

MISSOURI PST INSURANCE FUND

Using a Guarantee to Meet the Fund Deductible Requirement

The Fund anticipates the primary users of this mechanism to be applicants who are not capable of meeting the self-insurance requirements. The concepts underlying this mechanism are the same as self-insurance. The guarantor must meet the financial requirements of the self-insurance mechanisms (\$100,000 of tangible net worth or \$50,000 of net working capital and tangible net worth) and must have a “substantial business relationship” with the applicant. Examples of the kinds of “substantial business relationships” are:

- *Owners who lease their station(s)
- *Product distributor
- *Parent or affiliated corporation

The specific wording of the guarantee is detailed below.

If the guarantor already has financial statements that meet the requirements of self-insurance, the costs associated with the use of this mechanism should be minimal.

The following text should be used to comply with the \$10,000 deductible requirement of 10 CSR 100-4.010 (2)(F) and 10 CSR 100-4.020 (2)(F), except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Sample Guarantee

Guarantee made this [date] by [name of guaranteeing entity or individual], [Insert the phrase “a business entity organized under the laws of the State of []” (if guarantor is not an individual)], herein referred to as guarantor, to the Missouri Petroleum Storage Tank Insurance Fund (PSTIF) and to any and all third parties and obligees on behalf of [owner or operator] of [business address].

Recitals

(A) Guarantor meets or exceeds one of the following financial criteria:

1. Tangible net worth of \$100,000
2. Net working capital and tangible net worth of \$50,000

(B) [Owner or operator] owning and/or operating one or more storage tank facilities located in the State of Missouri shall be covered by this guarantee, satisfying 10 CSR 100-4.010 (2)(F) and/or 10 CSR 100-4.020(2)(F) requirements for assuring funding for the deductible in the event a claim is established against the PSTIF arising from the operation of one or more storage tank facilities in the amount of \$10,000 per occurrence.

(C) [Insert appropriate phrase: “On behalf of our subsidiary” (if guarantor is corporate parent of the owner or operator); “on behalf of our affiliate” (if guarantor is a related firm of the owner or operator); or “Incident to our business relationship with” (if guarantor is providing the guarantee as a result of a substantial business relationship with owner or operator); or “Incident to my ownership of” (if guarantor is an individual who has ownership interest in the insured entity)] [owner or operator], guarantor guarantees to PSTIF and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within sixty (60) days after receipt of a notice of cancellation of this guarantee and the PSTIF has determined or suspects that a release has occurred from a storage tank covered by

this guarantee, the guarantor, upon written instructions from the PSTIF, shall deposit with the PSTIF an amount not to exceed the \$10,000 per occurrence.

In the event that the PSTIF determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above identified tank(s) in accordance with 10 CSR 100-5, and 10 CSR 26-2.070 through 10 CSR 26-2.083, or 10 CSR 26-5.010 through 10 CSR 26-5.030, the guarantor, upon written instructions from the PSTIF, shall deposit with the PSTIF an amount not to exceed \$10,000 per occurrence.

If [owner or operator] fails to satisfy a judgment or award based on the determination of liability for bodily injury or property damage to third parties caused by "sudden" and/or "non-sudden" accidental releases arising from the operation of 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 PSTIF, shall deposit with the PSTIF an amount to satisfy such judgment(s), award(s), or settlement agreement(s) up to \$10,000 per occurrence.

(D) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria listed in (A) above, guarantor shall send within one hundred twenty (120) days of such failure, by certified mail, notice to [owner or operator] and the PSTIF. This guarantee will terminate one hundred twenty (120) days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(E) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of 10 CSR 100-4.010(2)(F) and 10 CSR 100-4.020(2)(F), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator] and the PSTIF, such cancellation to become effective no earlier than one hundred twenty (120) days after receipt of such notice by [owner or operator] and the PSTIF, as evidenced by the return receipt.

(F) Guarantor expressly waives notice of acceptance of this guarantee by the PSTIF, by any or all third parties or by [owner or operator].

Effective Date:

[Name of guarantor]

[Name of person signing]

[Authorized signature of guarantor]

[Title of person signing]