



## MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

Remediation and Redevelopment Division

### **FINANCIAL TEST AND FINANCIAL TEST/CORPORATE GUARANTEE PART 213**

This document provides instructions on the use of the Financial Test (FT) or Financial Test/Corporate Guarantee (FT/CG) to fulfill the requirements for financial assurance pursuant to Section 21309a(2)(f) of Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* This document, the attached Standard Financial Test Model (Appendix A), the Letter from the Chief Financial Officer for Financial Test or Financial Test/Corporate Guarantee Model (Appendix B), the Financial Test Or Financial Test/Corporate Guarantee Report Of The Independent Certified Public Accountant Model (Appendix C), and the Corporate Guarantee Model (Appendix D)s are provided to the public as preliminary guidance as to the content, format, and terms of the Financial Assurance Mechanism and are not intended, nor can they be relied upon to create any substantive or procedural rights by any other party.

Pursuant to Section 21309a of the NREPA, if initial actions under Section 21307 have not resulted in the completion of corrective action, an owner or operator that is liable under Section 21323a shall prepare a corrective action plan to address contamination at the site. If the corrective action plan includes the operation of a mechanical soil or groundwater remediation system, or both, a financial assurance mechanism to pay for monitoring, operation, and maintenance necessary to assure the effectiveness and integrity of the corrective action remediation system is required. The Michigan Department of Environment, Great Lakes, and Energy has determined that the FT and the FT/CG are acceptable Financial Assurance Mechanisms (FAMs). The FT allows for the financial strength of a company to be used as a FAM. If a company cannot meet the requirements for the FT and is a subsidiary, it may rely on its parent company's financial strength to meet the FT requirements; however, the parent company must agree to assume responsibility for the FAM on behalf of its subsidiary through entry of a Corporate Guarantee Agreement (Appendix D).

If a person elects to use the FT to meet its financial assurance obligations (Designated Party), the Designated Party must:

1. Pass the Standard Financial Test using either Alternative I or II (See Appendix A).
2. Provide a letter signed by the Designated Party's Chief Financial Officer (CFO) that is worded in accordance with the language in Appendix B and include the documents referenced therein.
3. Provide a letter from the independent Certified Public Accountant certifying his or her review of the CFO letter and the company Financial Statements, that is worded in accordance with the language in Appendix C.

If the Designated Party elects to use the FT/CG, the parent company must:

1. Pass the Standard Financial Test using either Alternative I or II (See Appendix A).

2. Provide a letter signed by the CFO of the parent company that is worded in accordance with the language provided in Appendix B and include the documents referenced therein.
3. Submit a Corporate Guarantee in accordance with Appendix D.
4. Provide a letter from the independent Certified Public Accountant certifying his or her review of the CFO letter and the company Financial Statements, that is worded in accordance with the language in Appendix C.

Please contact Mr. Brad Ermisch, Compliance and Enforcement Section, Remediation and Redevelopment Division (RRD), at [ermischb@michigan.gov](mailto:ermischb@michigan.gov) or 517-275-1173 for any questions relating to this document or the attached model document; or you may call the RRD main number at 517-284-5087 for assistance.

Drafting Instructions: Copy and paste the text portion of the model documents onto appropriate letterhead. Drafting notes and examples appear as ***italicized bold font***, insertion directions appear as ***[italicized bold font within bold brackets]***, and word choices appear as ***[regular bold font within bold brackets]***.

--END OF GUIDANCE AND INSTRUCTIONS--

**Appendix A**

**STANDARD FINANCIAL TEST MODEL**

**STANDARD FINANCIAL TEST**

**[Create a header for this document identifying the purpose and parties represented by the standard financial test. This test must be renewed thirty days following the close and publication of financial information or an alternative financial assurance document is to be provided to the Michigan Department of Environment, Great Lakes, and Energy (EGLE).]**

**ALTERNATIVE I**

1. Sum of the current cost estimates for all environmental actions (e.g. corrections actions, response activities, etc.) needed at Michigan facilities, including the cost for operation and maintenance of all environmental actions for the next 30 year time period. \$ \_\_\_\_\_
2. Sum of the current cost estimates for all environmental actions needed at non-Michigan facilities, including the cost for operation and maintenance of all environmental actions. \$ \_\_\_\_\_
3. Sum of lines 1 and 2. \$ \_\_\_\_\_
- \*4. Total liabilities [if any portion of the cost estimates for lines 1 or 2 is included in total liabilities, you may deduct that amount from this line and add that amount to lines 5 and 6]. \$ \_\_\_\_\_
- \*5. Tangible net worth. \$ \_\_\_\_\_
- \*6. Net worth. \$ \_\_\_\_\_
- \*7. Current assets. \$ \_\_\_\_\_
- \*8. Current liabilities. \$ \_\_\_\_\_
9. Net working capital [line 7 minus line 8] \$ \_\_\_\_\_
- \*10. The sum of net income plus depreciation, depletion and amortization. \$ \_\_\_\_\_
- \*11. Total assets in the United States. \$ \_\_\_\_\_
- \*12. Total assets in Michigan, excluding the value of all real property on which corrective actions are necessary. \$ \_\_\_\_\_
- \*13. Total assets in Michigan, including the value of all real property on which corrective actions are necessary. \$ \_\_\_\_\_

**STANDARD FINANCIAL TEST**

	YES	NO
14. Is line 5 at least \$10 million?	___	___
15. Is line 5 at least 6 times line 3?	___	___
16. Is line 9 at least 6 times line 3?	___	___
*17. Are at least 90% of the company's assets located in the United States? If not, complete line 18.	___	___
18. Is line 11 at least 6 times line 3?	___	___
19. Is line 4 divided by line 6 less than 2.0?	___	___
20. Is line 10 divided by line 4 greater than 0.1?	___	___
21. Is line 7 divided by line 8 greater than 1.5?	___	___
*22. Is line 12 at least \$50 million?	___	___
23. Is line 13 at least 6 times line 1?	___	___

The figures for the above items marked with an (\*) are to be identified as to the source of the information for the company. The preferred source is the independently audited year-end financial statements from the latest fiscal year.

To “pass” Alternative I of the standard financial test, the company must meet all of the criteria listed in lines 14, 15, and 16; meet the criterion of either line 17 or line 18; meet two out of three of the ratios listed in lines 19, 20, and 21; and meet the criterion of either line 22 or 23.

ALTERNATIVE II

- 1. Sum of the current cost estimates for all environmental actions (e.g. corrections actions, response activities, etc.) needed at Michigan facilities, including the cost for operation and maintenance of all environmental actions for the next 30-year time-period. \$ \_\_\_\_\_
  - 2. Sum of the current cost estimates for all environmental actions needed at non-Michigan facilities, including the cost for operation and maintenance of all environmental actions. \$ \_\_\_\_\_
  - 3. Sum of lines 1 and 2. \$ \_\_\_\_\_
  - 4. Current bond rating of most recent issuance for this company and name of rating service. \_\_\_\_\_
  - 5. Date of issuance of bond. \_\_\_\_\_
  - 6. Date of maturity of bond. \_\_\_\_\_
  - \*7. Tangible net worth (if any portion of the cost estimates for lines 1 and 2 is included in "total liabilities" on your financial statements, you may add that portion to this line). \$ \_\_\_\_\_
  - \*8. Total assets in the United States. \$ \_\_\_\_\_
  - \*9. Total assets in Michigan, excluding the value of all real property on which corrective actions are necessary. \$ \_\_\_\_\_
  - \*10. Total assets in Michigan, including the value of all real property on which corrective actions are necessary. \$ \_\_\_\_\_
- 
- |   | YES | NO  |
|---|-----|-----|
| 11. Is line 7 at least \$10 million?  | ___ | ___ |
| 12. Is line 7 at least 6 times line 3?  | ___ | ___ |
| *13. Are at least 90% of company's assets located in the United States? If not, complete line 14. | ___ | ___ |
| 14. Is line 8 at least 6 times line 3?  | ___ | ___ |
| *15. Is line 9 at least \$50 million?   | ___ | ___ |
| 16. Is line 10 at least 6 times line 1?   | ___ | ___ |

**STANDARD FINANCIAL TEST**

The figures for the above items marked with an (\*) are to be identified as to the source of the information for the company. The preferred source is the independently audited year-end financial statements from the latest fiscal year.

To “pass” Alternative II of the standard financial test, the company must have a current rating for the most recent bond issuance of AAA, AA, A, or BBB for Standard and Poor’s or Aaa, Aa, A, or Baa for Moody’s; meet the criteria listed in lines 11 and 12; meet the criterion of either line 13 or line 14; and meet the criterion of either line 15 or 16.

***[Insert the following at the end of the Standard Financial Test that you chose to use]***

I hereby certify that the wording of this form is a true copy of the model financial test provided by EGLE, with the exception of any changes made and agreed to by representatives of EGLE and ***[insert name of company]***.

\_\_\_\_\_  
Chief Financial Officer

\_\_\_\_\_  
Name of Company

Date: \_\_\_\_\_

Signed and sealed  
in the presence of:

\_\_\_\_\_  
NOTARY PUBLIC

Notary Public \_\_\_\_\_ County  
My Commission Expires \_\_\_\_\_

## Appendix B

### LETTER FROM CHIEF FINANCIAL OFFICER FOR FINANCIAL TEST or FINANCIAL TEST/CORPORATE GUARANTEE MODEL

**[Insert name of Remediation and Redevelopment Division (RRD) Director]**, Director  
Remediation and Redevelopment Division  
Michigan Department of Environment, Great Lakes, and Energy  
P.O. Box 30426  
Lansing, MI 48909-76115

Dear **[Insert name of RRD Director]**:

I am the chief financial officer of **[insert name of company or name of parent company if Financial Test/Corporate Guarantee (FT/CG)]**, **[insert address]**.

The **[insert name of company or, for FT/CG, name of subsidiary]** is liable under Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, for the **[insert name of site]** site (Site) located at **[insert address of site]** that is the subject of a correction action plan submitted as part of a final assessment report to the Michigan Department of Environment, Great Lakes, and Energy (EGLE) on **[insert date of final assessment report]**. Pursuant to the corrective action plan, **[insert name of company]** has agreed to **[briefly describe corrective actions required by the corrective action plan/Order/Decree/Agreement and any other obligations as necessary]** at the **[insert name of site]**.

In order for EGLE to approve implementation of these corrective actions, Part 213 requires that **[insert name of company]** provide financial assurance to pay for monitoring, operation, and maintenance necessary to assure the effectiveness and integrity of the corrective action remediation system.

**For a company that is providing its own financial test, insert the following paragraph**

This letter is in support of **[insert name of company]**'s use of the financial test to satisfy the financial assurance requirements of Part 213 for the **[insert name of site]**. I understand that using this type of Financial Assurance Mechanism (FAM) requires that **[insert name of company]** submit a financial test annually to EGLE for review and approval. I agree that if the use of the financial test is approved as an acceptable FAM, **[insert name of company]** shall, within ninety (90) days after the end of **[insert name of company]**'s next fiscal year and the end of each succeeding fiscal year, submit to EGLE the necessary forms and supporting documents to demonstrate to the satisfaction of EGLE that **[insert name of company]** can continue to meet the financial test requirements. If, at any time, **[insert name of company]** can no longer meet the financial test requirements, **[insert name of company]** shall, within thirty (30) days, submit a proposal for an alternate FAM to satisfy its financial obligations.

**For a parent company that is providing a FT/CG for its subsidiary, insert the following paragraph**

This company is the parent corporation of **[insert name of subsidiary that is the beneficiary of the FT/CG]**. This letter is in support of **[insert name of parent company]**'s use of the financial test and financial test/corporate guarantee to satisfy the financial assurance requirements of Part 213 for the **[insert name of site]**. I understand that using this type of FAM requires that **[insert name of company]** submit a financial test/corporate guarantee annually to EGLE for review and approval. I agree that if the use of the financial test/corporate guarantee is approved as an acceptable FAM, **[insert name of company]** shall, within ninety (90) days after the end of **[insert name of company]**'s next fiscal year and the end of each succeeding fiscal year, submit to EGLE the necessary forms and supporting documents to demonstrate to the satisfaction of EGLE that **[insert name of company]** can continue to meet the financial test/corporate guarantee requirements. If, at any time, **[insert name of company]** can no longer meet the financial test/corporate guarantee requirements, **[insert name of company]** shall, within thirty (30) days, submit a proposal for an alternate FAM to satisfy its financial obligations.

This company has prepared a Standard Financial Test-Alternative **[insert as appropriate: I or II]** (SFT) using EGLE model SFT and has passed that test as shown in the attached SFT document. The estimated annual cost of corrective actions to be performed at this Site as reflected in the SFT is **[insert estimated annual cost amount]**.

Pursuant to the terms of this FAM, within 30 days after each succeeding 5 year anniversary date of the end of the fiscal year that this FAM is in effect, **[insert name of company]** is required to submit to EGLE an updated cost estimate for implementing the **[describe the general nature of corrective actions, including, monitoring, operation, and maintenance, and other costs]** for the next **[insert 30 year period, or if appropriate, other period of time]**.

With this letter, I also am submitting the following items to demonstrate to EGLE that **[insert name of company]** meets the requirements for using the **[Insert as appropriate: financial test or financial test and corporate guarantee]** as its financial assurance mechanism:

1. A copy of an independent certified public accountant's report for the latest fiscal year for **[insert as appropriate: name of company or parent company]**. The fiscal year of this firm ends on **[insert date of end of company's fiscal year]**.

**NOTE: Please provide a footnote explaining line items in the financial test that deviate from the amounts given in the audited year-end financial statements.**

and

2. A letter from an independent certified public accountant certifying its review of this letter and this company's financial statements. **See Appendix C**

This company **[insert as appropriate: is or is not]** required to file Form 10K with the Securities and Exchange Commission for the latest completed fiscal year which ended **[insert date]**.

I hereby certify that the wording of this letter is identical to the model letter provided by EGLE, with the exception of any changes that have been made with the concurrence of representatives of EGLE and **[insert as appropriate: name of company or parent company]**.



\_\_\_\_\_  
Chief Financial Officer

\_\_\_\_\_  
**[Name of Company or Parent Company]**

Date: \_\_\_\_\_

Attachments

Signed and sealed  
in the presence of:

\_\_\_\_\_  
NOTARY PUBLIC

Notary public \_\_\_\_\_ County  
My commission expires: \_\_\_\_\_

**Appendix C**  
**FINANCIAL TEST or FINANCIAL TEST/CORPORATE GUARANTEE**  
**REPORT OF THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT MODEL**

**[Insert name of Chief Financial Officer (CFO)]**  
**[Insert name and address of Company]**

Dear **[insert name of CFO]**:

We have audited, in accordance with generally accepted auditing standards, the financial statements of **[insert as appropriate: name of company or parent company]** for its fiscal year ending **[insert fiscal year end date]** and have issued our report thereon dated **[insert date]**.

We have not performed any auditing procedures since that date.

At your request, I have read your letter to the Michigan Department of Environment, Great Lakes, and Energy (EGLE) dated **[insert date of letter to EGLE]**, that provided a standard Financial Test and have compared the data in that letter, which are specified as having been derived from the **[insert name of company]**'s audited financial statements for its fiscal year ending **[insert fiscal year end date]**, to the **[insert name of company]**'s financial statements for its most recent fiscal year. In connection with that review, no matters came to my attention that caused me to believe that the specified data should be adjusted or corrected.

This letter is furnished solely for the use of **[insert name of company]** and EGLE and is not to be used for any other purpose.

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**[Name and address of Accounting Firm]**

## Appendix D

### CORPORATE GUARANTEE MODEL

#### CORPORATE GUARANTEE

This Corporate Guarantee (Guarantee) is made this **[insert date]** to the State of Michigan by **[insert name of Parent Company or other guaranteeing entity]** (Guarantor), a business corporation organized under the laws of the State of **[insert name of state]**, **[insert address]**, on behalf of our subsidiary **[insert name of subsidiary company]**, **[insert subsidiary business address]**.

#### RECITALS

Whereas, Guarantor is the parent corporation of **[insert name of subsidiary company]**, is a majority shareholder of **[insert name of subsidiary company]** and will benefit from the operation and activities of **[insert name of subsidiary company]**.

Whereas, **[insert name of subsidiary company]** is liable pursuant to Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* for the **[insert name of Site]** site (Site) located at **[insert street address, or township, county, and state]** with Facility ID No. **[insert number]** and confirmed release No. **[insert confirmed release No. of the release addressed by the corrective action]** which is covered by this Guarantee.

Whereas, the required components of a corrective action plan are outlined in Section 21309a of the NREPA.

Whereas, Section 21309a of the NREPA requires an owner or operator that is liable under Section 21323a to prepare a corrective action plan to address contamination at the Site, if initial actions have not resulted in the completion of corrective action.

Whereas, Section 21309a(2)(f) requires financial assurance as part of the corrective action plan, if the corrective action plan includes the operation of a mechanical soil or groundwater remediation system, or both, to pay for monitoring, operation, and maintenance necessary to assure the effectiveness and integrity of the corrective action remediation system.

Whereas, the Michigan Department of Environment, Great Lakes, and Energy (EGLE) has determined that the Financial Test/Corporate Guarantee (FT/CG) is an acceptable Financial Assurance Mechanism (FAM).

Whereas, the Guarantor has met the Financial Test (FT) criteria and provided other financial information to EGLE (Attachment **[xx]**) **NOTE: this attachment must contain the documents included in Appendices A, B, and C** and EGLE has determined that **[insert name of subsidiary company]** may use this Guarantee to fulfill its financial obligations pursuant to Part 213 of the NREPA.

In consideration of the foregoing, it is hereby agreed by and between EGLE and the Guarantor that this Guarantee will provide the required financial assurance for the Site described above.

## **I. REPRESENTATIONS AND WARRANTIES OF GUARANTOR**

Guarantor hereby represents and warrants as follows:

### 1.1 Corporate Authority

A. Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of ***[insert name of state where Guarantor is incorporated]***. Guarantor has the requisite corporate powers and authority to own its property and assets, to carry on its business as it is now conducting it, and to execute, deliver, and perform this Guarantee. Guarantor is duly qualified to do business in every jurisdiction, to which such qualification is necessary, including the State of Michigan.

B. The execution, delivery, and performance of this Guarantee and the consummation of the transactions herein contemplated have been duly authorized by all requisite corporate action on the part of the Guarantor and will not violate any provision of law, any order of any court or other agency of government, the articles of incorporation or bylaws of Guarantor, or any indenture, agreement or other instrument to which it is a party or by which it or any of its property is bound; and will not conflict with, result in a breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument.

## **II. GUARANTOR'S BUSINESS COVENANTS**

The Guarantor covenants that, during such time as this Guarantee is in effect, it will comply with the following:

### 2.1 Financial Records - Guarantor will:

- A. Maintain a system of accounting, which is established and administered in accordance with generally accepted accounting principles;
- B. Keep adequate records and books of account in which true, accurate, and complete entries are made and which reflect all transactions that are required to be reflected by such accounting principles; and
- C. Keep accurate and complete records of any property owned by it.

2.2 Corporate Existence and Rights - Guarantor will perform or cause to be performed all things necessary to preserve and keep in full force and effect its existence, rights and franchises, provided that this covenant shall not apply so as to prevent the Guarantor from entering into any transaction whereby all or substantially all of its assets and liabilities (including its obligations in respect of this Guarantee) are acquired and assumed by another corporation, whether by merger or otherwise, as long as such other successor corporation meets the FT criteria set forth in Section III and assumes the obligations of this Guarantee.

2.3 Compliance with Law - Guarantor will not violate any laws, ordinances or governmental rules and regulations to which it is subject and will not fail to obtain any licenses, permits, franchises or other governmental authorizations that are necessary to the ownership of its property or the conduct of its business, if such violation or failure to obtain might materially and adversely affect Guarantor's ability to perform its obligations under this Guarantee.

### **III. INFORMATION AS TO GUARANTOR**

Guarantor shall provide the following financial and business information to EGLE during the time period that this Guarantee is in effect.

#### 3.1 Financial Information:

A. Except as otherwise provided by Paragraph 3.1.B., within 90 days after the close of each succeeding fiscal year that this Guarantee is in effect, Guarantor shall prepare and submit to EGLE the following:

(1) A letter signed by Guarantor's chief financial officer, which is worded as specified by EGLE, and includes Guarantor's demonstration that it has passed the standard FT using the EGLE model for the FT. **NOTE: This is Appendix B**

(2) A copy of an independent certified public accountant's report regarding his/her examination of Guarantor's year-end financial statements for the last 5 years.

(3) A letter from an independent certified public accountant to Guarantor which states both of the following: **NOTE: This letter is Appendix C**

(a) That the independent certified public accountant has compared the data referenced in the letter from the chief financial officer in Paragraph 3.1.A(1) as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and  
that no matters came to the attention of the independent certified public accountant that caused the accountant to believe the specified data was incorrect or should be adjusted.

(4) A certificate from the President or a Vice President and the Treasurer or an Assistant Treasurer of Guarantor setting forth that the signers have reviewed the relevant terms of this Guarantee and have made, or caused to be made, under their supervision, a review of the transactions and conditions of the Guarantor from the beginning of the accounting period covered by the financial statements being delivered therewith to the date of the certificate, and that such review has not disclosed the existence during such period of any condition which constitutes an event of noncompliance under this Guarantee. If during such period any such condition or event of noncompliance existed or exists, the certificate shall specify the nature and period of existence thereof and the actions Guarantor has taken or proposes to take with respect thereto.

B. Pursuant to the terms of this FAM, within 30 days after each succeeding 5 year anniversary date of the end of the fiscal year that this FAM is in effect, **[insert name of subsidiary company]** is required to submit to EGLE and Guarantor an updated cost estimate for implementing

the **[describe the general nature of corrective actions, including, monitoring, operation, and maintenance, and other costs]** for the next **[insert 30 year period, or if appropriate, other period of time]**. Within 60 days of Guarantor's receipt of this information from **[insert name of subsidiary company]**, Guarantor shall re-evaluate whether it meets the FT criteria set forth in Paragraph 3.1.A(1) and submit the information required in Paragraph 3.1.A(1)-(3) to EGLE.

3.2 Requested Information – In addition to the information specified in Paragraph 3.1.A, EGLE, based on a reasonable belief that the Guarantor may no longer be able to pass the FT specified in Paragraph 3.1.A(1), may require Guarantor, at any time, to submit reports of its financial condition to EGLE. Guarantor shall provide with reasonable promptness to EGLE any other data and information that may reasonably be expected to materially adversely affect the Guarantor's ability to perform its obligations under the Guarantee.

3.3 Notice of Breach of Covenants or Noncompliance Events - Immediately upon becoming aware of the existence of any condition or event that constitutes either a noncompliance with the pertinent requirements of the corrective action plan or a breach of any covenants under this Guarantee (with the exception of breaches or notices of breach that EGLE sends to Guarantor), Guarantor shall provide written notice to EGLE. Such notice shall specify the nature and duration of the condition or event and the actions the Guarantor is taking or proposes to take to address the condition or event.

#### **IV. GUARANTEE OF OBLIGATIONS**

4.1 Guarantor guarantees that in the event **[insert name of subsidiary company]** fails to perform **[describe the general nature of corrective actions required under the corrective action plan]** for the Site in accordance with EGLE approved corrective action plan, Guarantor will do so.

4.2 Guarantor guarantees that this FT/CG shall be submitted annually to EGLE for review and approval. The guarantor will, within ninety (90) days after the end of **[insert name of Parent Company or other guaranteeing entity]**'s next fiscal year and the end of each succeeding fiscal year, submit to EGLE the necessary forms and supporting documents to demonstrate to the satisfaction of EGLE that **[insert name of Parent Company or other guaranteeing entity]** can continue to meet the FT/CG requirements.

4.3 Guarantor guarantees that if, at the end of any fiscal year before termination of this Guarantee, Guarantor fails to meet the FT criteria as set forth in Paragraph 3.1.A(1), Guarantor will send within 90 days, by certified mail, notice to EGLE and **[insert name of subsidiary company]** that it will provide alternate financial assurance, in a FAM acceptable to EGLE, in the name of **[insert name of subsidiary company]**.

4.4 If an alternate FAM must be secured by Guarantor, within 30 days of providing the notice required by Paragraph 4.3, Guarantor shall submit for review and approval to EGLE, the necessary forms and documents for implementing the alternate FAM. Such forms and documents shall be in a form acceptable to EGLE and shall include the type of FAM, the amount of funds to be secured, and a procedure for the continued review and approval of that FAM by the parties, if appropriate. Submittals provided to EGLE pursuant to this paragraph shall be reviewed and approved and/or disapproved in accordance with the corrective action plan. Upon receipt of approval

by the Remediation and Redevelopment Division Director, Guarantor shall implement the alternate FAM within 15 days.

4.5 If at any time **[insert name of subsidiary company]** or EGLE identifies the need for additional corrective action as provided for in the corrective action plan, **[insert name of subsidiary company]** is required to submit to EGLE for review and approval a proposed plan and schedule for these corrective actions and is required to provide to EGLE and Guarantor, an estimate of the cost for implementing these corrective actions. **[insert name of subsidiary company]** is required to submit these items to the designated parties within 30 days of identification of the need for the additional corrective actions. If requested by EGLE, Guarantor shall then re-evaluate whether it meets the FT criteria as set forth in Paragraph 3.1.A(1) in view of the additional cost that will be incurred to implement these corrective actions and Guarantor shall submit the FT information to EGLE.

4.6 EGLE, based on a reasonable belief that Guarantor may no longer be able to meet the FT requirements specified in Paragraph 3.1.A(1), may require Guarantor to submit updated FT information to determine whether it can continue to meet the FT requirements. If based on that updated information EGLE determines that the Guarantor no longer meets the requirements for the FT, Guarantor shall provide an alternate FAM in accordance with Paragraphs 4.3 and 4.4 of this Guarantee.

4.7 Guarantor agrees to remain bound under this Guarantee notwithstanding any amendment or modification of the corrective action plan if such amendments or modifications continue to rely on the operation of a mechanical soil or groundwater remediation system.

4.8 Guarantor agrees to remain bound under this Guarantee for so long as **[insert name of subsidiary company]** must comply with the applicable financial assurance requirements of the corrective action plan for the Site.

4.9 Guarantor agrees to notify EGLE by certified mail within 10 days of commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code that names Guarantor as debtor.

4.10 If **[insert name of subsidiary company]** and Guarantor fail at any time to adequately implement the corrective actions required under the corrective action plan, EGLE, at its discretion, may choose to implement those corrective actions that have not been performed or may seek other available remedies.

4.11 Guarantor further agrees that it shall irrevocably guarantee performance of the corrective action obligations of **[insert name of subsidiary company]** whether or not it continues to be the holder, directly or indirectly, of the stock of **[insert name of subsidiary company]** and whether or not the Site, or any part of it, is sold, transferred or otherwise alienated. However, this Guarantee may be assigned to a purchaser of Guarantor's interests in **[insert name of subsidiary company]** or to a purchaser of all or substantially all of the assets of **[insert name of subsidiary company]**, if the following terms and conditions are met in advance of such transaction:

(1) The purchaser demonstrates to EGLE that it can meet the FT set forth in Paragraph 3.1.A(1);

(2) Guarantor and the purchaser enter into an assumption agreement in which the purchaser agrees to assume all of the obligations set forth in this Guarantee and which sets forth the terms and conditions of the transaction; and

(3) EGLE agrees in writing to the assumption agreement;

Upon compliance with the foregoing requirements of this paragraph, Guarantor shall be discharged from its obligations under this Guarantee.

## **V. NOTICE TO GUARANTOR/OPPORTUNITY TO CURE**

Any corrective action obligations of ***[insert name of subsidiary company]***, are guaranteed by Guarantor under this Guarantee, and shall be enforceable against Guarantor only after EGLE has first made demand of ***[insert name of subsidiary company]*** for performance of such obligations. EGLE demand to ***[insert name of subsidiary company]*** for performance shall set forth a detailed description of the nature of the specific performance required to cure the violation. EGLE shall also provide a copy of the demand for performance to the Guarantor. If ***[insert name of subsidiary company]*** has not complied with EGLE demand for performance within 15 days of receipt of such demand, Guarantor shall either:

(1) Cure the violation within 15 days; or

(2) Commence and diligently pursue the cure and, if the cure cannot be completely performed within 15 days, provide a proposed schedule for approval by EGLE for completion of the cure. Guarantor shall then complete the cure within the time frame approved by EGLE. Under either scenario, within 15 days of completing the cure, Guarantor shall notify EGLE of the date the violation was cured and the actions that were taken to cure the violation.

## **VI. TERMS OF GUARANTEE**

6.1 This Guarantee shall be fully enforceable by EGLE from the effective date of the Guarantee until EGLE ***[specify the conditions that must be met for the FAM to be released]***.

6.2 Except as provided in Paragraph 4.11 of this Guarantee, Guarantor may be excused from its obligations as set forth in this Guarantee only if all of the following conditions are met:

(1) ***[insert name of subsidiary company]*** is willing and financially able to provide an alternate FAM;

(2) ***[insert name of subsidiary company]*** submits and EGLE approves an alternate FAM that meets EGLE requirements; and

(3) Such a FAM is in place prior to the termination of this Guarantee;



## **VII. NOTICE**

Any notifications required under this Guarantee shall be directed to the following individuals at the addresses specified below, unless any of these individuals, their successors, or their attorneys provide notification of a change to the other party in writing.

As to Guarantor:

**[Insert Guarantor Name]**  
**[Title]**  
**[insert Address]**

As to EGLE:

**[insert Name of Division Director]**, Director  
Remediation and Redevelopment Division  
Michigan Department of Environment, Great Lakes, and Energy  
P.O. Box 30426  
Lansing, MI 48909-7926

## **VIII. REMEDIES**

No failure on the part of EGLE to exercise, nor any delay in exercising, any right hereunder shall operate as a waiver hereof. Neither the single or partial exercise of this Guarantee, nor the exercise of any other right, shall operate as a waiver hereof.

## **IX. GOVERNING LAW/CONSENT TO JURISDICTION**

This Guarantee shall be governed by and construed in accordance with the laws of the State of Michigan. For the sole and exclusive purpose of enforcing the terms of this Guarantee, Guarantor consents to jurisdiction over it and the subject matter of this Guarantee in the appropriate state or federal courts within the State of Michigan.

## **X. SUCCESSORS AND ASSIGNS**

This Guarantee shall be binding upon, and shall inure to the benefit of, the successors and assigns of the parties.

## **XI. EFFECTIVE DATE**

This Guarantee shall become effective on the date that it is executed by the Guarantor and EGLE.

### **XIII. AUTHORITY**

The undersigned representative of Guarantor certifies that **[he/she]** is fully authorized to execute and legally bind Guarantor to the obligations undertaken in this Guarantee. The undersigned representative of the State of Michigan certifies that **[he/she]** is fully authorized to accept this Guarantee.

EXECUTED THIS \_\_\_\_\_ day of \_\_\_\_\_, **[insert year]**.

**[insert name of Guarantor]**  
ACCEPTANCE OF GUARANTEE

Michigan Department of  
Environment, Great Lakes, and Energy

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(type name)

Name: \_\_\_\_\_  
(type name)

Title: \_\_\_\_\_

Title: Division Director, Remediation and Redevelopment  
Division

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If you need this information in an alternate format, contact [EGLE-Accessibility@Michigan.gov](mailto:EGLE-Accessibility@Michigan.gov) or call 800-662-9278.

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