

**APPENDIX B
GUARANTEE**

Guarantee made this _____ by _____, a business entity organized under the laws of the State of Delaware, herein referred to as Guarantor, to the Department of Natural Resources and Environmental Control (Department) and to any and all third parties, and obligees, on behalf of _____ of _____

Recitals

- (1) Guarantor meets or exceeds the financial test criteria of §§5.2 or 5.3 and agrees to comply with the requirements for Guarantors as specified in §6.
- (2) _____ owns or operates the following aboveground storage tanks (ASTs) covered by this guarantee:

Attach AST schedule:

List for each Facility: the name and address of the Facility where ASTs assured by this financial test are located, and whether ASTs are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the ASTs at this Facility, list each AST assured by this financial test by the AST identification number provided in the registration form submitted pursuant to Part A of these Regulations.

AST Facility I.D. Number: _____

Name/Address of AST Facility:

AST ID# (from AST registration form)	AST size	AST contents
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This guarantee satisfies Part D, §3 for assuring funding for _____ caused by Accidental Releases; if coverage is different for different ASTs or locations, indicate the type of coverage applicable to each AST or location arising from operating the above-identified AST(s) in the amount of _____ per Occurrence and _____ Annual Aggregate.

- (3) [Insert appropriate phrase: “On behalf of our subsidiary” (if Guarantor is corporate parent of the Owner or Operator); “On behalf of our affiliate” (if Guarantor is a related firm of the Owner or Operator); or “Incident to our business relationship with” (if Guarantor is providing the guarantee as an incident to a Substantial Business Relationship with Owner or Operator)] _____, Guarantor guarantees to the Department and to any and all third parties that:

In the event that _____ fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary has determined or suspects that a Release has occurred at an AST covered by this guarantee, the Guarantor, upon instructions from the Department, shall fund a standby trust fund in accordance with the provisions of Part D: §15 in an amount not to exceed the coverage limits specified above.

In the event that the DNREC determines that _____ has failed to perform corrective action for Release arising out of the operation of the above-identified tank(s) in accordance with Part E, the Guarantor upon written instructions from the DNREC shall fund a standby trust fund in accordance with the provisions of Part D, Section 15 in an amount not to exceed the coverage limits specified above.

If _____ fails to satisfy a judgment or award based on a determination of liability for Bodily Injury or Property Damage to third parties caused by Accidental Releases arising from the operation of the above-identified ASTs, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Department, shall fund a standby trust fund in accordance with the provisions of Part D, §15 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

- (4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the Guarantor fails to meet the financial test criteria of Part D, §§5.1 and 5.2 or 5.3, Guarantor shall send within 120 days of such failure, by Verifiable Service, notice to _____. The guarantee will terminate 120 days from the date of receipt of the notice by _____ as evidenced by Verifiable Service .
- (5) Guarantor agrees to notify _____ by Verifiable Service 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.
- (6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of _____ pursuant to these Regulations.

- (7) Guarantor agrees to remain bound under this guarantee for so long as _____ shall comply with the applicable financial responsibility requirements of these regulations for the above-identified ASTs, except that Guarantor may cancel this guarantee by sending notice by certified mail to _____ such cancellation to become effective no earlier than 120 days after receipt of such notice by _____ as evidenced by the return receipt.
- (8) The Guarantor's obligation does not apply to any of the following:
- (a) Any obligation of _____ under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
 - (b) Bodily Injury to an employee of _____ arising from, and in the course of, employment by _____;
 - (c) Bodily Injury or Property Damage arising from the Ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
 - (d) Property Damage to any property owned, rented, loaned to, in the care of, custody, or control of, or occupied by _____ that is not the direct result of a Release from an AST;
 - (e) Bodily Injury or Property Damage for which _____ is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the Requirements of §3 of this Part.
- (9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by _____.

I hereby certify that the wording of this guarantee is identical to the wording specified in Part D, §6 as such Regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of Person signing]

[Title of Person signing]

Signature of witness or notary: _____