corrective Action

Guarantor's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Contact Phone No.: \_\_\_\_\_

Guarantor's Fiscal Year Ends: \_\_\_\_\_

Closure Cost Estimate (Agency Approved): \_\_\_\_\_

Source Document / Date: \_\_\_\_\_

Post-Closure Cost Est. (Agency Approved): \_\_\_\_\_

Source Document / Date: \_\_\_\_\_

Corrective Action (Agency Approved): \_\_\_\_\_

Source Document / Date: \_\_\_\_\_

Reviewed by: \_\_\_\_\_

Date: \_\_\_\_\_

**RCRA SUBTITLE D FINANCIAL ASSURANCE CHECKLIST**  
**GUARANTOR'S FINANCIAL TEST FOR CLOSURE and/or POST-CLOSURE**  
 (Select Appropriate Care)

| YES                      | NO                       | QUESTION                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | Has a certified copy of the corporate guarantee that uses wording identical to that in 40 CFR §264.151 (h) been submitted?                                                                                                                                                                                                                                               |
| <input type="checkbox"/> | <input type="checkbox"/> | Is the guarantor one of the following?<br><input type="checkbox"/> The direct or higher-tier parent corporation of the owner or operator.<br><input type="checkbox"/> A firm whose parent corporation is also the parent corporation of the owner or operator.<br><input type="checkbox"/> A firm with a “substantial business relationship” with the owner or operator. |
| <input type="checkbox"/> | <input type="checkbox"/> | If the guarantor’s parent corporation is the parent corporation of the owner or operator, does the letter from the guarantor’s CFO describe the value received in consideration of the guarantee?                                                                                                                                                                        |
| <input type="checkbox"/> | <input type="checkbox"/> | If the guarantor is a firm with a “substantial business relationship” with the owner or operator, does the letter from the guarantor’s CFO describe this relationship and the value received in consideration of the guarantee?                                                                                                                                          |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the guarantor pass one of the financial tests outline in Attachments A and B?                                                                                                                                                                                                                                                                                       |
| <input type="checkbox"/> | <input type="checkbox"/> | Has a letter been submitted that is properly executed and signed by the guarantor’s CFO and is worded as specified in 40 CFR §264.151 (f)?                                                                                                                                                                                                                               |
| <input type="checkbox"/> | <input type="checkbox"/> | Has a report from an independent CPA been submitted that examines the guarantor’s financial statements for the latest completed fiscal year?                                                                                                                                                                                                                             |
| <input type="checkbox"/> | <input type="checkbox"/> | If a report has been submitted, indicate the nature of the opinion rendered?<br><input type="checkbox"/> Unqualified Opinion.<br><input type="checkbox"/> Disclaimer of Opinion or Adverse Opinion.<br><input type="checkbox"/> Qualified Opinion.                                                                                                                       |



**RCRA SUBTITLE D FINANCIAL ASSURANCE CHECKLIST**  
**GUARANTOR'S FINANCIAL TEST FOR CORRECTIVE ACTION**

| YES                      | NO                       | QUESTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | Has a certified copy of the corporate guarantee that uses wording identical to that in 40 CFR §264.151 (h) been submitted?                                                                                                                                                                                                                                                                                                                                                                                                |
| <input type="checkbox"/> | <input type="checkbox"/> | Is the guarantor one of the following?<br><input type="checkbox"/> The direct or higher-tier parent corporation of the owner or operator.<br><input type="checkbox"/> A firm whose parent corporation is also the parent corporation of the owner or operator.<br><input type="checkbox"/> A firm with a “substantial business relationship” with the owner or operator.                                                                                                                                                  |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the guarantor pass one of the financial tests outlined in Attachments A and B?                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <input type="checkbox"/> | <input type="checkbox"/> | Has a letter been submitted that is properly executed and signed by the guarantor’s CFO?                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <input type="checkbox"/> | <input type="checkbox"/> | Has a special report from the independent CPS been submitted?                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <input type="checkbox"/> | <input type="checkbox"/> | For a guarantor incorporated in the U.S., has a written statement been submitted by the Attorneys General or Insurance Commissioners for each state in which the guarantor is incorporated and in which facilities covered by this guarantee are located, indicating that a guarantee for liability coverage is a legally valid and enforceable obligation in that state?<br><input type="checkbox"/> Attorneys General.<br><input type="checkbox"/> Insurance Commissioners.<br><input type="checkbox"/> Not Applicable. |
| <input type="checkbox"/> | <input type="checkbox"/> | For a guarantor incorporated outside the U.S., has the guarantor identified a registered agent for service of process in each state in which a facility covered by the guarantee is located and in the state in which the guarantor has its principal place of business?                                                                                                                                                                                                                                                  |

**RCRA SUBTITLE D FINANCIAL ASSURANCE CHECKLIST**  
**GUARANTOR'S FINANCIAL TEST FOR CORRECTIVE ACTION**

| YES                      | NO                       | QUESTION                                                                                                                                                      |
|--------------------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                          |                          | <b><u>Attachment A – Test Alternative I</u></b>                                                                                                               |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the guarantor have tangible net worth of at least \$10 million?                                                                                          |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the guarantor have a net working capital and tangible net worth at least six times the amount of liability coverage to be demonstrated?                  |
| <input type="checkbox"/> | <input type="checkbox"/> | Are the guarantor's U.S. assets equal to at least 90 percent of total assets or at least six times the annual amount of corrective action to be demonstrated? |
|                          |                          | <b><u>Attachment B – Test Alternative II</u></b>                                                                                                              |
| <input type="checkbox"/> | <input type="checkbox"/> | Is the current bond rating of the guarantor adequate?                                                                                                         |
|                          |                          | Indicate the appropriate bond rating and the source:                                                                                                          |
|                          |                          | <input type="checkbox"/> Standard and Poor's <input type="checkbox"/> Moody's                                                                                 |
|                          |                          | <input type="checkbox"/> AAA <input type="checkbox"/> Aaa                                                                                                     |
|                          |                          | <input type="checkbox"/> AA <input type="checkbox"/> Aa                                                                                                       |
|                          |                          | <input type="checkbox"/> A <input type="checkbox"/> A                                                                                                         |
|                          |                          | <input type="checkbox"/> BBB <input type="checkbox"/> Baa                                                                                                     |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the guarantor have tangible net worth of at least \$10 million?                                                                                          |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the guarantor have tangible net worth of at least six times the amount of corrective action to be demonstrated by this test?                             |
| <input type="checkbox"/> | <input type="checkbox"/> | Are the guarantor's U.S. assets equal to at least 90% of total assets or six times the sum of the corrective action to be demonstrated by this test?          |