

Liability Requirements for Transport, Storage, and Land Application of Biosolids
Form IV - Corporate Guarantee

Letter From Chief Financial Officer
[Address to]

Virginia Department of Environmental Quality
629 East Main Street
Richmond, Virginia 23219

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the corporate guarantee to demonstrate financial responsibility for liability coverage as specified in 9VAC25-32- 810.

The firm identified above guarantees, through the guarantee specified in 9VAC25-32-800 and 9VAC25-32-810, liability coverage for clean up costs, personal injury, and/or property damage resulting from the transport, storage, and land application of biosolids in Virginia. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[Fill in Alternative I if the criteria of 9VAC25-32-800 B 1 are used. Fill in Alternative II if the criteria of 9VAC25-32-800 B 2 are used.]

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated \$ ____.

*2. Current assets \$ ____.

*3. Current liabilities \$ ____.

4. Net working capital (line 2 minus line 3) \$ ____.

*5. Tangible net worth \$ ____.

*6. If less than 90% of assets are located in the U.S., give total U.S. assets \$ ____.

7. Is line 5 at least \$10 million? (Yes/No) ____.

8. Is line 4 at least 6 times line 1? (Yes/No) ____.

9. Is line 5 at least 6 times line 1? (Yes/No) ____.

*10. Are at least 90% of assets located in the U.S.? (Yes/No) _____. If not, complete line 11.

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11. Is line 6 at least 6 times line 1? (Yes/No) _____.

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated \$_____.

2. Current bond rating of most recent issuance and name of rating service _____.

3. Date of issuance of bond _____.

4. Date of maturity of bond _____.

*5. Tangible net worth \$_____.

*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) \$_____.

7. Is line 5 at least \$10 million? (Yes/No) _____.

8. Is line 5 at least 6 times line 1? _____.

9. Are at least 90% of assets located in the U.S.? If not, complete line 10. (Yes/No) _____.

10. Is line 6 at least 6 times line 1? _____.

I hereby certify that the wording of this letter is identical to the wording specified in 9VAC25-32-800 and 9VAC25-32-810 as such regulations were constituted on the date shown immediately below.

[Signature]_____

[Name]_____

[Title]_____

[Date]_____

A guarantee, as specified in 9VAC25-32-800 and 9VAC25-32-810 of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

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Guarantee 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; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [permit holder or applicant] of [business address], which is one of the following: "our subsidiary;" "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in 9VAC25-32-770 to any and all third parties who sustain clean up costs, personal injury, and property damage resulting from the transport, storage, and land application of biosolids in Virginia 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 9VAC25-32-800 and 9VAC25-32-810.
2. [Permit holder or applicant] for which liability coverage for clean up costs, personal injury, and/or property damage resulting from the transport, storage, and land application of biosolids in Virginia covered by this guarantee: [List for each permit 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 clean up costs, personal injury, and property damage resulting from the transport, storage, and land application of biosolids in Virginia in the amount of \$2,000,000 for each occurrence and \$2,000,000 annual aggregate.
3. For value received from [permit holder or applicant], guarantor guarantees to pay any and all third parties who have sustained or may sustain clean up costs, personal injury, and property damage resulting from the transport, storage, and land application of biosolids in Virginia covered by this guarantee that in the event that [permit holder or applicant] fails to satisfy a judgment or award based on a determination of liability for clean up costs, personal injury, and property damage resulting from the transport, storage, and land application of biosolids in Virginia covered by this guarantee to third parties resulting from the transport, storage, and land application of biosolids in Virginia 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. 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 DEQ and to [permit holder or applicant] that he intends to provide alternate liability coverage as specified in 9VAC25-32-810, as applicable, in the name of [permit holder or applicant]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [permit holder or applicant] has done so.
5. The guarantor agrees to notify the DEQ 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 that within 30 days after being notified by DEQ 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 9VAC25-32-810 in the name of [permit holder or applicant], unless [permit holder or applicant] has done so.
7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 9VAC25-32-800 and 9VAC25-32-810, provided that such modification shall become effective only if DEQ does not disapprove the modification within 30 days of receipt of notification of the modification.

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8. Guarantor agrees to remain bound under this guarantee for so long as [permit holder or applicant] must comply with the applicable requirements of this chapter except as provided in paragraph 9 of this agreement.

9. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the permit holder or applicant]:

Guarantor may terminate this guarantee by sending notice by certified mail to the DEQ and to [permit holder or applicant], provided that this guarantee may not be terminated unless and until [permit holder or applicant] obtains, and the DEQ(s) approve(s), alternate liability coverage complying with 9VAC25-32-810.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the permit holder or applicant]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the DEQ director and by [the permit holder or applicant].

10. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

11. 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.

The Guarantor shall satisfy a third-party liability claim only on receipt of one 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 clean up costs, personal injury, and/or property damage arising from the transport, storage, and land application of biosolids in Virginia 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 clean up costs, personal injury, and property damage resulting from the transport, storage, and land application of biosolids in Virginia. I hereby certify that the wording of the guarantee is identical to the wording specified in 9VAC25-32-800 and 9VAC25-32-810 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] _____
Signature of witness or notary: _____