

# Corporate Guarantee for Liability Coverage

Guarantee made this \_\_\_\_\_ by \_\_\_\_\_, a  
(date) (name of guaranteeing entity)

business corporation organized under the laws of \_\_\_\_\_  
(if incorporated within the United States insert "the State of"

\_\_\_\_\_ and insert name of state; if incorporated outside the United States insert the name of the country in

\_\_\_\_\_ which incorporated, the principal place of business within the United States, and the name and address of the

\_\_\_\_\_ registered agent in the state of the principal place of business)

herein referred to as guarantor. This guarantee is made on behalf of \_\_\_\_\_  
(owner or operator)

of \_\_\_\_\_, which is (delete  
(business address)

all that do not apply) our subsidiary/a subsidiary of \_\_\_\_\_  
(name and address of common parent corporation)

or which guarantor is a subsidiary/an entity with which guarantor has a "substantial business relationship", as defined in 401 KAR 39:090 to any and all third parties who have sustained or may sustain bodily injury or property

damage caused by accidental \_\_\_\_\_  
(insert "sudden", "nonsudden" or "both sudden and nonsudden ")

occurrences arising from operation of the facility or facilities covered by the guarantee.

## Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 401 KAR 39:090.

2. \_\_\_\_\_ owns or operates the following hazardous  
(owner or operator)  
waste sites or facilities covered by this guarantee: (List for each facility: EPA Identification Number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each state)

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

This corporate guarantee satisfies RCRA third-party liability requirements for

\_\_\_\_\_ (insert "sudden" or "nonsudden" or "both sudden and nonsudden ")

accidental occurrences in the above-named owner or operator's facilities for coverage in the amount of

\_\_\_\_\_ for each occurrence and \_\_\_\_\_ annual aggregate.  
(insert "dollar amount") (insert "dollar amount")

3. For value received from \_\_\_\_\_, guarantor  
(owner or operator)

guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by

\_\_\_\_\_ accidental occurrences arising from operations of the facilities covered by this guarantee  
(sudden and/or nonsudden or both)

that in the event that \_\_\_\_\_ fails to  
(owner or operator)

satisfy a judgement or award based on a determination of liability for bodily injury or property damage to third parties caused by  
\_\_\_\_\_ accidental occurrences, arising from the operation of the above-named facilities, or  
(sudden and/or nonsudden or both)

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 shall satisfy such judgement(s), awards or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which \_\_\_\_\_ is obligated to pay damages  
(owner or operator)

by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that  
\_\_\_\_\_ would be obligated to pay in the absence of the contract or agreement.

(owner or operator)

(b) Any obligation of \_\_\_\_\_ under a workers' compensation, disability benefits, or  
(owner or operator)  
unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of \_\_\_\_\_ arising from, and in the course of  
(owner or operator)

employment by \_\_\_\_\_ ; or  
(owner or operator)

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of,  
employment by \_\_\_\_\_ .  
(owner or operator)

This exclusion applies:

(A) Whether \_\_\_\_\_ may be liable as an employer or in any other capacity; and  
(owner or operator)

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by \_\_\_\_\_ ;  
(owner or operator)

(2) Premises that are sold, given away or abandoned by \_\_\_\_\_ if the property  
(owner or operator)  
damage arises out of any part of those premises;

(3) Property loaned to \_\_\_\_\_ ;  
(owner or operator)

(4) Personal property in the care, custody or control of \_\_\_\_\_ ;  
(owner or operator)

(5) That particular part of real property on which \_\_\_\_\_ or any contractors  
(owner or operator)  
or subcontractors working directly or indirectly on behalf of \_\_\_\_\_ are  
(owner or operator)

performing operations, if the property damage arises out of these operations.

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 ninety (90) days, by certified mail, notice to the Division of Waste Management and to \_\_\_\_\_ that it intends to provide alternate liability coverage as specified in 401 KAR 39:090, as applicable, in the name of \_\_\_\_\_ . Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless \_\_\_\_\_ has done so.

6. The guarantor agrees to notify the Division of Waste Management by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U.S. Code, naming guarantor as debtor, within ten (10) days after commencement of the proceeding.

7. Guarantor agrees that within thirty (30) days after being notified by the Division of Waste Management of a determination that guarantor no longer meets the financial test criteria or that it is disallowed from continuing as a guarantor, it shall establish alternate liability coverage as specified in 401 KAR 39:090 in the name of \_\_\_\_\_ unless \_\_\_\_\_ has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 401 KAR 39:090, provided that such modification shall become effective only if the Division of Waste Management does not disapprove the modification within thirty (30) days of receipt of the notification of modification.

9. Guarantor agrees to remain bound under this guarantee for so long as \_\_\_\_\_ must comply with the applicable requirements of 401 KAR 39:090 for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. 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 of operator, guarantor may terminate this guarantee by sending notice by certified mail to the Division of Waste Management and to \_\_\_\_\_ , provided that this guarantee may not be terminated unless and until \_\_\_\_\_ obtains, and the Division of Waste Management approves alternate liability coverage complying with 401 KAR 39:090.

If the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator, as defined in 401 KAR 39:090, guarantor may terminate this guarantee 120 days following receipt of notification of termination by the Division of Waste Management and by \_\_\_\_\_

11. This guarantee is to be interpreted and enforced in accordance with the laws of Kentucky.

12. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

13. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

14. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification shall be submitted on the attached form.

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

15. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered \_\_\_\_\_ coverage.

*(insert "primary" or "excess")*

I hereby certify that the wording of this guarantee is identical to the wording specified in 401 KAR 39:090 as such regulations were constituted on the date shown immediately below.

Effective Date:

\_\_\_\_\_  
*(Name of guarantor, typed)*

\_\_\_\_\_  
*(Authorized signature for guarantor)*

\_\_\_\_\_  
*(Name of person signing, typed)*

\_\_\_\_\_  
*(Title of person signing, typed)*

\_\_\_\_\_  
*(Signature of Witness or Notary Public)*

*(Seal of Notary Public)*

\_\_\_\_\_  
*(Date Notary Public's Commission Expires)*

DWM-6035H2, effective 2/22/18

*(Note: Attach "Letter from Chief Financial Officer (to Demonstrate Liability Coverage or to Demonstrate Both Liability Coverage and Assurance of Closure or Postclosure Care, DWM-6035G.)"*