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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Environment and Conservation
Division:	Financial Responsibility Office
Contact Person:	O. J. Wingfield
Address:	8 th Floor, L & C Annex 401 Church Street Nashville, Tennessee 37243
Phone:	(615) 532-0877
Email:	O.J.Wingfield@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator
Address:	12 th Floor L&C Tower 401 Church Street Nashville, Tennessee 37243
Phone:	1-866-253-5827 (toll free) or (615) 532-0200 Hearing impaired callers may use the TN Relay Service at 1-800-848-0298.
Email:	Beverly.Evans@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Ruth Neff Conference Room – Side B 17 th Floor, L & C Tower		
Address 2:	401 Church Street		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	11/15/10		
Hearing Time:	1:00 p.m.	<input checked="" type="checkbox"/> X CST	<input type="checkbox"/> EST

Additional Hearing Information:

The Department prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review at the Tennessee Department of Environment and Conservation's (TDEC's) Environmental Field Offices located as follows:

Memphis Environmental Field Office
8383 Wolf Lake Drive
Memphis, TN 38133
(901) 371-3000/ 1-888-891-8332

Cookeville Environmental Field Office
1221 South Willow Avenue
Cookeville, TN 38506
(931) 432-4015/ 1-888-891-8332

Jackson Environmental Field Office
1625 Hollywood Drive
Jackson, TN 38305

Chattanooga Environmental Field Office
Suite 550 - State Office Building
540 McCallie Avenue

(731) 512-1300/ 1-888-891-8332

Chattanooga, TN 37402-2013
(423) 634-5745/ 1-888-891-8332

Columbia Environmental Field Office
1421 Hampshire Pike
Columbia, TN 38401
(931) 380-3371/ 1-888-891-8332

Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, TN 37921-5602
(865)594-6035/ 1-888-891-8332

Nashville Environmental Field Office
711 R. S. Gass Blvd.
Nashville, TN 37243-1550
(615) 687-7000/1-888-891-8332

Johnson City Environmental Field Office
2305 Silverdale Road
Johnson City, TN 37601-2162
(423) 854-5400/1-888-891-8332

The "Draft" rules may also be accessed for review using <http://tn.gov/environment/swm/ppo/>

Draft copies are also available for review at the following address:

Tennessee Department of Environment and Conservation
Division of Financial Responsibility
8th Floor, L&C Annex
401 Church Street
Nashville, Tennessee 37243
(615) 532-0877

Office hours are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Tennessee Department of Environment and Conservation, Financial Responsibility Office; Attention: O.J. Wingfield 8th Floor, L & C Annex; 401 Church Street; Nashville, Tennessee 37243; telephone 615-532-0877 or fax 615-253-8334. However, such written comments must be received by 4:30 PM CST, November 17, 2010, in order to assure consideration. For further information, please contact O. J. Wingfield at the above address or telephone number or by e-mail at O.J.Wingfield@tn.gov.

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1200-01-11	Hazardous Waste Management
Rule Number	Rule Title
1200-01-11-.05	Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage and Disposal Facilities
1200-01-11-.06	Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Amendment

Chapter 1200-01-11
Hazardous Waste Management

Subparagraph (f) of paragraph (7) of Rule 1200-01-11-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage and Disposal Facilities is amended by deleting the phrase "under part (8)(d)8 of this Rule" from the last sentence of that subparagraph and replacing it with the phrase "under part (8)(d)3 of this Rule" so that, as amended the last sentence of the subparagraph shall read:

"Documentation supporting the qualified Professional Engineer's certification must be furnished to the Commissioner upon request until he releases the owner or operator from the financial assurance requirements for closure under part (8)(d)3 of this Rule."

Part 7 of subparagraph (g) of paragraph (8) of Rule 1200-01-11-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage and Disposal Facilities is amended by deleting it in its entirety and replacing it with the following part 7:

7. Corporate Financial Test of Self-Assurance for Closure and/or Post-closure Care and/or Corrective Action and/or Liability Coverage
 - (i) An owner or operator may satisfy the requirements of subparagraph (d) and/or (f) of this paragraph by demonstrating that it passes a financial test as specified in this part. To pass this test the owner or operator must meet the criteria of item (I) and either items (II) or (III) of this subpart as follows:
 - (I) Financial Ratios. The owner or operator must have:
 - I. Two of the following three ratios: a ratio of total liabilities to net worth shall be less than 1.5; a ratio of the sum of net income plus depreciation, depletion, and amortization minus ten million dollars (\$10,000,000) to total liabilities shall be greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
 - II. Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and all other environmental financial assurance obligations covered by a financial test; and
 - III. Tangible net worth of at least \$10 million plus the dollar amount of the current closure and post-closure cost estimates and all other environmental financial assurance obligations covered by a financial test; and
 - IV. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and all other environmental financial assurance obligations covered by a financial test.
 - (II) Corporate Bonds. The owner or operator must have:
 - I. An outstanding corporate bond issuance of senior unsecured debt registered with the U.S. Securities and Exchange Commission (SEC); and

- II. A bond issuance used to comply with the financial test requirements that is the most recent senior unsecured debt issued by the corporation and is outstanding for the duration of the fiscal year of the corporation for which the financial test is intended to serve as financial assurance; and
 - III. A rating of the submitted bond issuance by Standard and Poor's, or Moody's, or Fitch debt rating agencies of not less than "BBB" by Standard and Poor's, "Baa2" by Moody's, and "BBB" by Fitch. Ratings of "BBB-" by Standard and Poor's, "Baa3" by Moody's, and "BBB-" by Fitch are not acceptable to the Commissioner; and
 - IV. If a corporate owner or operator, using the financial test, has bond ratings by more than one rating agency, "all" of the ratings must be submitted to the Commissioner, and "all" of the ratings must meet the ratings allowed by these regulations as listed in subitem III of this item.
- (III) Corporate Credit Ratings. The owner or operator must have:
- I. A corporate credit rating that has been issued or confirmed by no more than one year prior to the date of the submission of the financial test; and
 - II. A corporate credit rating of not less than the Standard and Poor's long term debt rating of "BB" and short term debt rating of "A-2", Moody's long term debt rating of "Baa2" and short term debt rating of "P-2", and Fitch's long term debt rating of "BBB" and short term debt rating of "F2"; and
 - III. Corporate credit long term ratings of "BBB-" by Standard and Poor's, "Baa3" by Moody's and "BBB-" by Fitch are not acceptable to the Commissioner; and
 - IV. If a corporate owner or operator, using the financial test, has a corporate credit rating by more than one rating agency, "all" of the ratings must meet the ratings allowed by these regulations as listed in subitems II and III of this item.
- (ii) If the owner or operator submits corporate bond ratings or corporate credit ratings made by rating agencies other than those listed in items (II) and (III) of subpart (i) of this part, the acceptability of such ratings for purposes of qualifying to use the Financial Test of Self-assurance shall be made by the Commissioner.
- (iii) To demonstrate that the corporation meets this test, the owner or operator must submit the following items to the Commissioner:
- (I) A letter signed by the owner's or operator's chief financial officer and worded as specified in part (p)6 of this paragraph; and
 - (II) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and
 - (III) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:
 - I. 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

- II. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted; and
 - (IV) A written statement or statements from the rating agency or agencies of all existing bond ratings or corporate credit ratings; and
 - (V) A Financial Test of Self-Assurance Guarantee Agreement for Closure and/or Post Closure and/or Corrective Action and/or Liability Coverage completed and signed by the chief financial officer with the proper notarization, and with the original of the document being submitted to the Commissioner as an accompaniment to the Letter from the Chief Financial Officer.
- (iv) An owner or operator wanting to use the financial test of self-assurance or corporate parent financial test guarantee for the first time, or an owner or operator previously disqualified from continuing to use the financial test but desiring to use the financial test of self-assurance again, must demonstrate its qualification as evidenced in its year-end financials for two years prior to the beginning of the fiscal year in which it seeks to use the financial test. Subparts (i) through (iii) of this part must be submitted for each of the two years to evidence its qualification to use the financial test of self-assurance.
 - (v) After the initial submission of items specified in subparts (i), (ii), and (iii) of this part, and the approval of the submittals by the Commissioner, the owner or operator desiring to continue use of the financial test must send the same information, updated, to the Commissioner within 90 days after the close of each succeeding fiscal year.
 - (vi) If the owner or operator no longer meets the requirements of this part as a direct result of its independently audited year-end financials, the owner or operator must send notice to the Commissioner of intent to establish alternate financial assurance as specified in this paragraph. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.
 - (vii) The Commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see items (II) and (III) of subpart (iii) of this part). An adverse opinion or a disclaimer of opinion will be cause for disallowance.
 - (viii) The Commissioner may evaluate other qualifications on an individual basis. The qualifications that may be evaluated include, but are not limited to, the following:
 - (I) Timely submission of the test denoting that the test can only be used as a financial instrument if submitted during the 90 day period following the end of the owner's or operator's fiscal year;
 - (II) Accuracy and validity of the financial data submitted in the test;
 - (III) Changes by the rating agencies in the rating systems and nomenclature that affect the determination of which ratings are acceptable to the Commissioner as listed in these regulations. In the event such changes are made by the rating agencies, the Commissioner may determine which corporate bond and corporate credit ratings are acceptable to

coincide with the changes by the rating agencies;

- (IV) Any other factors relating to split bond and credit ratings that significantly affect the owner or operator's financial posture;
 - (V) Owner's or operator's failure to include in the test, the sum of all environmental financial assurance amounts for which the financial test serves as financial assurance in the United States and internationally; and
 - (VI) Any other items or concerns that affect the acceptability of the submitted financial test and its comparability to other allowed financial assurance instruments.
- (ix) If the Commissioner disallows the use of the test based on the failure to meet the requirements or determinations made pursuant to subpart (viii) of this part, the owner or operator must provide alternate financial assurance as specified in this paragraph within 30 days after notification of the disallowance.
 - (x) If the owner or operator determines at any time during its fiscal year, by sources internal or external to the corporation, that the corporation can no longer meet the financial test criteria, it shall notify the Commissioner in writing within 72 hours of such determination and shall establish an approved alternative financial assurance instrument within 30 days of such notification.
 - (xi) The Commissioner may, based on a reasonable belief that the owner or operator no longer meets the requirements of subpart (i), (ii), and (iii) of this part, require reports of financial condition at any time from the owner or operator. If the Commissioner finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subpart (i), (ii), and (iii) of this part, the owner or operator must provide alternate financial assurance as specified in this paragraph within 30 days after notification by the Commissioner that the owner or operator no longer meets the requirements to use the financial test of self-assurance.
 - (xii) If the amount of any increase in financial assurance occurring after the initial annual submittal of the financial test would disqualify the owner or operator from using the financial test based on current year-to-date financials, the owner or operator must provide an interim alternative financial assurance mechanism to the Commissioner. This interim financial assurance instrument, in the amount of the increase, must be filed with the Commissioner within thirty (30) days of such determination by the owner or operator or the Commissioner. The subsequent annual re-submittal of the Financial Test must include all environmental financial obligations including the amount provided by the interim financial instrument.
 - (xiii) The owner or operator is no longer required to submit the items specified in subparts (i), (ii) and (iii) of this part when:
 - (I) An owner or operator substitutes alternate financial assurance as specified in this paragraph; or
 - (II) The Commissioner or Board releases the owner or operator from the requirements of this paragraph in accordance with part (d)3 and/or (f)3 of this paragraph.
 - (xiv) An owner or operator may meet the requirements of subparagraph (d) and/or (f) of this paragraph by obtaining a written guarantee, hereafter referred to as "Corporate Parent Financial Test Guarantee Agreement". The guarantor must be the direct or higher-tier parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in subparts (i) through (ix) of this part and must comply with the terms of the corporate

guarantee. The wording of the Corporate Parent Financial Test Guarantee Agreement must be identical to the wording specified in Rule 1200-01-11-.06(8)(p). A certified copy of the guarantee agreement must accompany the items sent to the Commissioner as specified in subpart (iii) of this part. The terms of the Corporate Parent Financial Test Guarantee Agreement must provide that:

- (I) If the owner or operator fails to perform final closure and/or post-closure of a facility covered by the Corporate Parent Financial Test Guarantee Agreement in accordance with the closure and/or post-closure plan and other interim status requirements whenever required to do so, the guarantor shall do so or shall establish a trust fund as specified in part 1 of this subparagraph in the name of the owner or operator or shall forfeit to the State monies in an amount equal to the current closure and/or post-closure cost estimate for the facility as provided in parts (d)4 and/or (f)4 of this paragraph as directed by the Commissioner.
- (II) The Corporate Parent Financial Test Guarantee Agreement shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Commissioner. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Commissioner, as evidenced by the return receipts.
- (III) If the owner or operator fails to provide alternate financial assurance as specified in this paragraph and obtain the written approval of such alternate assurance from the Commissioner within 90 days after receipt by both the owner or operator and the Commissioner of a notice of cancellation of the guarantee from the guarantor, the guarantor shall provide such alternative financial assurance in the name of the owner or operator.

Part 6 of subparagraph (n) of paragraph (8) of Rule 1200-01-11-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage and Disposal Facilities is amended by deleting it in its entirety and replacing it with the following:

6. Financial Test for Liability Coverage

- (i) An owner or operator may satisfy the requirements of this subparagraph by demonstrating that he passes a financial test as specified in part (g)7 of this paragraph.

Part 8 of subparagraph (g) of paragraph (8) of Rule 1200-01-11-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities is amended by deleting it in its entirety and replacing it with the following part 8:

8. Corporate Financial Test of Self Assurance for Closure and/or Post-closure Care

- (i) An owner or operator may satisfy the requirements of subparagraph (d) and/or (f) of this paragraph by demonstrating that he passes a financial test as specified in this part. To pass this test the owner or operator must meet the criteria of item (I) and either items (II) or (III) of this subpart as follows:
 - (I) The owner or operator must have:
 - I. Two of the following three ratios: a ratio of total liabilities to net worth shall equate to less than 1.5; a ratio of the sum of net income plus depreciation, depletion, and amortization minus ten million dollars (\$10,000,000) to total liabilities shall equate to greater than 0.1; and a ratio of current assets to current liabilities

greater than 1.5; and

- II. Net working capital and tangible net worth each at least six times the sum of all environmental financial assurance obligations covered by a financial test; and
- III. Tangible net worth of at least \$10 million plus the dollar amount of all environmental financial assurance obligations covered by a financial test; and
- IV. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of all environmental financial assurance obligations covered by a financial test.

(II) The owner or operator must have:

- I. An outstanding corporate bond issuance of senior unsecured debt registered with the U.S. Securities and Exchange Commission (SEC); and
- II. A bond issuance used to comply with the financial test requirements that is the most recent senior unsecured debt issued by the corporation and is outstanding for the duration of the fiscal year of the corporation for which the financial test is intended to serve as financial assurance; and
- III. A rating of the submitted bond issuance by Standard and Poor's, or Moody's, or Fitch debt rating agencies of not less than "BBB" by Standard and Poor's, "Baa2" by Moodys, and "BBB" by Fitch. Ratings of "BBB-" by Standard and Poor's, "Baa3" by Moodys, and "BBB-" by Fitch are not acceptable to the Commissioner; and
- IV. If a corporate owner or operator, using the financial test, has bond ratings by more than one rating agency, "all" of the ratings must be submitted to the Commissioner, and "all" of the ratings must meet the rating allowed by these regulations as listed in subitem III of this item.

(III) The owner or operator must have:

- I. A corporate credit rating indicative of the capability of the corporation to meet all of its short term and long term financial obligations; and
- II. A corporate credit rating that has been issued or confirmed by no more than one year prior to the date of the submission of the financial test; and
- III. A corporate credit rating of not less than the Standard and Poor's Long term debt rating of "BBB" and short term debt rating of "A-2", Moody's long term debt rating of "Baa2" and short term debt rating of "P-2", and Fitch's long term debt rating of "BBB" and short term debt rating of "F2"; and
- IV. Corporate credit long term ratings of "BBB-" by Standard and Poor's, "Baa3" by Moody's and "BBB-" by Fitch are not acceptable to the Commissioner; and
- V. If a corporate owner or operator, using the financial test, has a

corporate credit rating by more than one rating agency, all of the ratings must meet the ratings allowed by these regulations as listed in subitems III and IV of this item.

- (ii) If the owner or operator submits corporate bond ratings or corporate credit ratings made by rating agencies other than those listed in subpart (i), items (II) and (III) of this part the acceptability of such ratings for purposes of qualifying to use the Financial Test of Self-assurance shall be made by the Commissioner.
- (iii) To demonstrate that the corporation meets this Corporate Financial Test, the owner or operator must submit the following items to the Commissioner:
 - (I) A letter signed by the owner's or operator's chief financial officer and worded as specified in part (p)6 of this paragraph; and
 - (II) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and
 - (III) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:
 - I. 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
 - II. In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted; and
 - (IV) A written statement or statements from the rating agency or agencies of all existing bond ratings or corporate credit ratings; and
 - (V) A Financial Test of Self-Assurance Guarantee Agreement for Closure and/or Post Closure Care and/or Corrective Action and/or Liability Coverage completed and signed by the chief financial officer with the proper notarization, and with the original of the document being submitted to the Commissioner as an accompaniment to the Letter from the Chief Financial Officer.
- (iv) An owner or operator wanting to use the Financial Test of Self-Assurance for the first time, or an owner or operator previously disqualified from continuing to use the financial test but desiring to use the financial test again, must demonstrate its qualification as evidenced in its year-end financials for two years prior to the beginning of the fiscal year in which it seeks to use the financial test. Subparts (i) through (iii) of this part must be submitted for each of the two years to evidence its qualification to use the financial test of self-assurance.
- (v) After the initial submission of items specified in subparts (i), (ii), and (iii) of this part, and the approval of the submittals by the Commissioner, the owner or operator desiring to continue use of the Financial Test must send the same information, updated, to the Commissioner within 90 days after the close of each succeeding fiscal year.
- (vi) If the owner or operator no longer meets the requirements of this part as a direct result of its independently audited year-end financials, the owner or operator must send notice to the Commissioner of intent to establish alternate financial assurance as specified in this paragraph. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end

financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

- (vii) The Commissioner may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see item (iii)(II) of this part). An adverse opinion or a disclaimer of opinion will be cause for disallowance.
- (viii) In evaluating the sufficiency of the documentation submitted to qualify to use the corporate financial test, the Commissioner may consider the following factors:
 - (I) Timely submission of the test denoting that the test can only be used as a financial instrument if submitted during the 90 day period following the end of the owner's or operator's fiscal year;
 - (II) Accuracy and validity of the financial data submitted in the test;
 - (III) Changes by the rating agencies in the rating systems and nomenclature that affect the determination of which ratings are acceptable to the Commissioner as listed in these regulations. In the event such rating structural and nomenclature changes are made by the rating agencies, the Commissioner may determine which corporate bond and corporate credit ratings are acceptable to coincide with the changes by the rating agencies. Promulgations of amendments to these regulations to document the re-determination of which rating are acceptable shall be accomplished by no later than 12 months from the change by the rating agencies;
 - (IV) Any determination of the acceptability or unacceptability of specific split bond and credit ratings, if not adequately addressed by these regulations but affecting the Department's financial posture;
 - (V) Owner's or operator's failure to include in the test, the sum of all environmental financial assurance amounts for which the financial test serves as financial assurance in the United States and internationally; and
 - (VI) Any other items or concerns that affect the acceptability of the submitted financial test and its comparability to other allowed financial assurance instruments.
- (ix) If the Commissioner disallows the use of the test, the owner or operator must provide alternate financial assurance as specified in this paragraph within 30 days after notification of the disallowance.
- (x) If the owner or operator determines at any time during its fiscal year, by sources internal or external to the corporation, that the corporation can no longer meet the financial test criteria, it shall notify the Commissioner in writing within 72 hours of such determination and shall establish an approved alternative financial assurance instrument within 30 days of such notification.
- (xi) The Commissioner may, based on a reasonable belief that the owner or operator no longer meets the requirements of subpart (i), (ii), and (iii) of this part, require reports of financial condition at any time from the owner or operator. If the Commissioner finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subpart (i), (ii), and (iii) of this part, the owner or operator must provide alternate financial assurance as specified in this paragraph within 30 days after notification by the Commissioner that the owner or operator no longer meets the requirements to use the financial

test of self-assurance.

- (xii) If the amount of any increase in financial assurance occurring after the initial annual submittal of the financial test would disqualify the owner or operator from using the financial test based on current year-to-date financials, the owner or operator must provide an interim alternative financial assurance mechanism to the Commissioner. This interim financial assurance instrument, in the amount of the increase, must be filed with the Commissioner within thirty (30) days of such determination by the owner or operator or the Commissioner. The subsequent annual re-submittal of the Financial Test must include all environmental financial obligations including the amount provided by the interim financial instrument.
- (xiii) The owner or operator is no longer required to submit the items specified in subparts (i), (ii) and (iii) of this part when:
 - (I) An owner or operator substitutes alternate financial assurance as specified in this paragraph; or
 - (II) The Commissioner or Board releases the owner or operator from the requirements of this paragraph in accordance with part (d)4 and/or (f)4 of this paragraph.
- (xiv) An owner or operator may meet the requirements of subparagraph (d) and/or (f) of this paragraph by obtaining a written guarantee, hereafter referred to as "Corporate Parent Financial Test Guarantee Agreement". The guarantor must be the direct or higher-tier parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in subparts (i) through (xii) of this part and must comply with the terms of the corporate parent guarantee. The wording of the Corporate Parent Financial Test Guarantee Agreement must be identical to the wording specified in Rule 1200-01-11-.06(8)(p). A certified copy of the guarantee agreement must accompany the items sent to the Commissioner as specified in subpart (iii) of this part. The terms of the Corporate Parent Financial Test Guarantee Agreement must provide that:
 - (I) If the owner or operator fails to perform final closure and/or post-closure of a facility covered by the Corporate Parent Financial Test Guarantee Agreement in accordance with the closure and/or post closure care plan and other interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in part 1 of this subparagraph in the name of the owner or operator or forfeit to the State monies in an amount equal to the current closure and/or post-closure cost estimate for the facility as provided in parts (d)5 and/or (f)5 of this paragraph as directed by the Commissioner.
 - (II) The Corporate Parent Financial Test Guarantee Agreement will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Commissioner. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Commissioner, as evidenced by the return receipts.
 - (III) If the owner or operator fails to provide alternate financial assurance as specified in this paragraph and obtain the written approval of such alternate assurance from the Commissioner within 90 days after receipt by both the owner or operator and the Commissioner of a notice of cancellation of the Guarantee from the Guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator before the expiration of the 90 days.

Hazardous Waste Treatment, Storage and Disposal Facilities is amended by deleting it in its entirety and replacing it with the following:

6. Financial Test for Liability Coverage

An owner or operator may satisfy the requirements of this subparagraph by demonstrating that he passes a financial test as specified in part (g)8 of this paragraph.

Subparagraph (p) of paragraph (8) of Rule 1200-01-11-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities is amended by deleting the introductory language prior to part 1 so that, as amended, the introductory language shall read as follows:

(p) Wording of the Instruments

The wording of the financial instruments listed below must be as follows or otherwise approved for use by the Commissioner:

1. Trust Agreement for a Trust Fund
2. Surety Bond Guaranteeing Payment into a Trust Fund
3. Surety Bond Guaranteeing Performance of Closure and/or Post-closure Care
4. Irrevocable Standby Letter of Credit (For Closure and/or Post-closure Requirements)
5. Certificate of Insurance for Closure and/or Post-closure
6. Letter from Chief Financial Officer (For Closure and/or Post-closure Costs and/or Corrective Action and/or Liability Coverage)
7. Financial Test of Self-Assurance Guarantee Agreements
 - (i) Corporate Financial Test Guarantee Agreement for Closure, Post Closure Care and/or Corrective Action
 - (ii) Corporate Parent Financial Test Guarantee Agreement for Closure, Post Closure Care and/or Corrective Action
8. Guarantees for Financial Test of Self-Assurance for Liability Coverage
 - (i) Corporate Financial Test Guarantee Agreement for Liability Coverage
 - (ii) Corporate Parent Financial Test Guarantee Agreement for Liability Coverage
9. Hazardous Waste Facility Liability Endorsement
10. Hazardous Waste Facility Certificate of Liability Insurance
11. Irrevocable Standby Letter of Credit (For Liability Requirements)
12. Payment Bond (Surety Bond)
13.
 - (i) Trust Agreement
 - (ii) Certification of Acknowledgement
14.
 - (i) Standby Trust Agreement
 - (ii) Certification of Acknowledgement
15. Personal Bond Supported by Securities
16. Reserved

Parts 6, 7 and 8 of subparagraph (p) of paragraph (8) of Rule 1200-01-11-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities is amended by deleting them in their entirety and replacing them with the following parts 6, 7 and 8:

6. Letter from Chief Financial Officer (for Closure and/or Post-closure and/or Corrective Action and/or Liability Coverage)

Part A

A letter from the chief financial officer, as specified in Rule 1200-01-11-.05(8)(g)7 or Rule 1200-01-11-.06(8)(g)8 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to Commissioner]

I am the chief financial officer of [name and address of firm]. This letter is in support of the use of the financial test to demonstrate financial responsibility for [insert: "closure and/or post-closure care and/or corrective action and/or liability coverage" if applicable] as specified in Rules 1200-01-11-.05(8), 1200-01-11-.06(8), and Rule 1200-01-11-.06(22).

Fill in paragraphs (I) through (III) regarding facilities and associated closure and/or post closure and/or corrective action cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its Installation Identification Number, name, address, and current closure and/or post-closure care and/or corrective action cost estimates. Identify each cost estimate as to whether it is for closure, post-closure care, corrective action, liability coverage, or other environmental financial responsibility obligations.

(I) The corporate owner or operator must complete subparagraph (a) of this paragraph or the corporate parent guarantor must complete subparagraph (b) of this paragraph.

(a) I. This firm identified above owns or operates the following facilities in Tennessee for which financial assurance for closure and/or post-closure care and/or corrective action is demonstrated through the financial test of self-assurance as specified in Rules 1200-01-11-.05(8) and 1200-01-11-.06(8). The current closure and/or post-closure care and/or corrective action cost estimate(s) covered by the test is/are shown for each facility:

_____.

II. The firm identified above is the owner or operator of the following facilities in Tennessee for which liability coverage for [insert: "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in Rules 1200-01-11-.05(8) and 1200-01-11-.06(8): _____.

III. In Tennessee, this firm is the owner or operator of the following facilities, not listed in items I and II of this subparagraph through which it is demonstrating financial assurance and/or liability coverage through the use of a test equivalent or substantially equivalent to the financial test specified in Rules 1200-01-11-.05(8) and 1200-01-11-.06(8). The current cost estimate(s) covered by such a test are shown below for each facility by environmental program, permit number, and physical location: _____.

(b) I. This firm identified above guarantees, through the Corporate Parent Financial Test Guarantee specified in Rules 1200-01-11-.05(8) and 1200-01-11-.06(8), the closure and/or post-closure care and/or corrective action of the following facilities in Tennessee owned or operated by wholly owned subsidiary of the Corporate Parent. The current cost estimates for the closure and/or post-closure care and/or corrective action so guaranteed is/are shown for each facility:

_____.

II. The firm identified above guarantees, through the Corporate Parent Financial Test Guarantee specified in Rules 1200-01-11-.05(8) and 1200-01-11-.06(8), liability coverage for [insert: "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities in Tennessee owned or operated by the following: _____.

III. In Tennessee the firm identified above is the Corporate Parent Guarantor for the following facilities not listed in items I and II of this subparagraph for which it is demonstrating financial assurance and/or liability coverage through the use of a test equivalent or substantially equivalent to the Corporate Parent Financial Test Guarantee specified in Rules 1200-01-11-.05(8) and 1200-01-11-.06(8). The

current cost estimate(s) covered by such a test are shown below for each facility by environmental program, permit number, and physical location:

- (II) The firm identified above is the [insert: corporate owner or operator or the corporate parent guarantor] of each of the following facilities not listed in subparagraph (I)(a) or (b) of this letter from the Chief Financial Officer for which the financial test or a similar document of self-assurance serves in the United States and/or internationally as environmental financial assurance:

EPA ID#: _____
Name of Facility: _____
Physical Address of Facility: _____
Regulatory Environmental Program: _____
Amount of Financial Responsibility in Dollars: _____
Type Environmental Obligation (closure, corrective action, etc.) _____
(Repeat as necessary)

- (III) The firm identified above is the [insert: corporate owner or operator or the corporate parent guarantor] of each of the following waste management facilities for which financial assurance is not demonstrated to the Commissioner, another State, the U.S. Environmental Protection Agency, the Nuclear Regulatory Commission, nor any other national or international regulatory agency through the financial test of self-assurance or any other financial assurance mechanism:

EPA ID#: _____
Name of Facility: _____
Physical Address of Facility: _____
Regulatory Environmental Program: _____
Amount of Financial Responsibility in Dollars: _____
Type Environmental Obligation (closure, corrective action, etc.) _____
(Repeat as necessary)

Is this firm required to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year? Yes ___ No ___. In order to use this test the owner/operator or corporate parent providing the guarantee must file a Form 10K with the SEC annually.

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].

Part B

Financial Test of Self Assurance to provide financial assurance for closure and/or post-closure care and/or corrective action and/or liability coverage. In order to pass this financial test, the owner or operator must meet the requirement of Rule 1200-01-11-.05(8)(g)7, Rule 1200-01-11-.06(8)(g)8, and Rule 1200-01-11-.06(8)(n)6.

The Financial Test of Self Assurance

1. Sum of all environmental financial assurance obligations listed in paragraphs (I) through (III) in Part A of this letter \$ _____
- *2. Total liabilities (if any portion of your financial assurance obligations is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 3 and 4). \$ _____
- *3. Tangible net worth \$ _____
- *4. Net worth \$ _____
- *5. Current assets \$ _____

- *6. Current liabilities \$ _____
- 7. Net working capital (line 5 minus line 6) \$ _____
- *8. The sum of net income plus depreciation, depletion, and Amortization minus ten million dollars (\$10,000,000) \$ _____
- *9. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) \$ _____
- 10. Is line 3 at least \$10 million plus the dollar amount of all financial assurance covered, Line 1? Yes__ No__
- 11. Is line 3 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 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 1.5? 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__

Complete lines 18 through 21 if you are submitting a Corporate Bond Rating, or Lines 22 and 23 if you are submitting a corporate credit rating to comply with the requirements for this Financial Test.

- 18. Date of issuance of SEC registered corporate bond-senior unsecured debt _____
- 19. Is the above bond issuance the most recent senior unsecured debt issuance? Yes__ No__
- 20. What is the maturity date of the bond listed on line 18? _____
- 21. List all debt ratings for this bond issue by rating agency(ies) and dates of Rating(s)
 Agency _____ Date _____ Rating _____
 Agency _____ Date _____ Rating _____
 Agency _____ Date _____ Rating _____

Note: Rating agencies allowed are Standard and Poor's, Moody's and Fitch.

Current Corporate Debt Rating(s)

- 22. List all debt rating agencies for the entire corporate indebtedness
 Rating agency name _____
 Short term debt rating _____ Date of Rating _____
 Long term debt rating _____ Date of Rating _____

(Repeat as necessary for each rating agency)

Note: Rating agencies allowed are Standard and Poor's, Moody's and Fitch.

23. Were the above corporate credit ratings made within 12 months prior to the date of submission of this financial test? Yes__ No__

I hereby certify that the wording of this letter is identical to the wording specified in Tennessee Rule 1200-01-11-.06(8)(p)6 as such regulations were constituted on the date shown immediately below. I hereby certify that the above financial test has been completed in accordance with the instructions as listed herein and in accordance with the regulatory requirements governing the Financial Test of Self-Assurance as described in Rule 1200-01-11-.05(8)(g)7, Rule 1200-01-11-.06(8)(g)8, and/or Rule 1200-01-11-.06(8)(n)6 as applicable.

[Name of person signing] _____

[Title of person signing] _____

[Notary] _____

STATE OF _____

COUNTY _____

Before me personally appeared:

Who executed said instrument for the purpose therein expressed. Witness my hand and official seal this _____ day of _____, AD, 20_____.

_____ Notary Public

My commission expires _____

* * * * *

7. Financial Test of Self-Assurance Guarantee Agreements

One of the following guarantees, as appropriate, shall be completed and submitted by an owner or operator or corporate parent using the Financial Test of Self-Assurance as specified in Rule 1200-01-11-.05(8)(g)8(iii)(V) and Rule 1200-01-11-.06(8)(g)(iii)(V) to provide closure and/or post-closure care and/or corrective action. Subpart (i) of this part shall be submitted by an owner or operator using the Corporate Financial Test Guarantee Agreement. Subpart (ii) of this part shall be submitted by a corporate parent using the Corporate Parent Financial Test Guarantee Agreement to provide third party closure and/or post-closure care and/or corrective action for its subsidiary, the "owner or operator". The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the parentheses deleted:

- (i) Corporate Financial Test Guarantee Agreement for Hazardous Waste Management Closure, Post Closure Care, and/or Corrective Action

CORPORATE FINANCIAL TEST GUARANTEE AGREEMENT FOR HAZARDOUS WASTE MANAGEMENT CLOSURE, POST CLOSURE CARE, AND/OR CORRECTIVE ACTION

Guarantee made this [insert: date] by [insert: name of self guaranteeing entity of owner or operator], a business corporation organized under the laws of [insert: the name of the state] herein referred to as self-

guarantor, to the Commissioner, Tennessee Department of Environment and Conservation, beneficiary, on behalf of ourselves as [insert: owner or operator].

Recitals

- (1) The guarantor has full authority and capacity to enter into this guarantee under its bylaws, articles of incorporation, and laws of the State of [insert: guarantor's state or country of incorporation], its state of incorporation. Guarantor has approval from its Board of Directors to enter into this Self-Assurance Guarantee Agreement.
- (2) The fiscal year of this firm ends on [insert: month and day]. This firm, [insert: name of owner or operator], has no parent company holding majority control of its voting stock. This firm, [insert: name of owner or operator], has not pledged majority control of its voting stock to any business entity as a condition of any loan or financial agreement.
- (3) This self-assurance guarantor agreement is being issued to comply with paragraph (8) of Rule 1200-01-11-.05 or paragraph (8) of Rule 1200-01-11-.06 of the regulations promulgated by the Tennessee Department of Environment and Conservation, Division of Solid Waste Management.
- (4) This guarantee is issued to the Commissioner, Tennessee Department of Environment and Conservation on behalf of [Owner or Operator], which [insert: owns and/or operates] the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: Tennessee Permit Number, name and address. Indicate for each facility whether guarantee is for closure and/or post-closure care, and/or corrective action and the amount of financial assurance provided herewith by the guarantee.]
- (5) Guarantor meets or exceeds criteria of the Financial Test of Self-Assurance in Rule 1200-01-11-.05(8)(g)7 and Rule 1200-01-11-.06(8)(g)8.
- (6) Guarantor agrees that if, at the end of any fiscal year before the termination of this guarantee, it fails to meet the criteria for using the Financial Test of Self-Assurance, it shall send, by certified mail, within ninety (90) days of the end of the fiscal year, notice to the Commissioner, Tennessee Department of Environment and Conservation that it intends to provide alternate financial assurance as specified in subparagraph (8)(k) of Rule 1200-01-11-.05 or 1200-01-11-.06. Within one hundred twenty (120) days after the end of the fiscal year, the Guarantor shall establish such alternate financial assurance.
- (7) Guarantor agrees that if it is determined at any time, during its fiscal year, by sources internal or external to the corporation, that the corporation can no longer meet the criteria for using the Financial Test of Self-Assurance, it shall notify the Commissioner in writing within seventy two (72) hours of such determination and shall establish an approved alternative financial assurance instrument within thirty (30) days of such notification to the Commissioner.
- (8) Guarantor shall comply within thirty (30) days with the Commissioner's request for financial information to confirm that the Guarantor continues to meet or exceed the requirements for use of the Financial Test of Self-Assurance.
- (9) Guarantor, as well as its successors and assigns, shall remain bound jointly and severally under this agreement notwithstanding any amendments to the rules or statutes that impact the Hazardous Waste Management Program of the Tennessee Department of Environment and Conservation except wherein such regulatory or statutory amendments may impede the ability of the Guarantor to continue to meet the requirements necessary for continued use of the Financial Test of Self-Assurance. In which case, the Guarantor shall provide an alternative financial assurance instrument within thirty (30) days of such statutory or regulatory amendment.
- (10) Guarantor agrees that if it fails to provide alternative financial assurance as stipulated in items (6) and (7) of this agreement, the Guarantor shall fund a standby trust in the amount listed in item (4) of this agreement. The trust shall be funded by no later than the date by which the alternate financial assurance is due.

- (11) Guarantor agrees that it shall be liable for all litigation cost incurred by the beneficiary, the Commissioner, Tennessee Department of Environment and Conservation, in any successful legal litigation to enforce the agreement against the Guarantor.
- (12) Guarantor agrees to remain bound under this guarantee for as long as it must comply with the applicable financial assurance requirements of paragraph (8) of Rule 1200-01-11-.05 or 1200-01-11-.06, except that the Guarantor may replace this agreement and the Financial Test of Self-Assurance by substituting an approved alternative financial assurance instrument. In which case, the Guarantor will remain bound by this agreement until the substitute financial instrument is approved by the Commissioner, Tennessee Department of Environment and Conservation.
- (13) Guarantor expressly waives notice of acceptance of this self-guarantee by the Commissioner, Tennessee Department of Environment and Conservation. The Guarantor also expressly waives notice of amendment or modification of financial assurance requirements for the Hazardous Waste Management Program of the Tennessee Department of Environment and Conservation.
- (14) Guarantor shall notify the Commissioner within ten (10) days following its filing to seek protection from creditors under Title 11 (Bankruptcy) U.S. Code and that it shall submit, within thirty (30) days of it filling, alternate financial assurance as approved by the Commissioner in the amount specified in item (4) of this document.

I hereby certify that the wording of this guarantee is identical to the wording specified in Tennessee Rule 1200-01-11-.06(8)(p)7(i) as such regulations were constituted on the date first above written.

Effective Date: _____

[Name of self-guarantor] _____

[Authorized signature for self-guarantor] _____

[Name of person signing] _____

[Title of person signing] _____

[Notary] _____

STATE OF _____

COUNTY OF _____

Before me personally appeared

Who executed said instrument for the purpose therein expressed. Witness my hand and official seal, this _____ day of _____ AD, 20_____.

_____ Notary Public

My Commission expires _____

* * * * *

(ii) Corporate Parent Financial Test Guarantee Agreement for Hazardous Waste Management Closure, Post Closure Care, and/or Corrective Action

CORPORATE PARENT FINANCIAL TEST GUARANTEE AGREEMENT FOR HAZARDOUS WASTE MANAGEMENT CLOSURE, POST CLOSURE CARE, AND/OR CORRECTIVE ACTION

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 to the Commissioner, Tennessee Department of Environment and Conservation on behalf of the [owner or operator] of [business address], which is "our subsidiary".

Recitals

- (1) Guarantor has full authority and capacity to enter into this corporate parent guarantee under its bylaws, articles of incorporation, and laws of the State of [insert: guarantor's state or country of incorporation], its state of incorporation. Guarantor has approval from its Board of Directors to enter this Corporate Parent Guarantee Agreement.
- (2) The fiscal year of this firm end on [insert: month, day]. This firm [insert: name of owner or operator] has no parent company holding majority control of its voting stock. This firm, [insert: name of Corporate Parent or owner or operator], has not pledged majority control of its voting stock to any business entity as a condition of any loan or financial agreement.
- (3) This Guarantee is being issued to comply with [insert: paragraph (8) of Rule 1200-01-11-.05 or paragraph (8) of Rule 1200-01-11-.06] of Tennessee Department of Environment and Conservation, Division of Solid Waste Management.
- (4) This guarantee is issued to the Commissioner, Tennessee Department of Environment and Conservation on behalf of [Owner or Operator] "our subsidiary" which [insert: owns and/or operates] the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: Tennessee Permit Number, name, and address. Indicate for each facility whether guarantee is for closure and/or post-closure care, and/or corrective action and the amount of financial assurance provided for each category, and list the total amount of financial assurance provided herewith by this guarantee].
- (5) Guarantor meets or exceeds the criteria of the Financial Test in Rules 1200-01-11-.05(8)(g)7 or Rule 1200-01-11-.06(8)(g)8.
- (6) Guarantee 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 Commissioner that he intends to provide alternate financial assurance, as applicable, in the name of [owner or operator]. Within one hundred twenty (120) days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.
- (7) Guarantor agrees that if it is determined at any time, by sources internal or external to the corporation, that the corporation can no longer meet the applicable financial test criteria, it shall notify the Commissioner in writing within seventy-two (72) hours of such determination and shall establish an approved alternative financial assurance instrument within thirty (30) days of such notification.
- (8) Guarantor shall comply within thirty (30) days with the Commissioner's request for financial information to confirm that the Guarantor continues to meet or exceed the requirements for use of the Financial Test of Self-Assurance.
- (9) Guarantor, as well as its successors and assigns, shall remain bound jointly and severally under this agreement notwithstanding any amendments to the rules or statutes that impact the Hazardous Waste Management Program of the Tennessee Department of Environment and Conservation except wherein such regulatory or statutory amendments may impede the ability of the Guarantor to continue to meet the requirements necessary for continued use of the Financial Test of Self-Assurance. In which case, the Guarantor shall provide an alternative financial assurance instrument within thirty (30) days of such statutory or regulatory amendment.
- (10) Guarantor agrees that if it fails to provide alternative financial assurance as stipulated in items (6) and (7) of this agreement, the Guarantor shall fund a standby trust in the amount listed in item

(4). The trust shall be funded by no later than the date by which the alternate financial assurance is due.

(11) Guarantor agrees that it shall be liable for all litigation cost incurred by the beneficiary, the Commissioner, Tennessee Department of Environment and Conservation, in any successful legal litigation to enforce the agreement against the Guarantor.

(12) Guarantor shall remain bound under this guarantee for as long as it must comply with the applicable financial assurance requirements of paragraph (8) of Rule 1200-01-11-.05 or Rule 1200-01-11-.06, except that the Guarantor may replace this agreement and the Financial Test of Self-Assurance by substituting an approved alternative financial assurance instrument. In which case, the Guarantor shall remain bound by this agreement until the substitute financial instrument is approved by the Commissioner, Tennessee Department of Environment and Conservation. The Guarantor also expressly waives notice of amendment or modification of financial assurance requirements for the Hazardous Waste Management Program of the Tennessee Department of Environment and Conservation.

(13) Guarantor shall notify the Commissioner within ten (10) days following its filing to seek protection from creditors under Title 11 (Bankruptcy) U.S. Code and that it shall submit, within thirty (30) days of it filling, alternate financial assurance as approved by the Commissioner in the amount specified in item (4) of this document.

I hereby certify that the wording of this guarantee is identical to the wording specified in Tennessee Rule 1200-01-11-.06(8)(p)7(ii) 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) _____

Subscribed and sworn to before me this _____ day of _____, ____

Notary Public

My commission expires on the _____ day of _____, _____

* * * * *

8. Guarantee Agreements for Financial Test for Liability Coverage

One of the following guarantees, as appropriate, must be completed and submitted by an owner or operator or corporate parent using the Financial Test of Self Assurance to provide liability coverage as specified in Rule 1200-01-11-.05(8)(n)7 or Rule 1200-01-11-.06(8)(n)7 of this paragraph. Subpart (i) of this part must be submitted by an owner or operator using the Corporate Financial Test Guarantee Agreement to provide liability coverage. Subpart (ii) of this part must be submitted by a corporate parent using the Corporate Parent Financial Test Guarantee Agreement to provide third party liability coverage for its subsidiary, the "owner or operator". The guarantee must be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the brackets deleted:

(i) Corporate Financial Test Guarantee Agreement for Liability Coverage

CORPORATE FINANCIAL TEST GUARANTEE AGREEMENT FOR LIABILITY COVERAGE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States, insert: "the State of _____" and insert the name of State], herein referred to as guarantor. This guarantee is made on behalf of [name of owner or operator] of [business address], to any and all third parties who have sustained or may sustain bodily injury and/or property damage caused by [insert: "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Rule 1200-01-11-.05(8)(n)7 or Rule 1200-01-11-.06(8)(n)7.
2. Guarantor owns or operates the following hazardous waste management facility(ies) covered by this guarantee: (List for each facility: Installation 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 third-party liability requirements for [insert: "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert: dollar amount] for each occurrence and [insert: dollar amount] annual aggregate.
3. Guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury and/or property damage caused by [insert: "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences arising from operations of the facility(ies) covered by this guarantee:
 - (i) To satisfy a judgement or award based on a determination of liability for bodily injury and/or property damage to third parties caused by [insert: "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences, arising from the operation of the above-named facilities; and
 - (ii) To pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage; and
 - (iii) To satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.
4. Such obligation does not apply to any of the following:
 - (i) Bodily injury and/or property damage for which [insert: "owner" or "operator"] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert: "owner" or "operator"] would be obligated to pay in the absence of the contract or agreement.
 - (ii) Any obligation of [insert: "owner" or "operator"] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.
 - (iii) Bodily injury to:
 - (I) An employee of [insert: "owner" or "operator"] arising from, and in the course of, employment by [insert: "owner" or "operator"]; or
 - (II) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert: "owner" or "operator"]. This exclusion applies:
 - I. Whether [insert: "owner" or "operator"] may be liable as an employer or in any other capacity; and

- II. To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in items (I) and (II) of this subpart.
 - (iv) Bodily injury and/or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.
 - (v) Property damage to:
 - (I) Any property owned, rented, or occupied by [insert: "owner" or "operator"];
 - (II) Premises that are sold, given away or abandoned by [insert: "owner" or "operator"] if the property damage arises out of any part of those premises;
 - (III) Property loaned to [insert: "owner" or "operator"];
 - (IV) Personal property in the care, custody or control of [insert: "owner" or "operator"];
 - (V) That particular part of real property on which [insert: "owner" or "operator"] or any contractors or subcontractors working directly or indirectly on behalf of [insert: "owner" or "operator"] are 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 Commissioner that he intends to provide alternate liability coverage as specified in Rules 1200-01-11-.05(8)(n) and 1200-01-11-.06(8)(n), as applicable. Within one hundred twenty (120) days after the end of such fiscal year, the guarantor shall establish such liability coverage.
- 6. Guarantor shall notify the Commissioner within ten (10) days following its filing to seek protection from creditors under Title 11 (Bankruptcy) U.S. Code and shall submit, within thirty (30) days of its filing, alternate financial assurance as approved by the Commissioner in the amount specified in item 2 of this document.
- 7. Guarantor agrees that within thirty (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, he shall establish alternate liability coverage as specified in Rules 1200-01-11-.05(8)(n) and 1200-01-11-.06(8)(n).
- 8. Guarantor may modify this agreement to take into account amendment or modification of the liability requirements set by Rules 1200-01-11-.05(8)(n) and 1200-01-11-.06(8)(n), provided that such modification shall become effective only if the Commissioner does not disapprove the modification within thirty (30) days of receipt of notification of the modification subject to the written approval of such modification by the Commissioner.
- 9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of Rules 1200-01-11-.05(8)(n) and 1200-01-11-.06(8)(n) for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.
- 10. Guarantor may terminate this agreement only after the Guarantor or the owner or operator has submitted alternate liability coverage as specified in Rules 1200-01-11-.05(8)(n) and 1200-01-11-.06(8)(n) and only after having received approval of the alternate coverage from the Commissioner.
- 11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.
- 12. 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.

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

(i) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert: Principal] and [insert: name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [insert: "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrence arising from operating (Principal's) hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$(_____).

(Signatures) _____
Principal

Subscribed and sworn to before me this _____ day of _____, ____

Notary Public

My commission expires on the _____ day of _____, _____

(Signatures) _____
Claimant(s)

Subscribed and sworn to before me this _____ day of _____, ____

Notary Public

My commission expires on the _____ day of _____, _____

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

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert: "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in Tennessee Rule 1200-01-11-.06(8)(p)8(i) as such regulations were constituted on the date shown immediately below.

Effective date: _____

(Name of guarantor) _____

(Authorized signature for guarantor) _____

(Name of person signing) _____

(Title of person signing) _____

Subscribed and sworn to before me this _____ day of _____, _____

Notary Public

My commission expires on the _____ day of _____, _____

* * * * *

- (ii) Corporate Parent Financial Test Guarantee Agreement for Liability Coverage

CORPORATE PARENT FINANCIAL TEST GUARANTEE AGREEMENT FOR LIABILITY COVERAGE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States], insert "the State of _____" and insert name of State], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is "our subsidiary" to any and all third parties who have sustained or may sustain bodily injury and/or property damage caused by [insert: "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Rule 1200-01-11-.05(8)(n)7 or Rule 1200-01-11-.06(8)(n)7.
2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: (List for each facility: Installation 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 third-party liability requirements for [insert: "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert: dollar amount] for each occurrence and [insert: dollar amount] annual aggregate.
3. Guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury and/or property damage caused by [insert: "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury and/or property damage to third parties caused by [insert: "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences, arising from the operation of the above-named facilities, 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 will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.
4. Such obligation does not apply to any of the following:
 - (i) Bodily injury and/or property damage for which [insert: "owner" or "operator"] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert: "owner" or "operator"] would be obligated to pay in the absence of the contract or agreement.
 - (ii) Any obligation of [insert: "owner" or "operator"] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.
 - (iii) Bodily injury to:
 - (I) An employee of [insert: "owner" or "operator"] arising from, and in the course of, employment by [insert: "owner" or "operator"]; or
 - (II) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert: "owner" or "operator"]

"operator"]. This exclusion applies:

- I. Whether [insert: "owner" or "operator"] may be liable as an employer or in any other capacity; and
 - II. To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in items (I) and (II) of this subpart.
- (iv) Bodily injury and/or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.
- (v) Property damage to:
- (I) Any property owned, rented, or occupied by [insert: "owner" or "operator"];
 - (II) Premises that are sold, given away or abandoned by [insert: "owner" or "operator"] if the property damage arises out of any part of those premises;
 - (III) Property loaned to [insert: "owner" or "operator"];
 - (IV) Personal property in the care, custody or control of [insert: "owner" or "operator"];
 - (V) That particular part of real property on which [insert: "owner" or "operator"] or any contractors or subcontractors working directly or indirectly on behalf of [insert: "owner" or "operator"] are 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 90 days, by certified mail, notice to the Commissioner and to [owner or operator] that he intends to provide alternate liability coverage as specified in Rules 1200-01-11-.05(8)(n) and 1200-01-11-.06(8)(n), as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.
6. Guarantor shall notify the Commissioner within ten (10) days following its filing to seek protection from creditors under Title 11 (Bankruptcy) U.S. Code and shall submit, within thirty (30) days of its filing, alternate financial assurance as approved by the Commissioner in the amount specified in item 2 of this document.
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, he shall establish alternate liability coverage as specified in Rules 1200-01-11-.05(8)(n) and 1200-01-11-.06(8)(n) in the name of [owner or operator], unless [owner or operator] 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 Rules 1200-01-11-.05(8)(n) and 1200-01-11-.06(8)(n), provided that such modification shall become effective only if the Commissioner does not disapprove the modification within 30 days of receipt of notification of the modification.
9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of Rules 1200-01-11-.05(8)(n) and 1200-01-11-.06(8)(n) for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.
10. Guarantor may terminate this agreement only after the Guarantor or the owner or operator has submitted alternate liability coverage as specified in Rules 1200-01-11-.05(8)(n) and 1200-01-11-.06(8)(n) and only after having received approval of the alternate liability coverage from the Commissioner.
11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. 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.
13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:
 - (i) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert: Principal] and [insert: name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [insert: "sudden" and/or "nonsudden" or "both sudden and nonsudden"] accidental occurrence arising from operating (Principal's) hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$(_____).

(Signatures) _____
Principal

Subscribed and sworn to before me this _____ day of _____, __

Notary Public

My commission expires on the _____ day of _____, _____

(Signatures) _____
Claimant(s)

Subscribed and sworn to before me this _____ day of _____, __

Notary Public

My commission expires on the _____ day of _____, _____

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

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert: "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in Tennessee Rule 1200-01-11-.06(8)(p)8(ii) as such regulations were constituted on the date shown immediately below.

Effective date: _____

(Name of guarantor) _____

(Authorized signature for guarantor) _____

(Name of person signing) _____

(Title of person signing) _____

Subscribed and sworn to before me this _____ day of _____, _____

Notary Public

My commission expires on the _____ day of _____, _____

* * * * *

Part 16 of subparagraph (p) of paragraph (8) of Rule 1200-01-11-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities is amended by deleting it in its entirety and reserving the part so that, as amended, part 16 shall read as follows:

16. Reserved

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 9-20-10

Signature: J. Apple



Name of Officer: Johnie Mr. Apple

Title of Officer: Director, Div Solid Waste Mgmt

Subscribed and sworn to before me on: Sept 20, 2010

Notary Public Signature: Mary Evans

My commission expires on: January 16, 2014

Department of State Use Only

Filed with the Department of State on: 9/21/10

Tre Hargett

Tre Hargett
Secretary of State

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