

Guarantee (and Standby Trust Fund)
OAC 1301:7-9-05(M)

[Note: An owner or operator who uses a guarantee to satisfy the requirements of paragraph (H) to (H)(2) of this rule shall comply with all requirements of OAC 1301:7-9-05(M), including the establishment of a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the fire marshal. This standby trust fund shall meet the requirements specified in paragraph (R) to (R)(5) of this rule. The guarantee shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.]

“GUARANTEE.

Guarantee made this **[date]** by **[name of guaranteeing entity]**, a business entity organized under the laws of the state of **[name of state]**, and in compliance with all applicable sections of Title 39 of the Ohio Revised Code, herein referred to as Guarantor, to the Ohio Fire Marshal and to any and all third parties, and obligees, on behalf of **[owner or operator]** of **[business address]**.

Recitals.

(1) **[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, describe the tanks covered and list the name and address of the facility.]** This guarantee satisfies rule 1301:7-9-05 of the Ohio Administrative Code requirements for assuring funding for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from the above-identified underground storage tank(s) in the amount of **[insert applicable dollar amount required under paragraphs (H)(1) to (H)(1)(b) of this rule]** per occurrence and **[insert applicable dollar amount required under paragraph (J)(3) of this rule]** annual aggregate.

(2) On behalf of **[owner or operator]**, Guarantor guarantees to the Ohio Fire Marshal and to any and all third parties that:

In the event that **[owner or operator]** fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Ohio Fire Marshal has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the Guarantor, upon instructions from the Ohio Fire Marshal, shall fund a standby trust fund in accordance with the provisions of paragraphs (AA) to (AA)(3) of rule 1301:7-9-

05 of the Ohio Administrative Code, in an amount not to exceed the coverage limits specified above.

In the event that the Ohio Fire Marshal determines that **[owner or operator]** has failed to perform corrective action for releases from the above-identified tank(s) in accordance with section 3737.88 or 3737.882 of the Ohio Revised Code or Chapter 1301:7-9 of the Ohio Administrative Code, the Guarantor, upon written instructions from the Ohio Fire Marshal, shall fund a standby trust in accordance with the provisions of paragraphs (AA) to (AA)(3) of rule 1301:7-9-05 of the Ohio Administrative Code, in an amount not to exceed the coverage limits specified above.

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 accidental releases from 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 Ohio Fire Marshal, shall fund a standby trust in accordance with the provisions of paragraphs (AA) to (AA)(3) of rule 1301:7-9-05 of the Ohio Administrative Code to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(3) Guarantor agrees that if, at any time, the Guarantor fails to meet any of the applicable sections of Title 39 of the Ohio Revised Code, Guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to **[owner or operator]**. The guarantee will terminate one hundred twenty days from the date of receipt of the notice by **[owner or operator]**, as evidenced by the return receipt.

(4) 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 ten days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of **[owner or operator]** pursuant to Chapter 1301:7-9 of the Ohio Administrative Code.

(6) Guarantor agrees to remain bound under this guarantee for so long as **[owner or operator]** must comply with the applicable financial responsibility requirements of rule 1301:7-9-05 of the Ohio Administrative Code 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 one hundred twenty days after receipt of such notice by **[owner or operator]**, as evidenced by the return receipt.

(7) 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 a petroleum 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 paragraphs (H) to (H)(2) of rule 1301:7-9-05 of the Ohio Administrative Code.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Ohio Fire Marshal, by any or all third parties, or by **[owner or operator]**.

I hereby certify that **[name of Guarantor]** is in compliance with all applicable sections of Title 39 of the Ohio Revised Code.

I hereby certify that the wording of this guarantee is identical to the wording specified in paragraph (M)(4) of rule 1301:7-9-05 of the Ohio Administrative Code as such regulations were constituted on the effective date shown immediately below.

Effective date:[date].

[Name of Guarantor].

[Authorized signature for Guarantor].

[Name of person signing].

[Title of person signing].

[Signature of witness or notary].”

[Note: A separate document for the Standby Trust (OAC 1301:7-9-05(R) must also be prepared to meet all requirements associated with the “Guarantee” financial responsibility mechanism.]