

WAC 173-360A-1081 Appendix B—Guarantee.

Guarantee made this [date] by name of guaranteeing entity, a business entity organized under the laws of (name of state), herein referred to as Guarantor, to the Washington State Department of Ecology and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals

1. Guarantor meets or exceeds the financial test criteria of WAC 173-360A-1060 (2)(a) or (b) and (3) and agrees to comply with the requirements for guarantors as specified in WAC 173-360A-1061(3).

2. [Owner or operator] owns or operates the following underground storage tank(s) covered by this Guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-0200, and the name and address of the facility.] This Guarantee satisfies the requirements of Part 10 of chapter 173-360A WAC for assuring funding for [insert: "Taking remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

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)] [owner or operator], Guarantor guarantees to the Washington State Department of Ecology and to any and all third parties that:

a. 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 Washington State Department of Ecology has determined or suspects that a release has occurred at an underground storage tank covered by this Guarantee, the Guarantor, upon instructions from the Department, must fund a standby trust fund in accordance with the provisions of WAC 173-360A-1050, in an amount not to exceed the coverage limits specified above.

b. In the event that the Department determines that [owner or operator] has failed to perform remedial action for releases arising out of the operation of the above-identified tank(s) in accordance with WAC 173-360A-0750, the Guarantor, upon written instructions from the Department, must fund a standby trust in accordance with the provisions of WAC 173-360A-1050, in an amount not to exceed the coverage limits specified above.

c. If [owner or 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 ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), 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, upon written instructions from the Department, must fund a standby trust in accordance with the provisions of WAC 173-360A-1050 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage 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 of WAC 173-360A-1060 (2)(a) or (b) and (3), Guarantor must send within 120 days of such failure, by certified mail, notice to [owner or operator]. The Guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

5. Guarantor agrees to notify [owner or operator] 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.

6. Guarantor agrees to remain bound under this Guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 173-360A WAC.

7. Guarantor agrees to remain bound under this Guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of Part 10 of chapter 173-360A WAC for the above-identified tank(s), 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 [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

b. Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert 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, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from an underground storage tank;

e. Bodily damage 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 other than a contract or agreement entered into to meet the requirements of WAC 173-360A-1015.

9. Guarantor expressly waives notice of acceptance of this Guarantee by the Washington State Department of Ecology, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this Guarantee is identical to the wording specified in WAC 173-360A-1081 as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]
Signature of witness or notary:

[Statutory Authority: Chapter 90.76 RCW. WSR 18-15-083 (Order 16-02),
§ 173-360A-1081, filed 7/18/18, effective 10/1/18.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.