

**AST FR-4**  
**GUARANTEE**

Guarantee made this \_\_\_\_\_ by \_\_\_\_\_, 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 \_\_\_\_\_ of \_\_\_\_\_.

**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) \_\_\_\_\_ 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 \$\_\_\_\_\_.

(3) \_\_\_\_\_, guarantor guarantees to the WVDEP and to any and all third parties that:

In the event that \_\_\_\_\_ fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the 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 \_\_\_\_\_ 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 \_\_\_\_\_. The guarantee will terminate 120 days from the date of receipt of the notice by \_\_\_\_\_ as evidenced by verifiable service.

(5) Guarantor agrees to notify \_\_\_\_\_ by verifiable service of a voluntary or involuntary proceeding under 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 \_\_\_\_\_.

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

(8) The guarantor's obligation does not apply to any of the following: (a) any obligation of \_\_\_\_\_ under a workers' compensation, disability benefits, or unemployment compensation law or other similar law; (b) bodily injury to an employee of \_\_\_\_\_ arising from, and in the course of, employment by \_\_\_\_\_; (c) bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft; (d) property damage to any property owned, rented, loaned to, in the care of, custody, or control of, or occupied by \_\_\_\_\_ that is not the direct result of a release from an AST; (e) bodily injury or property damage for which \_\_\_\_\_ is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 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: \_\_\_\_\_