

AST FR – 4 Guidance Guarantee

An Owner or Operator may satisfy the requirements of W.Va. Code §22-3-7 and section 12 of the AST Rule by obtaining a guarantee that conforms to the following requirements. The Guarantor shall be a business entity that:

1. Possesses a controlling interest in the owner or operator; or
2. Possesses a controlling interest in a firm that has a controlling interest in the owner or operator; or
3. Is an affiliate which is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or
4. Is engaged in a substantial business relationship with the owner or operator and is issuing the guarantee as an act incident to that business relationship.

The Guarantor shall:

1. Comply with the financial test requirements for self-insurance (submit completed Form AST FR-3 along with Alternative I or Alternative II);
2. Complete Form AST FR-4, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; and
3. Submit the completed AST FR-4 to the WVDEP together with the submission required under self-insurance (AST FR-3); and
4. Provide the owner or operator with copies of the submissions required under self-insurance (AST FR-3) and AST FR-4.

If the Guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by verifiable service, before cancellation or non-renewal of the guarantee, notice to the owner and operator and to the WVDEP. The guarantee will terminate no less than 120 days after the date the owner and operator receive the notification, as evidenced by verifiable service. The owner or operator shall obtain alternative coverage within 30 days of termination of the guarantee.

If the WVDEP notifies the guarantor that it no longer meets the requirements for self-insurance, the guarantor shall notify the owner and operator by verifiable service within 10 days of receiving such notification from the WVDEP. The guarantee will terminate no less than 120 days after the date the owner and operator receive the notification, as evidenced by verifiable service. The owner or operator shall obtain alternative coverage within 30 days of termination of the guarantee.

An owner or operator may use a guarantee to establish financial responsibility only if the State's Attorney General has submitted a written statement to the WVDEP that a guarantee executed as set forth in Form AST FR-4 is a legally valid and enforceable obligation in the State of West Virginia.

The below template can be used to assist in filling out the AST FR-4 form. The brackets throughout this form contain instructions in red text. If you need to fill out the form you must download the AST FR-4 fillable PDF.

AST FR-4

GUARANTEE

Guarantee made this [*Date*] by [*Name of guaranteeing entity*], a business entity organized under the laws of the State of _____, herein referred to as Guarantor, to the West Virginia Department of Environmental Protection (WVDEP) and to any and all third parties, and obligees, on behalf of [*Owner or Operator*] of [*Business Name and Address*]

Recitals

(1) Guarantor meets or exceeds the self-insurance financial test criteria (Alternative I or Alternative II) and agrees to comply with the requirements for guarantors.

(2) [*Owner or Operator*] owns or operates the following aboveground storage tanks (ASTs) covered by this guarantee:

[*Attach tank schedule:*

List for each facility: the name and address of the facility where tanks assured by this financial test are located, the tank registration number and the individual WVDEP issued Tank identification number.]

This guarantee satisfies W.Va. Code §22-3-7 and section 12 of the AST Rule for assuring funding for taking corrective action for releases from the presence, use, or operation of ASTs; if coverage is different for different ASTs or locations, indicate the type of coverage applicable to each AST or location arising from operating the above-identified AST(s) in the aggregate amount of at least [*dollar amount*].

(3) [Insert appropriate phrase: “On behalf of our subsidiary” (if guarantor is corporate parent of the owner or operator); “On behalf of our affiliate” (if guarantor is a related firm of the owner or operator); or “Incident to our business relationship with” (if guarantor is providing the guarantee as an incident to a

substantial business relationship with owner or operator)]

_____, guarantor guarantees to the WVDEP and to any and all third parties that:

In the event that [*Owner or Operator*] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the WVDEP has determined or suspects that a release has occurred at an AST covered by this guarantee, the guarantor, upon instructions from the WVDEP, shall remit to the WVDEP funds in an amount not to exceed the coverage limits specified above for corrective action.

In the event that the WVDEP determines that [*Owner or Operator*] has failed to perform corrective action for a release arising out of the operation of the ASTs identified above in accordance with section 7 of the AST Rule, the Guarantor upon written instructions from the WVDEP, shall perform corrective action in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria for self-insurance, guarantor shall send within (120?) days of such failure, by verifiable service, notice to [*Owner and Operator*]. The guarantee will terminate (120?) days from the date of receipt of the notice by [*Owner and Operator*] as evidenced by verifiable service.

(5) Guarantor agrees to notify [*Owner or Operator*] by verifiable service of a voluntary or involuntary proceeding under the U.S. Bankruptcy Code, naming guarantor as debtor, within (10?) days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [*Owner or Operator*].

(7) Guarantor agrees to remain bound under this guarantee for so long as [*Owner or Operator*] shall comply with the applicable financial responsibility requirements of these regulations for the ASTs identified above, except that guarantor may cancel this guarantee by sending notice by certified mail to [*Owner or Operator*], such cancellation to become effective no earlier than 120 days after receipt of such notice by [*Owner or Operator*] as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following: (a) any obligation of [*Owner or Operator*] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law; (b) bodily

injury to an employee of [*Owner or Operator*] arising from, and in the course of, employment by [*Owner or Operator*]; (c) bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft; (d) property damage to any property owned, rented, loaned to, in the care of, custody, or control of, or occupied by [*Owner or Operator*] that is not the direct result of a release from an AST; (e) bodily injury or property damage for which [*Owner or Operator*] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of W.Va. Code §22-3-7 and section 12 of the AST Rule.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the WVDEP, by any or all third parties, or by _____.

Effective date:

Name of Guarantor

Authorized Signature for Guarantor _____

Name of Person signing

Title of Person signing

Signature of witness or notary: _____