**Financial Test and Corporate Guarantee**

a. **Financial Test**. To demonstrate the financial test, you should use a letter from the chief financial officer. It should be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. Don’t forget to send in the Accountant’s Opinion on your firm’s financial statement and the Special Report from the Independent CPA with the Letter from Chief Financial Officer\*\*.

\*\*If your company/corporation does not have a Chief Financial Officer then the highest official dealing with financial operations should sign the letter and his/her title should be inserted into the letter in place of "Chief Financial Officer".

*If the Owner/Operator is a government entity (i.e., a City or County), replace “firm” with the appropriate entity designation and edit accordingly where necessary.*

**LETTER FROM CHIEF FINANCIAL OFFICER**

Division Director

North Dakota Dept of Environmental Quality

Division of Waste Management – Solid Waste Program

4201 Normandy St.

Bismarck, ND 58503-1324

I am the chief financial officer of [Insert name and address of firm] . This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert “and closure and/or postclosure care” if applicable] as specified in North Dakota Administrative Code (NDAC) Chapter 33.1-20-14.

**Instructions:** *Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its permit number, name, and address.*

The firm identified above is the owner or operator of the following facilities for which liability coverage for sudden accidental occurrences is being demonstrated through the financial test specified in NDAC Section 33.1-20-14-06:

Name:

Address:

City, State, Zip:

Permit No.:

The firm identified above guarantees, through the guarantee specified in NDAC Section 33.1-20-14-06, liability coverage for sudden accidental occurrences at the following facilities owned or operated by the following:

Name:

Address:

City, State, Zip:

Permit No.:

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]*.

**Instructions:** *If you are using the financial test to demonstrate coverage of both liability and closure and postclosure care, fill in the following two paragraphs regarding facilities and associated closure and postclosure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its permit number, name, address, and current closure and/or postclosure cost estimates. Identify each cost estimate as to whether it is for closure or postclosure care.*

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or postclosure care or liability coverage is demonstrated through the financial test specified in NDAC Chapter 33.1-20-14. The current closure and postclosure cost estimates covered by the test are shown for each facility:

Name:

Address:

City, State, Zip:

Permit No.:

Closure cost estimate: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Postclosure cost estimate: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Total cost estimate: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. The firm identified above guarantees, through the guarantee specified in NDAC Chapter 33.1-20-14, the closure and postclosure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for closure or postclosure care so guaranteed are shown for each facility:

Name:

Address:

City, State, Zip:

Permit No.:

Closure cost estimate: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Postclosure cost estimate: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Total cost estimate: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This firm [Choose *one*: "is required" **or** "is not required"] to file a form 10K with the securities and exchange commission for the latest fiscal year.

The fiscal year of this firm ends on [Insert month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [Insert date] .

[Fill in **Part A** if you are using the financial test to demonstrate assurance liability coverage **only**.]

**Part A. Liability Coverage for Sudden Accidental Occurrences**

**Instructions:** *Choose only one of the following alternatives.*

**Alternative I**

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

\*2. Total liabilities *(if any portion of the closure or post-closure cost estimates*

*is included in total liabilities, you may deduct the amount of that portion*

*from this line and add that amount to lines 3 and 4)* $

\*3. Tangible net worth *(if any portion of the closure and post-closure cost*

 *estimates is included in “total liabilities” on your firm’s/entity’s financial*

 *statements, you may add the amount of that portion to this line)* $

\*4. Net worth *(if any portion of the closure and post-closure cost estimates is*

 *included in “total liabilities” on your firm’s/entity’s financial statements, you*

 *may add the amount of that portion to this line)* $

\*5. Current assets $

\*6. Current liabilities $

\*7. Net working capital (line 5 minus line 6) $

\*8. The sum of net income plus depreciation, depletion, and amortization $

\*9. Total assets in the United States $

 YES NO

10. Is line 5 divided by line 6 greater than 1.5? \_\_\_\_\_ \_\_\_\_\_

11. Is line 7 at least 4 times line 1? \_\_\_\_\_ \_\_\_\_\_

12. Is line 3 at least 4 times line 1? \_\_\_\_\_ \_\_\_\_\_

13. Is line 3 at least $2 million?...........................................................................\_\_\_\_\_ \_\_\_\_\_

14. Is line 9 at least 4 times line 1? \_\_\_\_\_ \_\_\_\_\_

I hereby certify that this letter meets the requirements specified in NDAC Subsection 33.1-20-14-07(5) and NDAC Section 33.1-20-14-06 as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

**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. Total liabilities *(if any portion of the closure or post-closure cost estimates*

*is included in total liabilities, you may deduct the amount of that portion*

*from this line and add that amount to lines 6 and 7)* $

 \*6. Tangible net worth *(if any portion of the closure and post-closure cost*

 *estimates is included in “total liabilities” on your firm’s/entity’s financial*

 *statements, you may add the amount of that portion to this line)* $

 \*7. Net worth *(if any portion of the closure and post-closure cost*

 *estimates is included in “total liabilities” on your firm’s/entity’s financial*

 *statements, you may add the amount of that portion to this line)* $

 \*8. Current assets $

 \*9. Current liabilities $

 \*10. Net working capital *(line 8 minus line 9)* $

 \*11. The sum of net income plus depreciation, depletion, and amortization $

 \*12. Total assets in the United States $

 YES NO

 13. Is line 10 at least 4 times line 1? \_\_\_\_ \_\_\_\_\_

 14. Is line 6 at least 4 times line 1? \_\_\_\_ \_\_\_\_\_

 15. Is line 6 at least $2 million?............................................................................. \_\_\_\_ \_\_\_\_\_

 16. Is line 12 at least 4 times line 1? \_\_\_\_ \_\_\_\_\_

I hereby certify that this letter meets the requirements specified in NDAC Subsection 33.1-20-14-07(5) and NDAC Section 33.1-20-14-06 as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

[Fill in **Part B** if you are using the financial test to demonstrate assurance of **both** liability coverage and closure or postclosure care.]

**Part B. Liability Coverage for Sudden Accidental Occurrences and Closure or Postclosure Care**

**Instructions:** *Choose only one of the following alternatives.*

**Alternative I**

 1. Sum of current closure and post-closure cost estimate(s) (*total of all cost*

*estimates shown above*)$

 2. Amount of annual aggregate liability coverage to be demonstrated $

 3. Sum of lines 1 and 2 $

 \*4. Total liabilities *(if any portion of the closure or post-closure cost estimates*

*is included in total liabilities, you may deduct the amount of that portion*

*from this line and add that amount to lines 5 and 6)* $

 \*5 Tangible net worth *(if any portion of the closure and post-closure cost*

 *estimates is included in “total liabilities” on your firm’s/entity’s financial*

 *statements, you may add the amount of that portion to this line)* $

 \*6 Net worth *(if any portion of the closure and post-closure cost estimates is*

 *included in “total liabilities” on your firm’s/entity’s financial statements, you*

 *may add the amount of that portion to this line)* $

 \*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 $

 YES NO

 12. Is line 7 divided by line 8 greater than 1.5? \_\_\_\_\_ \_\_\_\_\_

 13. Is line 9 at least 4 times line 3? \_\_\_\_\_ \_\_\_\_\_

 14. Is line 5 at least 4 times line 3? \_\_\_\_\_ \_\_\_\_\_

 15. Is line 5 at least $2 million?............................................................................\_\_\_\_\_ \_\_\_\_\_

 16. Is line 11 at least 4 times line 3? \_\_\_\_\_ \_\_\_\_\_

I hereby certify that this letter meets the requirements specified in NDAC Subsection 33.1-20-14-07(5) and NDAC Section 33.1-20-14-06 as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

**Alternative II**

1. Sum of current closure and post-closure cost estimate(s) *(total of all cost*

*estimates shown above)* $

 2. Amount of annual aggregate liability coverage to be demonstrated $

 3. Sum of lines 1 and 2 $

 4. Current bond rating of most recent issuance

and name of rating service

 5. Date of issuance of bond

 6. Date of maturity of bond

 \*7. Total liabilities *(if any portion of the closure or post-closure cost estimates*

*is included in total liabilities, you may deduct the amount of that portion*

*from this line and add that amount to lines 8 and 9)* $

 \*8. Tangible net worth *(if any portion of the closure and post-closure cost*

 *estimates is included in “total liabilities” on your firm’s/entity’s financial*

 *statements, you may add the amount of that portion to this line)* $

 \*9. Net worth *(if any portion of the closure and post-closure cost*

 *estimates is included in “total liabilities” on your firm’s/entity’s financial*

 *statements, you may add the amount of that portion to this line)* $

 \*10. Current assets $

 \*11. Current liabilities $

 \*12. Net working capital *(line 10 minus line 11)* $

 \*13. The sum of net income plus depreciation, depletion, and amortization $

 \*14. Total assets in the United States $

 YES NO

 15. Is line 12 at least 4 times line 3? \_\_\_\_ \_\_\_\_\_

 16. Is line 8 at least 4 times line 3? \_\_\_\_ \_\_\_\_\_

 17. Is line 8 at least $2 million?............................................................................ \_\_\_\_ \_\_\_\_\_

 18. Is line 14 at least 4 times line 1? \_\_\_\_ \_\_\_\_\_

I hereby certify that this letter meets the requirements specified in NDAC Subsection 33.1-20-14-07(5) and NDAC Section 33.1-20-14-06 as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

b. **Corporate Guarantee**. If you are using a guarantee, as specified in NDAC Subsection 33.1-20-14-07(5), it should be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. You will also need to submit the Letter from Chief Financial Officer to prove that you meet the requirements of NDAC Subdivisions 33.1-20-14-07(5)(a) through (e).

**NOTE:** If you are utilizing a corporate guarantee for both liability coverage and closure and/or postclosure, you will need to submit two corporate guarantees: one for liability coverage (see wording below) and one for closure and/or postclosure (see wording in Guideline 18).

**GUARANTEE FOR LIABILITY COVERAGE**

Guarantee made this [Insert date] by [Insert name of guaranteeing entity] , a business corporation organized under the laws of [If incorporated within the United States insert the 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 [Insert name of Owner or Operator] of [Insert business address] , which is [Insert one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], or which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship"], to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden 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 North Dakota Administrative Code (NDAC) Subsection 33.1-20-14-07(5).

2. [Insert name of Owner or Operator] owns or operates the following industrial waste landfill facility(ies) covered by this guarantee:

Name:

Address:

City, State, Zip:

Permit No.:

This corporate guarantee satisfies Resource Conservation and Recovery Act third-party liability requirements for sudden accidental occurrences in above-named owner or operator facilities 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 or Operator] , guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [Insert name of 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 accidental occurrences, arising from the operation of the above-named facilities, 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 or 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 Owner or Operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [Insert name of Owner or 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 or Operator] arising from, and in the course of, employment by [Insert name of Owner or 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 or Operator] . This exclusion applies:

 (A) Whether [Insert name of Owner or 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 or Operator] ;

(2) Premises that are sold, given away, or abandoned by [Insert name of Owner or Operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [Insert name of Owner or Operator] ;

(4) Personal property in the care, custody, or control of [Insert name of Owner or Operator] ;

(5) That particular part of real property on which [Insert name of Owner or Operator] or any contractors or subcontractors working directly or indirectly on behalf of [Insert name of Owner or 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 ninety days, by certified mail, notice to the DEPARTMENT and to [Insert name of Owner or Operator] that he intends to provide alternate liability coverage complying with NDAC Section 33.1-20-14-06, as applicable, in the name of [Insert name of Owner or Operator] . Within one hundred twenty days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [Insert name of Owner or Operator] has done so.

6. The guarantor agrees to notify the DEPARTMENT by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), United States Code, naming guarantor as debtor, within ten days after commencement of the proceeding.

7. Guarantor agrees that within thirty days after being notified by the DEPARTMENT of a determination that guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor, the guarantor shall establish alternate liability coverage as specified in NDAC Section 33.1-20-14-06 in the name of [Insert name of Owner or Operator] , unless [Insert name of Owner or 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 NDAC Section 33.1-20-14-06, provided that such modification shall become effective only if the DEPARTMENT does not disapprove the modification within thirty days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [Owner or Operator] must comply with the applicable requirements of NDAC Section 33.1-20-14-06 for the above-listed facility(ies), except as provided in paragraph 10 of this AGREEMENT.

10. **Instructions:** *Insert the following paragraph 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 Owner or Operator, otherwise ignore it.*

Guarantor may terminate this guarantee by sending notice by certified mail to the DEPARTMENT and to [Insert name of Owner or Operator] , provided that this guarantee may not be terminated unless and until [Insert name of Owner or Operator] obtains, and the DEPARTMENT approve(s), alternate liability coverage complying with NDAC Section 33.1-20-14-06.

**Instructions:** *Insert the following paragraph if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the Owner or Operator, otherwise ignore it.*

Guarantor may terminate this guarantee one hundred twenty days following receipt of notification, through certified mail, by the DEPARTMENT and by [Insert name of Owner or Operator] .

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 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 should be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**CERTIFICATION OF VALID CLAIM**

The undersigned, as parties [Insert name of 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 accidental occurrence arising from operating [Principal's] industrial waste landfill 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 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 [Choose *one*: "primary" or "excess"] coverage.

I hereby certify that this guarantee meets the requirements specified in NDAC Section 33.1-20-14-06 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 of notary: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_