



DEPT. OF ENVIRONMENT AND ENERGY

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05-175M

Revised September, 2021

Guidance Document for the Local Government Guarantee

A local government may guarantee the costs of closure, post-closure care or corrective action costs of a solid waste management facility owned by another local government, agency, coalition, joint venture, or by a private business. The local government guarantee must promise to take responsibility for the obligations of the facility or a certain percentage of the responsibility if the owner/operator fails to do so and the guarantor must pass the financial test outlined under local government financial test on an annual basis. The written guarantee must be a legally valid, binding, and enforceable contract between the entities involved that has the following terms:

- a) The guarantor must demonstrate compliance by passing the financial test on an annual basis. In the case the guarantor fails the test, alternate financial assurance must be provided to NDEE by the owner/operator within 180 days following the close of the guarantor's fiscal year. If the owner/operator fails to provide alternate financial assurance within the 180 day period the guarantor would be required to provide approved alternate assurance within 210 days following the close of the guarantor's fiscal year.
- b) If the owner or operator of the solid waste management facility fails to perform any action required under the regulation with respect to closure, post-closure, or corrective action, the guarantor will perform the activities or pay the costs of having them conducted by a third party (performance guarantee), or will establish a trust fund in the name of the owner/operator for the full amount of the obligation (payment guarantee).
- c) The guarantor agrees to remain bound under the guarantee for so long as the owner or operator must comply with the financial assurance requirements, except that guarantor may send notice of cancellation by certified mail to the owner/operator and NDEE. Such cancellation cannot become effective earlier than 120 days after receipt of such notice by both NDEE and the owner/operator.
- d) If a guarantee is cancelled, the owner or operator must, within 90 days following receipt of the cancellation notice, obtain a financial assurance mechanism that is approved by NDEE.
- e) If the owner or operator fails to provide alternate financial assurance within the 90 day period in (d) above, the guarantor must provide alternate assurance within 120 days after receipt of cancellation notice by the guarantor as describe in (c).
- f) If the guarantor is a member of an agency or other type of organization and is guaranteeing only partial financial assurance responsibility, the guarantee must identify the exact amount or

percentage of the total costs that are being guaranteed. In the case of a partial guarantee, only payment of the costs into a trust fund would be allowed. Performance of the required activities would not be allowed in a partial guarantee or in combination with other financial assurance mechanisms.

Once a guarantee is given, a guarantor will not be able to escape the responsibility for the closure, post-closure, or corrective action costs associated with the guarantee. Therefore, the local government guarantor needs to provide documentation to NDEE that the governing body of the local government agrees to the terms of the guarantee and that the public was properly notified that the local government intends to provide a guarantee for closure, post-closure care and/or corrective action of a solid waste management facility.