

ATTORNEY GENERAL, et al v GELMAN SCIENCES, INC.

(Washtenaw County Circuit Court No. 88-34734-CE)

# **ATTACHMENT L**

# Remediation and Redevelopment Division

## Michigan Department of Environment, Great Lakes, and Energy

Financial Test and Financial Test/Corporate Guarantee.doc

04/21/2020

### FINANCIAL TEST AND FINANCIAL TEST/CORPORATE GUARANTEE PART 201

\*\*Prior to use 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.

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 20114d(4)(b) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* This document and attached model documents 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 20114d of the NREPA, upon completion of remedial actions that satisfy the requirements of Part 201, a person may submit a No Further Action Report (NFA Report) to the Michigan Department of Environment, Great Lakes, and Energy (EGLE). If a postclosure agreement (Agreement) is required as part of the NFA Report, Section 20114d(4)(b) requires financial assurance to pay for monitoring, operation and maintenance, oversight, and other costs determined by EGLE to be necessary to assure the effectiveness and integrity of the remedial action unless the financial assurance is de minimis. The de minimis threshold is \$2,500 per year in 2001 dollars. A link to a Consumer Price Index Inflation Calculator is provided to determine if the current annual costs exceed the 2001 dollar value: [CPI Inflation Calculator](#). Section 20101(u) of the NREPA, defines financial assurance as a performance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, corporate guarantee, or other equivalent security, or combination thereof. EGLE has determined that the FT and the FT/CG are acceptable 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.

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

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.

If a person 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.

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**

The figures for the following 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. Also create a header for this document identifying the purpose and parties represented by the standard financial test. And 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 EGLE.

**ALTERNATIVE I**

1. Sum of the current cost estimates for response activities needed at Michigan facilities, including the cost for operation and maintenance of remedial actions for the next 30-year time period. \$ \_\_\_\_\_
2. Sum of the current cost estimates for response activities needed at non-Michigan facilities, including the cost for operation and maintenance of remedial actions. \$ \_\_\_\_\_
3. Sum of lines 1 and 2. \$ \_\_\_\_\_
- \*4. Total liabilities [if any portion of the cost estimates for response activities (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 response activities are necessary. \$ \_\_\_\_\_
- \*13. Total assets in Michigan, including the value of all real property on which response activities 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?	___	___

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

ALTERNATIVE II

- 1. Sum of the current cost estimates for response activities needed at Michigan facilities, including the cost for operation and maintenance of remedial actions for the next 30-year time period. \$ \_\_\_\_\_
  - 2. Sum of the current cost estimates for response activities needed at non-Michigan facilities, including the cost for operation and maintenance of remedial 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 response activities (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 response activities are necessary. \$ \_\_\_\_\_
  - \*10. Total assets in Michigan, including the value of all real property on which response activities 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?<br>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**

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 criterion of either line 13 or line 14; meet the criteria listed in lines 11 and 12; 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 the Michigan Department of Environment, Great Lakes, and Energy (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 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), for the **[insert name of facility]** located at **[insert address of facility]** that is the subject of a postclosure agreement submitted as part of a no further action report to the Michigan Department of Environment, Great Lakes, and Energy (EGLE) on **[insert date of no further action report]**. Pursuant to the postclosure agreement, **[insert name of company]** has agreed to **[briefly describe response activities required by the Order/Decree/Agreement and any other obligations as necessary]** at the **[insert name of facility]**.

In order for EGLE to approve implementation of these response activities, EGLE requires that **[insert name of company]** provide financial assurance to assure performance of the necessary and appropriate response activities to protect public health, safety, and welfare, and to assure the effectiveness and integrity of the remedial action at the facility.

**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 201 for the **[insert name of facility]**.

**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 201 for the **[insert name of facility]**.

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 response activities to be performed at this facility as reflected in the SFT is **[insert estimated annual cost amount]**.

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 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* for the **[insert name of Facility]** facility (Facility) located at **[insert street address, or township, county, and state]** with Site ID No. **[insert number]** which is covered by this Guarantee.

Whereas Section 20114d of the NREPA states that upon completion of remedial actions that satisfy the requirements of Part 201, a person may submit a No Further Action Report (NFA Report) to the Michigan Department of Environment, Great Lakes, and Energy (EGLE).

Whereas Section 20114d(4)(b) requires financial assurance to pay for monitoring, operation and maintenance, oversight and other costs determined by EGLE to be necessary to assure the effectiveness and integrity of the remedial action if a postclosure agreement is required as part of the NFA Report.

Whereas **[insert name of subsidiary company]** is required to submit a postclosure agreement as part of their NFA Report.

Whereas Section 20101(u) of the NREPA, defines financial assurance as a performance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, corporate guarantee, or other equivalent security, or combination thereof.

Whereas, EGLE has determined that the Financial Test/Corporate Guarantee (FT/CG) is an acceptable 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 201 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 Facility 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

(b) That, in connection with Paragraph 3.1.A(3)(a), 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 the postclosure agreement, within 30 days after each succeeding 5-year anniversary date of the end of the fiscal year that the postclosure agreement 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 response activities, including, if appropriate oversight, monitoring 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)-(4) 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 postclosure agreement 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 hereby irrevocably guarantees the full and prompt performance of all obligations of ***[insert name of subsidiary company]*** under the postclosure agreement including, without limitation, payment of all amounts including any interest or stipulated penalties, which are or may become due thereunder.

4.2 Guarantor guarantees that in the event ***[insert name of subsidiary company]*** fails to perform ***[describe the general nature of response activities required under the postclosure agreement]*** for the Facility in accordance with EGLE approved plans, Guarantor will do so.

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 postclosure agreement. Upon receipt of approval by the Remediation and Redevelopment Division Director, Guarantor shall implement the alternate FAM within 15 days.

4.5 Pursuant to the postclosure agreement, if at any time ***[insert name of subsidiary company]*** or EGLE identifies the need for additional response activity as provided for in the postclosure agreement, ***[insert name of subsidiary company]*** is required to submit to EGLE for review and approval a proposed plan and schedule for these response activities and is required to provide to EGLE and Guarantor, an estimate of the cost for implementing these response activities. ***[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 response activities. 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 response activities 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:

(1) The response activities or other obligations, including **[generally describe response activities or obligations, for example: plans for monitoring, operation and maintenance, and oversight]**; or

(2) Plans for additional response activities that are necessary to protect public health, safety, or welfare, or the environment.

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 postclosure agreement for the Facility.

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 response activities required under the postclosure agreement or any response activities provided in a plan approved by EGLE, EGLE, at its discretion, may choose to implement those response activities that have not been performed or may seek other available remedies as specified by the postclosure agreement. If **[insert name of subsidiary company]** has not reimbursed EGLE its costs within the 30-day time frame or alternate time frame specified in the postclosure agreement, Guarantor shall reimburse EGLE its costs for implementing those response activities as set forth in the postclosure agreement.

4.11 Guarantor further agrees that it shall irrevocably guarantee performance of the obligations of **[insert name of subsidiary company]** under the postclosure agreement 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 Facility, 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;

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

(4) The postclosure agreement is modified, in accordance with the applicable procedures therein, to reflect this modification.

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 obligations of **[insert name of subsidiary company]**, which are contained in the postclosure agreement and guaranteed by Guarantor under this Guarantee, shall be enforceable against Guarantor only after EGLE has first made demand of **[insert name of subsidiary company]** for performance of such obligations pursuant to the terms of the postclosure agreement. EGLE demand to **[insert name of subsidiary company]** for performance shall set forth a detailed description of the nature of the violation of the postclosure agreement and 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]** pursuant to the postclosure agreement.

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;

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

(4) The postclosure agreement is modified, in accordance with the applicable procedures stated therein, to reflect this modification.

#### **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. INTEGRATION**

This Guarantee constitutes the entire obligation of Guarantor insofar as it concerns the postclosure agreement between **[insert name of subsidiary company]** and EGLE.

#### **XII. 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: Director, Remediation and Redevelopment  
Division