§ 280.106 Local government guarantee.

(a) A local government owner or operator may satisfy the requirements of §280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be either the state in which the local government owner or operator is located or a local government having a "substantial governmental relationship" with the owner and operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor must:

(1) demonstrate that it meets the bond rating test requirement of §280.104 and deliver a copy of the chief financial officer’s letter as contained in §280.104(c) to the local government owner or operator; or

(2) demonstrate that it meets the worksheet test requirements of §280.105 and deliver a copy of the chief financial officer’s letter as contained in §280.105(c) to the local government owner or operator; or

(3) demonstrate that it meets the local government fund requirements of §280.107(a), §280.107(b), or §280.107(c) and deliver a copy of the chief financial officer’s letter as contained in §280.107 to the local government owner or operator.

(b) If the local government guarantor is unable to demonstrate financial assurance under any of §§280.104, 280.105, 280.107(a), 280.107(b), or 280.107(c), at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in §280.114(c).

(c) The guarantee agreement must be worded as specified in paragraph (d) or (e) of this section, depending upon which of the following alternative guarantee arrangements is selected:

(1) If, in the default or incapacity of the owner or operator, the guarantor

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in 40 CFR part 280.105(c) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

(d) If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(e) The Director of the implementing agency may require reports of financial condition at any time from the local government owner or operator. If the Director finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of §280.105 (b) and (c), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(f) If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within 30 days of notification by the Director of the implementing agency that it no longer meets the requirements of the financial test, the owner or operator must notify the Director of such failure within 10 days.

§ 280.106 Local government guarantee.

(40 CFR Ch. I (7–1–11 Edition))

14. Funds Balance to Total Expenses

a. Total Funds (from 5)

b. Total Expenses (from 2c)

c. Divide 14a by 14b

d. Subtract .866

e. Divide by 6.409

15. Total Funds to Population

a. Total Funds (from 5)

b. Population (from 6)

c. Divide 15a by 15b

d. Subtract 270

e. Divide by 4,548

16. Add 7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in 40 CFR part 280.105(c) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]
Environmental Protection Agency

§ 280.106

Local Government Guarantee With Standby Trust Made by a State

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located.]

(3) Guarantor guarantees to make payments as directed by the Director of the implementing agency for taking corrective action or compensating third parties for bodily injury and property damage caused by [‘‘sudden’’ and/or ‘‘nonsudden’’] 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 [Director], shall fund a standby trust fund in accordance with the provisions of 40 CFR part 280.112, in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees to notify [owner or operator] 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.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR part 280.

(6) Guarantor agrees to remain bound under this guarantee for as long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR part 280, subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(7) The guarantor’s obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers’ compensation, disability benefits, or unemployment compensation law or other similar law;
§ 280.106

40 CFR Ch. I (7–1–11 Edition)

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR part 280.106(d)

(f) Waiverer expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator], upon written instructions from the [Director] shall fund a standby trust fund in accordance with the provisions of 40 CFR part 280.112, in an amount not to exceed the coverage limits specified above.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to [implementing agency] and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the [Director] shall fund a standby trust fund in accordance with the provisions of 40 CFR part 280.112, in an amount not to exceed the coverage limits specified above.

Local Government Guaranty With Standby Trust Made by a Local Government

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of [name of state], wherein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obliges, on behalf of [local government owner or operator],

Recitals

1. Guarantor meets or exceeds [select one: the local government bond rating test requirements of 40 CFR part 280.104, the local government financial test requirements of 40 CFR part 280.105, or the local government financial test requirements of 40 CFR part 280.106(d)]

2. Local government owner or operator owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR part 280 or the corresponding state requirements, and the name and address of the facility. This guarantee satisfies 40 CFR part 280, subpart H requirements for assuring funding for "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases". If coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location arising out of the operation of the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

3. Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to [implementing agency] and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the [Director] shall fund a standby trust fund in accordance with the provisions of 40 CFR part 280.112, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award on a determination of liability for bodily injury or property damage to third parties caused by a "sudden" and/or "nonsudden" accidental releases arising out of 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 [Director], shall fund a standby trust fund in accordance with the provisions of 40 CFR part 280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.
(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] 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.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR part 280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 40 CFR part 280, subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor’s obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers’ compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR part 280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator]. I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR part 280.106(d) as such regulations were constituted on the effective 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:

(e) If the guarantor is a state, the local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

LOCAL GOVERNMENT GUARANTEE WITHOUT STANDBY TRUST MADE BY A STATE

Guarantee made this [date] by [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR part 280, subpart H requirements for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases”]; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Guarantor guarantees to [implementing agency] and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the [Director]...
shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [local government 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 40 CFR part 280, subpart F, the guarantor upon written instructions from the [Director] shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [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" and/or "nonsudden"] 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 [Director], shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees to notify [owner or operator] 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.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CFR part 280.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] comply with the applicable financial responsibility requirements of 40 CFR part 280, subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(7) The guarantor’s obligation does not apply to any of the following:
   (a) Any obligation of [local government owner or operator] under a workers’ compensation disability benefits, or unemployment compensation law or other similar law;
   (b) Bodily injury to an employee of [insert local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];
   (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
   (d) Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
   (e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CFR part 280.93.

(8) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR part 280.106(e) as such regulations were constituted on the effective 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:

If the guarantor is a local government, the local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

LOCAL GOVERNMENT GUARANTEE WITHOUT STANDBY TRUST MADE BY A LOCAL GOVERNMENT

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 40 CFR part 280.104, the local government financial test requirements of 40 CFR part 280.105, the local government financial test requirements of 40 CFR part 280.107(a), 280.107(b), or 280.107(c)].

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more
Environmental Protection Agency

§ 280.106

than one instrument is used to assure differ-
ent tanks at any one facility, for each
ject covered by this instrument, list the
tank identification number provided in the
notice submitted pursuant to 40 CFR
part 280 or the corresponding state require-
ment, and the name and address of the facil-
ity.) This guarantee satisfies 40 CFR part
280, subpart H requirements for assuring
funding for [insert: “taking corrective ac-
tion” and/or “compensating third parties for
bodily injury and property damage caused by
“sudden accidental releases” or “nonsudden accidental releases” or “acci-
dental releases”; if coverage is different for
different tanks or locations, indicate the
type of coverage applicable to each tank or
location] arising from operating the above-
identified underground storage tank(s) in the
amount of [insert: dollar amount] per occur-
rence and [insert: dollar amount] annual ag-
gregate.

(3) Incident to our substantial govern-
ment relationship with [local government
owner or operator], guarantor guarantees to
[implementing agency] and to any and all
third parties and obliges that:

In the event that [local government owner
or operator] fails to provide alternative cov-
erage within 60 days after receipt of a notice
of cancellation of this guarantee and the [Di-
rector of the implementing agency] has de-
termined or suspects that a release has oc-
curred at an underground storage tank cov-
ered by this guarantee, the guarantor, upon
written instructions from the [Directo-
]
shall make funds available to pay for correc-
tive actions and compensate third parties for
bodily injury and property damage in an
amount not to exceed the coverage limits
specified above.

In the event that the [Director] determines
that [local government 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
40 CFR part 280, subpart F, the guarantor
upon written instructions from the [Direc-
tor] shall make funds available to pay for correc-
tive actions in an amount not to ex-
cede the coverage limits specified above.

If [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”
and/or “nonsudden”] accidental releases
arising from the operation of the above-iden-
tified 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 in-
structions from the [Director], shall make
funds available to compensate third parties
for bodily injury and property damage in an
amount not to exceed the coverage limits
specified above.

(4) Guarantor agrees that if at the end of
any fiscal year before cancellation of this

(5) Guarantor agrees to notify [owner or
operator] by certified mail of a voluntary or
involuntary proceeding under Title 11 (Bank-
ruptcy), U.S. Code naming guarantor as
deptor, within 10 days after commencement
of the proceeding.

(6) Guarantor agrees to remain bound
under this guarantee notwithstanding any
modification or alteration of any obligation
of [owner or operator] pursuant to 40 CFR
part 280.

(7) Guarantor agrees to remain bound
under this guarantee for so long as [local
government owner or operator] must comply
with the applicable financial responsi-
ability requirements of 40 CFR part 280, subpart H
for the above identified tank(s), except that
guarantor may cancel this guarantee by
serving notice by certified mail to [owner or
operator], such cancellation to become effec-
tive no earlier than 120 days after receipt of
such notice by [owner or operator], as evi-
denced by the return receipt. If notified of a
probable release, the guarantor agrees to re-
main bound to the terms of this guarantee
for all charges arising from the release, up to
the coverage limits specified above, notwith-
standing the cancellation of the guarantee
with respect to future releases.

(8) The guarantor’s obligation does not
apply to any of the following:

(a) Any obligation of [local government
owner or operator] under a workers’ com-
penration disability benefits, or unemploy-
ment compensation law or other similar law;

(b) Bodily injury to an employee of [insert:
local government owner or operator] arising
from, and in the course of, employment by
[insert: local government owner or operator];

(c) Bodily injury or property damage aris-
ing from the ownership, maintenance, use, or
entrustment to others of any aircraft, motor
vehicle, or watercraft;

(d) Property damage to any property
owned, rented, loaded to, in the care, cus-
tody, or control of, or occupied by [insert:
local government owner or operator] that is
not the direct result of a release from a pe-
roleum underground storage tank;

(e) Bodily damage or property damage for
which [insert: owner or operator] is obligated
to pay damages by reason of the assumption
of liability in a contract or agreement other
than a contract or agreement entered into to
meet the requirements of 40 CFR part 280.93.
§ 280.107 Local government fund.

A local government owner or operator may satisfy the requirements of § 280.93 by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in paragraph (b), a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:

(a) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks and is funded for the full amount of coverage required under § 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or

(b) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, and is funded for five times the full amount of coverage required under § 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or

(c) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven year period is hereafter referred to as the “pay-in-period.” The amount of each payment must be determined by this formula:

\[
\frac{TF - CF}{Y}
\]

Where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and:

(1) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, or

(2) The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government’s debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.

(d) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator and/or guarantor must sign a letter...