

Requirements for Submittal of Financial Test for the Tennessee Department of Environment and Conservation, Divisions of Remediation and Solid Waste Management

The company or guarantor must submit the following documents in support of the Financial Test, as specified by Tennessee Department of Environment and Conservation (TDEC) Rules 0400-15-01-.12 (Remediation) and Rule 0400-11-01-.03 (Solid Waste Management- SWM). All documents must be submitted within ninety (90) days of the end of the company's or guarantor's most recently completed fiscal year unless an extension is approved by TDEC:

- A. a letter signed by the Chief Financial Officer certifying compliance with the financial conditions and measures set forth in Exhibit B, Alternate I or Alternate II. The letter shall be identical to Exhibit A attached hereto; and
- B. a copy of the audited financial statements for the latest completed fiscal year, and a copy of the independent certified public accountant's report on examination of such financial statements, which report shall be unqualified or, if qualified, such qualification shall have been approved in writing by TDEC; and
- C. a special report from an independent certified public accountant attesting to compliance with the financial conditions and measures set forth in Exhibit B that states that: 1. he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and, 2. In connection with the procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.
- D. if filing as a corporate guarantor, the Corporate Guarantee for Closure, Post-Closure and Operation and Maintenance attached hereto as Exhibit C.

EXHIBIT A:
FINANCIAL TEST
WITH LETTER FROM CHIEF FINANCIAL OFFICER

[Address to Division Director]

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for Operation and Maintenance and closure and/or post-closure costs, pursuant to Departmental Rules 0400-11-01-.03(3) and 0400-15-01-.12.

[Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its Tennessee Permit or Site Number, name, address, and current Operation and Maintenance, closure and/or post-closure cost estimates.]

1. This firm is the owner or operator of the following facilities for which financial assurance for Operation and Maintenance and closure and/or post-closure care is demonstrated through the financial test specified here. The current Operation and Maintenance and closure and/or post-closure cost estimates covered by the test are shown for each facility: _____.

2. This firm guarantees the Operation and Maintenance and closure and/or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the Operation and Maintenance and closure and/or post-closure care so guaranteed are shown for each facility: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator, (2) owned by the same parent corporation as owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In Tennessee, this firm is the owner or operator of the following facilities, not listed in item 1 above through which it is demonstrating financial assurance through the use of a test equivalent or substantially equivalent to the financial test specified in Rule 0400-11-01-.03(3). The current cost estimate(s) covered by such a test are shown below for each facility by environmental program, permit number, and physical location: _____.

4. In states other than Tennessee, this firm, as owner and/or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified herein, including but not limited to hazardous waste Treatment, Storage and Disposal ("TSD") facilities, Solid Waste Landfill ("SWLF") facilities, Underground Storage Tank (UST) facilities, Underground Injection Control (UIC) sites under 40 CFR § 144, or CERCLA settlements under 42 U.S.C. § 9607 et seq. The total dollar amount of such financial assurance covered by a financial test is equal, in the aggregate, to [\$_____], and is shown for each facility as follows: _____

5. This firm is the owner or operator of the following facilities for which financial assurance for Operation and Maintenance and/or any obligations for SWLF, TSD, UST, UIC, or CERCLA is required but financial assurance has not yet been demonstrated either to EPA or a state through the financial test or any other financial assurance mechanism. The current closure/post-closure and/or Operation and Maintenance estimates not covered by such financial assurance are shown for each facility. _____

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

**EXHIBIT B:
FINANCIAL CONDITIONS**

ALTERNATE I

ALTERNATE II

1. Sum of current cost estimate [total of all cost estimates shown in the five numbered items in Exhibit A]
\$ _____

1. Sum of current cost estimate [total of all cost estimates shown in the five numbered items in Exhibit A]
\$ _____

*2. Total liabilities [if any portions of the closure, post-closure and/or O&M cost estimate is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to line 3 and 4.]
\$ _____

2. Current bond rating of most recent issuance of this firm and name of rating service (rating must be BBB or higher from Standard & Poor's or Baa or higher from Moody's) _____

*3. Tangible net worth \$ _____

3. Date of issuance of Bond \$ _____

*4. Net Worth \$ _____

4. Date of maturity of Bond \$ _____

*5. Current assets \$ _____

*5. Tangible net worth [if any portion of the closure, post-closure and/or O&M cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line]
\$ _____

*6. Current liabilities \$ _____

7. Net working capital [line 5 minus line 6] \$ _____

*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ _____

*8. The sum of net income plus depreciation, depletion, and amortization \$ _____

7. Is line 5 at least \$10 million? (Yes/No) \$ _____

*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ _____

8. Is line 5 at least 6 times line 1? (Yes/No) \$ _____

10. Is line 3 at least \$10 million? (Yes/No) \$ _____

*9. Are at least 90% of firm's assets located in the U.S.? If not complete line 10 (Yes/No) \$ _____

11. Is line 3 at least 6 times line 1? (Yes/No) \$ _____

10. Is line 6 at least 6 times line 1? (Yes/No) \$ _____

12. Is line 7 at least 6 times line 1? (Yes/No) \$ _____

*13. Are at least 90% of the firm's assets located in the U.S.? If not, complete Line 14 (Yes/No) \$ _____

14. Is line 9 at least 6 times line 1? (Yes/No) \$ _____

15. Is line 2 divided by line 4 less than 2.0? (Yes/No) \$ _____

16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) \$ _____

17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) \$ _____

I hereby certify that, to the best of my knowledge after thorough investigation, the information contained in this letter is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

EXHIBIT C
CORPORATE GUARANTEE FOR CLOSURE, POST-CLOSURE AND OPERATION AND MAINTENANCE

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” pursuant to the relevant TDEC Rules. TDEC Rules commonly referred to in this document are Rule 0400-15-01-.12 (Remediation) and Rule 0400-11-01-.03 (Solid Waste Management-SWM). There are other TDEC rules that may be applicable depending on the circumstances.

Recitals

1. Guarantor meets or exceeds the financial test criteria as specified in Exhibit B and agrees to comply with the requirements specified in the “Requirements for Submittal of Financial Test” document attached hereto.
2. [Owner or Operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: Tennessee Site Number, name, and address.]
3. “Closure plans” and/or “post-closure plans” as used below to 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. Operation and maintenance is defined as found in the relevant TDEC rules.
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 closure, post-closure, and/or Operation and Maintenance activities on the above facility(ies) in accordance with the closure plan, post-closure plan, Operation and Maintenance Plan, Consent Order and Agreement, Record of Decision (ROD), and/or other permit requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in the applicable TDEC Rules in the name of [owner or operator] in the amount of the current closure, post-closure and/or Operation and Maintenance 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, post-closure, and/or Operation and Maintenance care, he shall establish alternate financial assurance as specified by Departmental Rules 0400-15-01-.12 and 0400-11-01-.03, 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 plan, post-closure plan and/or Operation and Maintenance plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure, post-closure and/or Operation and Maintenance, or any other modification or alteration of an obligation of the owner or operator pursuant to Rules 0400-15-01 and 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 Rules 0400-15-01-.12 and 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, post-closure and/or Operation and Maintenance care coverage complying with Rules 0400-15-01-.12 and 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 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 plan, post-closure plan and/or Operation and Maintenance plan(s) and of amendments or modifications of the facility permit(s).

I hereby certify that, to the best of my knowledge after thorough investigation, the information contained in this letter is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:
