

Liability Requirements for Transport, Storage, and Land Application of Biosolids
Form VIII – Local Government Guarantee

A guarantee, as specified in 9 VAC 25-32-830 of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for Local Government Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a local government created under the laws of the state of Virginia, herein referred to as guarantor. This guarantee is made on behalf of the (permit holder or applicant) of (address), to any and all third parties who sustain clean up costs, personal injury, and property damage resulting from the transport, storage, and land application of biosolids in Virginia 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 9 VAC 25-32-830.
2. [Permit holder or applicant] for which liability coverage for clean up costs, personal injury, and/or property damage resulting from the transport, storage, and land application of biosolids in Virginia covered by this guarantee. This local government guarantee satisfies third-party liability requirements for clean up costs, personal injury, and property damage resulting from the transport, storage, and land application of biosolids in Virginia in the amount of \$2,000,000 for each occurrence and \$2,000,000 annual aggregate.
3. For value received from [permit holder or applicant], guarantor guarantees to pay any and all third parties who have sustained or may sustain clean up costs, personal injury, and property damage resulting from the transport, storage, and land application of biosolids in Virginia covered by this guarantee that in the event that [permit holder or applicant] fails to satisfy a judgment or award based on a determination of liability for clean up costs, personal injury, and property damage resulting from the transport, storage, and land application of biosolids in Virginia covered by this guarantee to third parties resulting from the transport, storage, and land application of biosolids in Virginia 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. 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 90 days, by certified mail, notice to the DEQ and to [permit holder or applicant] that he intends to provide alternate liability coverage as specified in 9 VAC 25-32-830, as applicable, in the name of [permit holder or applicant]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [permit holder or applicant] has done so.
5. The guarantor agrees to notify the DEQ by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

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6. Guarantor agrees that within 30 days after being notified by DEQ of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in 9 VAC 25-32-830 in the name of [permit holder or applicant], unless [permit holder or applicant] has done so.

7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 9 VAC 25-32-780, provided that such modification shall become effective only if DEQ does not disapprove the modification within 30 days of receipt of notification of the modification.

8. Guarantor agrees to remain bound under this guarantee for so long as [permit holder or applicant] must comply with the applicable requirements of this chapter.

9. Guarantor may terminate this guarantee by sending notice by certified mail to the DEQ and to [permit holder or applicant], provided that this guarantee may not be terminated unless and until [permit holder or applicant] obtains, and the DEQ(s) approve(s), alternate liability coverage complying with 9 VAC 25-32-780.

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the DEQ director and by [the permit holder or applicant].

10. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

11. 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.

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

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of clean up costs, personal injury, and/or property damage arising from the transport, storage, and land application of biosolids in Virginia should be paid in the amount of \$_____.

[Signatures] _____

Principal: _____

(Notary) Date: _____

[Signatures]: _____

Claimant(s): _____

(Notary) Date: _____

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(b) A valid final court order establishing a judgment against the Principal for clean up costs, personal injury, and property damage resulting from the transport, storage, and land application of biosolids in Virginia. I hereby certify that the wording of the guarantee is identical to the wording specified in 9VAC25-32-770 et seq. 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 or notary: _____