Missouri specific wording template for liability for third party

bodily injury or property damage

Replace wording in brackets and italics as instructed

*Wording is similar to 40 CFR 264.151(h)(2)*

 **GUARANTEE FOR LIABILITY COVERAGE**

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, on behalf of ***[insert name of owner/operator]*** of ***[insert business address]***which is ***[insert one of the following: “our subsidiary” or “a subsidiary of [name and address of common parent corporation]”]****,* to any and all third parties who have sustained or may sustain bodily injury or property damage caused by ***[insert sudden and/or 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 10 CSR 25-7.264 and 265.

 2. ***[Insert name of owner/operator]*** owns or operates the following hazardous waste management facility(ies) covered by this guarantee: ***[List for each facility the EPA and State identification number, name, and address.]*** This corporate guarantee satisfies the Missouri Hazardous Waste Management Law third-party liability requirements for ***[insert "sudden" or "nonsudden" or "both sudden and nonsudden"]*** accidental occurrences in above-named owner or operator facility(ies) for coverage in the amount of ***[insert dollar amount]*** for each occurrence and ***[insert dollar amount]***annual aggregate.

 3. For value received from ***[insert name of owner/operator]***, guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by ***[insert sudden and/or nonsudden]*** accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that ***[insert name of owner/operator]*** fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ***[insert sudden and/or nonsudden]*** accidental occurrences, arising from the operation of the above-named facility(ies), 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:

(a) Bodily injury or property damage for which ***[insert name of owner/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 name of owner/operator]*** would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of ***[insert name of owner/operator]*** under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of ***[insert name of owner/operator]*** arising from, and in the course of, employment by ***[insert name of owner/operator]***; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by ***[insert name of owner/operator]***. This exclusion applies:

(A) Whether ***[insert name of owner/operator]*** may be liable as an employer or in any other capacity; and

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

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

(e) Property damage to:

(1) Any property owned, rented, or occupied by ***[insert name of owner/operator]****;*

(2) Premises that are sold, given away or abandoned by ***[insert name of owner/operator]*** if the property damage arises out of any part of those premises;

(3) Property loaned to ***[insert name of owner/operator]***;

(4) Personal property in the care, custody or control of ***[insert name of owner/operator]***;

(5) That particular part of real property on which ***[insert name of owner/operator]*** or any contractors or subcontractors working directly or indirectly on behalf of ***[insert name of owner/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 Director of the Missouri Department of Natural Resources (MDNR) and to ***[insert name of owner/operator]*** that he intends to provide alternate liability coverage as specified in 10 CSR 25-7.264 and 265, as applicable, in the name of ***[insert name of owner/operator]***. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless ***[insert name of owner/operator]*** has done so.

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

 7. Guarantor agrees that within 30 days after being notified by the Director of the MDNR 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 10 CSR 25-7.264 and 265 in the name of ***[insert name of owner/operator]***, unless *[owner/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 10 CSR 25-7.264 and 265, provided that such modification shall become effective only if the Director of the MDNR 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 ***[insert name of owner/operator]*** must comply with applicable requirements of 10 CSR 25-7.264 and 265 for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. Guarantor may terminate this guarantee by sending notice by certified mail to the Director of the MDNR and to ***[insert name of owner/operator]***, provided that this guarantee may not be terminated unless and until ***[insert name of owner/operator]*** obtains, and the Director of the MDNR approves, alternate liability coverage complying with 10 CSR 25-7.264 and 265.

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 on of the following documents:

(a) 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 brackets are to be replaced with the relevant information and the brackets 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 *[sudden or nonsudden]* accidental occurrence arising from operating *[Principal's]* hazardous waste treatment, storage, or disposal facility should be paid in the amount of $\_\_\_\_\_\_\_\_\_\_\_.

*[Signatures]*

Principal

(Notary) Date

*[Signatures]*

Claimant(s)

(Notary) Date

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

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 this guarantee is identical to the wording specified in 10 CSR 25-7.264 and 265 as such regulations were constituted on the date shown immediately below.

EFFECTIVE DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***[Name of Guarantor]***

***[Authorized Signature for Guarantor]***

***[Type Name of Person Signing]***

***[Title of Person Signing]***

Signature of Witness or Notary: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_