

STATE OF RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
UNDERGROUND STORAGE TANK SECTION



REGULATIONS FOR UNDERGROUND STORAGE FACILITIES  
USED FOR PETROLEUM PRODUCTS AND HAZARDOUS MATERIALS

REGULATION DEM-OWM-UST07-02

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## **1.00 SECTION 1.00 PURPOSE**

The purposes of these regulations are to:

(A) Protect the waters of the state, including groundwater, from pollution resulting from the underground storage of petroleum products and hazardous materials;

(B) Establish procedures and requirements for the assessment and remediation of sites contaminated due to releases associated with the underground storage of petroleum products or hazardous materials;

(C) Implement a system of registration of underground storage tank facilities;

(D) Prevent releases from underground storage tanks of petroleum products or hazardous materials by establishing siting, design, installation and operating requirements for underground storage tank (UST) systems;

(E) Establish facility leak detection and monitoring requirements, including tank precision testing schedules, for the early detection of releases from underground storage tanks;

(F) Require facility owners/operators to guarantee the availability of sufficient resources to respond to and rectify releases from underground storage tanks systems;

(G) Establish fees and a schedule of payment for such fees; and

(H) Establish UST closure procedures that provide for protection of human health and the environment.

## **2.00 SECTION 2.00 AUTHORITY**

These regulations are adopted pursuant to Chapters 46-12, 46-13.1, 42-17.1, 42-35 and 23-19.1 of the General Laws of Rhode Island, 1956, as amended.

## **3.00 SECTION 3.00 SUPERSEDED RULES AND REGULATIONS**

These rules and regulations supersede the Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials, adopted in 1985 and as amended in 1987, 1989, 1992, and 1993.

## **4.00 SECTION 4.00 SEVERABILITY**

If any provision of these regulations or the application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, the remainder of the rules and regulations shall not be affected thereby. The invalidity of any section shall not affect the validity of the remainder of these rules and regulations.

## **5.00 SECTION 5.00 APPLICABILITY**

5.01 General Applicability: Unless otherwise noted, these regulations apply to all proposed, new and existing underground storage tank facilities, at which petroleum product(s) and/or hazardous material(s) are or have been stored underground in a tank or tank systems; whether such facilities serve institutional, industrial, commercial, educational, agricultural, governmental, residential or other purposes; and whether such facilities or USTs located there upon, have been abandoned; and to persons who owned or operated such facilities since May, 1985.

5.02 Leak & Spill Response: Section 14.00, Leak and Spill Response, shall apply to all facilities and the owners/operators thereof, and any person having actual knowledge of a confirmed leak, spill and other release. There are no exemptions to the responsibility to report a suspected or confirmed leak or spill.

5.03 Exempted Tanks:

(A) These regulations do not apply to:

(1) Hydraulic Lift tanks;

(2) Storage tanks located entirely within structures, such as a basement or cellar provided that:

(a) the structure allows for physical access to the storage tank;

(b) the structure is not part of a secondary enclosure; and

(c) the tank is situated upon or above the surface of a concrete floor;

(3) Septic Tanks;

(4) Pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;

(5) Flow through process tanks;

(6) Underground storage tanks storing propane or liquified natural gas;

(7) Underground storage tanks used for the temporary storage of raw materials or products by industry (so called "intermittent" or "fill and draw" tanks);

(8) Emergency Spill Protection and Overflow tanks;

(9) USTs connected to floor drains or other piping outlets which serve residential structures of one, two or three dwelling units.

(B) Except as provided for in Rule 11.02(A) and (B) (prohibition of new installations), Section 14.00,(Leak and Spill Response), and Rule 15.02(A) (prohibition of abandonment of any UST), these regulations do not apply to:

(1) **Residential Tank:** Tanks less than or equal to 1,100 gallons in capacity used for storing No. 2 heating oil and serving a one, two or three family dwelling;

(2) **Farm Tank:** Tanks less than or equal to 1,100 gallons in capacity and storing No. 2 heating oil for non-commercial purposes.

- 5.04 UST systems used to contain discharges of non-sanitary wastewaters (holding tanks): All existing and proposed UST systems which are used to contain discharges, both intermittent and continuous, of non-sanitary waste waters or other pollutants from floor drains or other piping outlets, shall be subject to Rule 8.00 (registration), Rule 10.03 (corrosion protection), Rule 15.02 (prohibition of abandonment of any UST), Section 14.00 (leak and spill response), Section 15.00 (closures), Section 17.00 (signatories to registration and closure), Section 18.00 (transfer of certificates), Section 19.00 (USTs serving floor drains), Section 20.00 (variances), Section 21.00 (appeals) and Section 22.00 (penalties).

NOTE: Certain USTs subject to these regulations are exempt from portions of the specific requirements that follow in the rules. Exemptions are identified at the beginning of each applicable section.
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## **6.00 SECTION 6.00 ADMINISTRATIVE FINDINGS**

(A) Approximately 25% of the population of Rhode Island depends upon groundwater as a sole or principal source of water supply.

(B) The principal groundwater resources of the State are located in relatively thin, glacial deposits of stratified sand and gravel that underlie about one-third of the State. These aquifers lie close to the surface and are extremely vulnerable to contamination.

(C) A number of small public and private water users obtain water from till-covered, fractured bedrock aquifers throughout the state. These aquifers are especially difficult to monitor and to reclaim once contaminated.

(D) A large portion of the State's future water supplies will likely be developed from groundwater sources due to the limited number of suitable sites for the construction of surface water reservoirs.

(E) The effective protection of drinking water supplies requires a recognition that groundwater and surface water systems are hydrogeologically interconnected and contaminants may be transferred between such systems.

(F) The growing number of groundwater contamination incidents resulting from releases of petroleum products and hazardous materials from UST systems poses a serious threat to the environment and public health.

(G) Technologies to continuously monitor and contain releases from underground storage tanks, including secondary containment, are widely available and should be utilized in new and replacement tank installations.

(H) As a release from an UST poses a high risk to groundwater quality, the establishment of new tank facilities in the state's most valuable aquifer areas, those being designated wellhead protection areas pursuant to R.I.G.L. 46-13.1, should be restricted.

## **7.00 SECTION 7.00 DEFINITIONS**

- 7.01 **ABANDONMENT** means the relinquishment or termination of possession, ownership or control of underground storage tanks, by vacating or by disposition, without meeting the closure requirements listed in Section 15.00 of these regulations; or the action of taking a UST or UST system out of operation for a period of greater than 180 consecutive days without the prior permission of the Director pursuant to Section 15.00.
- 7.02 **AQUIFER** means a geologic formation, group of formations, or part of a formation that contains sufficient saturated permeable material to yield quantities of water to wells and springs in quantities which in the aggregate are sufficient to supply the daily requirements of one or more persons.
- 7.03 **CATHODIC PROTECTION** is a technique to prevent the corrosion of metal surfaces by making that surface the cathode of an electrochemical cell.
- 7.04 **CATHODIC PROTECTION TESTER** means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray component electrical isolation measurements of buried metal piping and tank systems.
- 7.05 **CLOSURE** means the removal from service of any underground storage tank consistent with the provisions of Section 15.00.
- 7.06 **COMMENCED CONSTRUCTION** means that the owner/operator has obtained all governmental approvals or permits required to begin physical construction and has either (1) begun a continuous on-site physical construction program; or (2) entered into contractual obligations which cannot be canceled or modified without substantial loss and are payable upon physical construction of the facility.
- 7.07 **COMMERCIAL TANK** means any underground storage tank used in the furtherance of trade, traffic, business or commerce including, without limitation, tanks used to store heating oil for residential structures containing four or more or living units.
- 7.08 **COMMUNITY WATER SYSTEM** means a public water system which serves either (a) fifteen or more service connections used by year-round residents or (b) regularly serves 25 or more year-round residents.
- 7.09 **COMPATIBLE** means ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.
- 7.10 **CONSULTANT** means a geologist certified by the American Institute of Professional Geologists, or a geologist registered by any state program, or a professional engineer registered

in Rhode Island, or an engineer-in-training working under the supervision of a professional engineer.

- 7.11 **CONTAMINANT** means any physical, chemical, biological or radiological substance in water which renders or is likely to render such water unfit for its intended use or for any feasible use.
- 7.12 **CONTINUOUS MONITORING SYSTEM** means an automatic, continuous leak detection and alarm system that operates independent of human assistance and meets industry standards such as those of Underwriters Laboratories (UL), and which is approved by the Director.
- 7.13 **CORROSION EXPERT** means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by education and practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal tanks. Such a person must be accredited or certified by the National Association of Corrosion Engineers or be a registered professional engineer who has education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.
- 7.14 **DEM** or the **Department of Environmental Management** means the Rhode Island Department of Environmental Management and/or any division thereof.
- 7.15 **DIESEL FUEL** means any grade of distillate oil, commonly referred to as "diesel", that is manufactured and sold for use, or is used, as fuel in an internal combustion engine; including petroleum products substituted for use as a diesel fuel.
- 7.16 **DIRECTOR** means the Director of the Department of Environmental Management or his/her designee. Any documents or reports required to be submitted to the Director by these regulations should be sent to: UST Program, R.I. Department of Environmental Management, 291 Promenade Street, Providence, Rhode Island 02908.
- 7.17 **DOUBLE-WALLED TANK** means a container with two complete shells providing both primary and secondary containment. The container shall have a continuous 360% interstitial space between the primary and secondary shell. The interstitial space shall be designed so that an approved interstitial space monitor is able to continuously monitor this space. All double-walled tanks shall be UL-listed.
- 7.18 **DRY SEASON** means that the time period during which the groundwater tables are at their lowest elevation at which they occur, usually falling during the months of May-December. Specific dates for the dry season will be determined on a yearly basis by the Director.
- 7.19 **EMERGENCY SPILL PROTECTION TANK** means a tank used for temporary storage of substances in response to a leak, spill or other unplanned occurrence. This tank must be emptied expeditiously following use.
- 7.20 **EXISTING FACILITY** means a facility which is either in full operation; or where "substantial construction" has begun; or where construction on any modification was commenced prior to October, 31 1984.

- 7.21 **EXCAVATION ZONE** means the underground area containing the tank system and backfill material, bounded by the ground surface, walls, and floor of the pit and trenches into or from which the UST system is installed or removed.
- 7.22 **FACILITY** means any parcel of real estate or contiguous parcels of real estate owned and/or operated by the same person(s), which together with all land, structures, facility components, improvements, fixtures and other appurtenances located therein form a distinct geographic unit and at which petroleum products or hazardous materials are or have been stored in underground storage tanks.
- 7.23 **FACILITY COMPONENT** means any underground tanks associated pipes, pumps, leak monitoring systems, cathodic protection systems, vaults, fixed containers or appurtenant structures, used or designed to be used for the storage, transmission, or dispensing of petroleum products and hazardous materials.
- 7.24 **FARMER** means an individual, partnership or corporation who operates a farm and has filed a 1040F U.S. Internal Revenue Form with the Internal Revenue Service, has a State of Rhode Island farm tax number and has earned ten thousand dollars (\$10,000) gross income on farm products in each of the preceding four (4) years.
- 7.25 **FARM TANK** means an underground storage tank located on a tract of land operated by a farmer, provided that the material stored is used on-site.
- 7.26 **FLOW THROUGH PROCESS TANK** means any tank that is an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of finished products or by-products from a production process.
- 7.27 **FREE PRODUCT** means any petroleum product or hazardous material that is present as a nonaqueous phase liquid (e.g. liquid not dissolved in water)
- 7.28 **GASOLINE** means a petroleum distillate, or blends of petroleum distillates, having a Reid vapor pressure of 7 pounds per square inch absolute (48.3 k Pa) or greater and capable of being used as fuel for internal combustion engines.
- 7.29 **GROUNDWATER** means water found in the saturated zone underground; which completely fills the open spaces between particles of sediment and within rock formations.
- 7.30 **HAZARDOUS MATERIALS** means any material defined as a "hazardous substance" by section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 USC 9605), as amended (see Appendix A). Hazardous materials shall also include any material defined as a "hazardous waste" pursuant to the Rhode Island Hazardous Waste Management Act of 1978, as well as any of the following materials:
- Acetone
  - Ethanol
  - Ethylene Oxide
  - Methanol
  - Methylene Chloride
  - Perchloroethylene



- 7.31 **HEATING OIL** means No. 1, No. 2, No. 4, No. 5, or No. 6, technical grades of fuel oil, other residual fuel oil, including bunker C and/or other fuels, except motor fuels or waste oils, when used as substitutes for any of these fuel oils used for the purpose of producing heat (e.g., burned in a furnace).
- 7.32 **HYDRAULIC CONDUCTIVITY** is a measure of the ability of an aquifer to transmit a fluid.
- 7.33 **HYDRAULIC LIFT TANKS** are those tanks holding hydraulic fluid for a closed-loop mechanical system using compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.
- 7.34 **LEAK** means a loss from or gain to a UST system of 0.05 gallons per hour or more of fluid as determined by a precision test, visual inspection, a continuous monitoring system, inventory control, or other appropriate means.
- 7.35 **LINE LEAK DETECTION SYSTEM** means a device installed on the discharge side of a pump which is capable of interrupting product flow if there is a leak greater than or equal to three (3) gallons per hour.
- 7.36 **LOCAL FIRE CHIEF** means the person responsible for the administration and direction of a fire department in a fire district or municipality, including a fire administrator or chief, or that person's designee.
- 7.37 **MAINTENANCE** means the normal operational upkeep of an underground storage tank system necessary to prevent a release of product.
- 7.38 **MODIFICATION** means any addition, replacement, restoration, refurbishment or renovation to an existing facility which either: (a) increases or decreases the facility's storage capacity; (b) alters the facility's physical configuration; (c) alters the design and/or specifications of facility components; or (d) impairs or affects the physical integrity of a facility or its monitoring systems.
- 7.39 **MONITORING WELL** means a cased well with a screened interval that intercepts the water table and can be used to detect the presence of groundwater contamination. Monitoring wells are typically located outside of the tank excavation area.
- 7.40 **MOTOR FUELS** means any petroleum or a petroleum-based substance, typically used in the operation of combustion (motor) engines, including but not limited to, gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol.
- 7.41 **NEW FACILITY** means any facility that was not in operation or where substantial construction had not begun as of November 1, 1984.
- 7.42 **NFPA 30** means the National Fire Protection Association publication number 30 entitled, "Flammable and Combustible Liquids Code ", 1990 or current edition.
- 7.43 **NFPA 30(A)** means the National Fire Protection Association Publication Number 30A entitled "Automotive and Marine Service State Code," 1990 or current edition.

- 7.44 **NFPA 329** means the National Fire Protection Association publication number 329 entitled, "Handling Underground Releases of Flammable and Combustible Liquids," 1992 or current edition.
- 7.45 **NO. 1 FUEL OIL** means a distillate oil, commonly referred to as kerosene, range oil, or jet propulsion fuel (JP-1).
- 7.46 **NO. 1 1-D FUEL OIL** -means a distillate oil, commonly referred to as light diesel oil.
- 7.47 **NO. 2 FUEL OIL** means a distillate oil, commonly referred to as home heating oil.
- 7.48 **NO. 2 2-D FUEL OIL** -means a distillate oil, commonly referred to as medium diesel oil.
- 7.49 **NO. 4 FUEL OIL** means a distillate oil blend of No. 2 and No. 6 fuel oil.
- 7.50 **NO. 5 FUEL OIL** means a distillate oil blend of No. 4 and No. 6 fuel oil.
- 7.51 **NO. 6 FUEL OIL** means a distillate oil, commonly referred to as Bunker-C or residual fuel.
- 7.52 **NON-COMMUNITY WATER SYSTEM** means a public water system that is not a community water system.
- 7.53 **OBSERVATION WELL** means a well other than a monitoring well that is typically located in a tank excavation or the collection sump of a secondary containment system.
- 7.54 **ON-SITE** -means located on the same or geographically contiguous property, which may be divided by public or private right-of-way provided the entrance and exit between the properties is at a cross-roads intersection and access is by crossing as opposed to going along the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.
- 7.55 **OPERATE A FACILITY** means to maintain petroleum product(s) or hazardous material(s) in underground storage tanks at a facility for purposes of storage, use or sale.
- 7.56 **OPERATOR** means any person in control of or having responsibility for the daily operation of a facility.
- 7.57 **OVERFLOW TANK** means a tank used for temporary storage of substances in response to a leak, spill or other unplanned occurrence. This tank must be emptied expeditiously following use.
- 7.58 **OWNER** means any person who holds exclusive or joint title to or lawful possession of a facility or part of a facility.
- 7.59 **OWNER/OPERATOR** means owner and/or operator.
- 7.60 **OVERFILL PROTECTION** means a device that will:

(A) alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

(B) automatically shut off flow into the tank when the tank is no more than 95 percent full; or

(C) an equivalent device pre-approved by the Director.

7.61 **PERSON** means an individual, trust, firm, joint stock company, corporation (including quasi-government corporation), partnership, or other unincorporated association, syndicate, governmental entity or subdivision thereof.

7.62 **PETROLEUM PRODUCT** means crude oil or any fractions thereof that is liquid at standard conditions of temperature (60°F) and pressure (14.7 pounds per square inch absolute) and includes substances derived from crude oil including, but not limited to the following:

- Gasoline
- Fuel Oils
- Diesel Oils
- Waste Oils
- Gasohol, lubricants and solvents

7.63 **POLLUTANT** means any material or effluent which may alter the chemical, physical, biological, or radiological characteristics and/or integrity of water, including, but not limited to, dredge spoils, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, cellar dirt or industrial, municipal, agricultural, or other waste, petroleum or petroleum products, including but not limited to oil.

7.64 **PRECISION TEST** means a test able to determine whether or not an underground storage tank system is leaking as defined by NFPA 329, "Underground Leakage of Flammable and Combustible Liquids". The test shall be capable of accurately detecting a tank or piping leak as small as 0.1 gallons per hour, adjusted for all variables, with a probability of detection of no less than 95 percent and a probability of false detection of no more than 5 percent. Measurements recorded for each test shall be in accordance with manufacturer's protocol. The test method must be approved by the Director prior to use, and must be conducted by persons who have demonstrated the capability to properly conduct the test in accordance with Section 16.00.

7.65 **PUBLIC WATER SYSTEM** means a system for the provision to the public of piped water for human consumption, provided such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

7.66 **RELEASE** means any spilling, leaking, pumping, pouring, injecting, emitting, escaping, leaching, or disposing of any material stored in an underground storage tank system into groundwater, surface water or subsurface soils.

7.67 **REMOVE FROM SERVICE** means to cease to operate a facility component.

- 7.68 **REPLACEMENT TANK** means a tank installed at an existing facility in place of a tank which has been permanently closed.
- 7.69 **RESIDENTIAL TANK** means a tank containing No. 2 heating oil serving no more than three one-family dwellings.
- 7.70 **SATURATED THICKNESS** means the thickness of an aquifer below the water table.
- 7.71 **SPILL** means a loss of petroleum product or hazardous material in a manner other than a leak, occurring on the property where a facility is in operation, and such that the product or material is likely to enter groundwater or surface water, and shall be considered a release from a facility.
- 7.72 **SPILL CONTAINMENT BASIN** means a device installed in fill pipe manholes that prevents petroleum product or hazardous material spills from leaching into the soil and groundwater.
- 7.73 **STRATIFIED DRIFT** means the predominantly sorted sediments deposited in layers by meltwater from a glacier.
- 7.74 **SUBSTANTIAL CONSTRUCTION** means that a continuous on-site physical construction program has progressed to a point where 25% or more of the total project is completed or where 25% or more of the total cost of the project has been expended for materials which are at the site.
- 7.75 **SUBSTANTIAL MODIFICATION** means any modification to a facility, facility component or any new facility plan that is inconsistent with the information provided to the Director in a facility's application for a certificate of registration or any modification that could be expected to result in reduced performance of a facility component as it relates to leak prevention or detection. Such modifications include, but are not limited to:
- (1) The installation of tanks that are not identified on the application for a certificate of registration for the facility;
  - (2) The repair, relining or replacement of any underground storage tank;
  - (3) The replacement or repair of any product piping;
  - (4) Any changes in type of petroleum product or hazardous material stored;
  - (5) For a New Facility, any alterations to the site plan;
  - (6) Any changes in the design or specifications of a facility's corrosion protection system; and/or
  - (7) Any changes in the design, specifications or location of a facility's leak detection equipment, including groundwater monitoring wells.
- 7.76 **SURFACE WATER** means a body of water whose top surface is exposed to the atmosphere and includes all waters of the territorial sea, tidewaters, all inland waters of any river, stream, brook, pond, lake or wetlands.

- 7.77 **TANK** means a stationary device designed to contain petroleum products or other regulated substances and which is constructed of non-earthen materials that provide structural support.
- 7.78 **TANK OWNER** means the owner of the real property on which an Underground Storage Tank is located, unless a different party is identified in the facility registration documentation filed with the Department.
- 7.79 **TILL** means the predominantly unsorted, unstratified sediments deposited directly by a glacier.
- 7.80 **TRANSMISSIVITY** is a measure of the ability of an aquifer to transmit a fluid. It is equal to the average hydraulic conductivity multiplied by the saturated thickness.
- 7.81 **UNDERGROUND** means 10 percent or more of the volume of the facility components (storage tanks and piping) is buried in the ground.
- 7.82 **UST or UNDERGROUND STORAGE TANK (UST) SYSTEM** means any one or more underground tanks and their associated components, including piping, used to contain an accumulation of petroleum product or hazardous material. The system shall include piping whose volume is 10 percent or more beneath the surface of the ground.
- 7.83 **VAULT** means a secondary enclosure which houses an underground storage tank and is designed to contain any leaks from the tank and provide protection from corrosive soils.
- 7.84 **WASTE OIL** means used or spent oil of any kind, including but not limited to those oils from automotive, industrial, aviation and other sources.
- 7.85 **WELLHEAD PROTECTION AREA** means the three-dimensional zone, surrounding a public well or wellfield through which water will move toward and reach such well or wellfield, as designated by the Director pursuant to 46-13.1.

## **8.00 SECTION 8.00 FACILITY REGISTRATION AND NOTIFICATION**

- 8.01 Applicability: All owners/operators of USTs shall comply with the registration requirements of this Section unless otherwise exempted from these rules in Section 5.03.
- 8.02 Prohibition of Use of Unregistered USTs: No person subject to this section shall operate an underground storage tank facility unless the tank(s) is/are registered with the Department.
- 8.03 Registration Deadlines: The owner/operator of an UST facility shall apply for and obtain a certificate of registration from the Director in accordance with the following schedule:
- (A) New and Replacement Facilities: The owner/operator shall apply for a certificate of registration before commencing construction.
- (B) Existing facilities: The owner/operator shall have applied for and obtained a certificate of registration in accordance with the following deadlines:

<u>Type of Tank</u>	<u>Registration Deadline</u>
Tanks of any size storing No. 4, No. 5 or No. 6 fuel oils	January 1, 1993
Tanks with less than or equal to a capacity of 1,100 gallons storing motor fuels at residential properties	January 1, 1993
Farm tanks with less than or equal to a capacity of 1,100 gallons storing motors fuels	January 1, 1993
Tanks serving floor drains	July 1, 1994
All other tanks subject to these regulations of any size storing petroleum products or hazardous materials	April 9, 1985

(C) USTs No Longer in Service: Any facility at which USTs have been removed from service for more than 180 days without the permission of the Director are considered abandoned and shall be subject to the closure requirements contained in Section 15.00.

8.04 Application for Registration: To apply for a certificate of registration, the facility owner/operator shall complete, certify and submit to DEM the application forms available from the Department, along with the applicable registration fees. Information to be included on the form shall include, but not be limited to, the following:

(A) For New Facilities and Proposed Replacement Tank Systems:

(1) A set of detailed installation plans and specifications for the tank system. All plans for new facilities shall be stamped by a registered professional engineer. The Director reserves the authority to require that plans for replacement UST installations be stamped by a registered professional engineer at locations where the site conditions and/or installation is determined to be complex or poses engineering difficulties.

(2) A written description, including technical specifications, of the following:

- (a) Proposed tank size, construction material, construction type and material to be stored;
- (b) All proposed leak monitoring systems;
- (c) Proposed spill/overflow protection methods;
- (d) Proposed corrosion protection methods; and
- (e) Operation and maintenance requirements for any of the above.

(3) A site plan including all of the information listed below:

- (a) Proposed location(s) of all tanks, piping, and dispensing pumps;

- (b) Proposed location(s) of on-site monitoring or observation wells; where applicable.
- (c) Watertable elevation, where available;
- (d) Location of all public water supply wells or reservoirs within 400 feet of the facility site;
- (e) Location of all facilities served by private wells within 200 feet of the facility site;
- (f) Location of all proposed and existing building and associated structures;
- (g) Boundaries of the facility site; and
- (h) North Arrow.

(B) For Existing Facilities Facilities:

(1) The results of any precision or leak detection tests pertaining to all tanks and associated piping.

(2) Written description of the following:

- (a) Tank size, construction material, construction type and material stored;
- (b) All existing or proposed leak monitoring systems;
- (c) Spill/overflow protection methods;
- (d) Corrosion protection methods; and
- (e) Operation and maintenance requirements for any of the above.

(3) A site plan including all of the information listed below:

- (a) Location of all tanks, piping, and dispensing pumps;
- (b) Location of existing or proposed on-site monitoring or observation wells; where applicable.
- (c) Description of water service to the facility and properties within 200 feet of the facility site;
- (d) Location s of buildings and associated structures on-site;
- (e) Boundaries of the facility site; and
- (f) North Arrow

(4) Description of all repairs performed on the tank system.

(5) A description of all past spills and leaks associated with the tank system known to have occurred at the site on or after October, 1984.

8.05 Unknown Tank Size: Any tank of unknown size shall be assumed to be of regulated capacity unless it is determined to the satisfaction of the Director by records or measurements that the tank is not of regulated capacity.

8.06 Unknown Tank Age: Any tank of unknown age shall be assumed to be greater than thirteen years of age for the purpose of these rules.

8.07 Approval of Plans for New Facility and Replacement Tank Systems Plans:

(A) Upon receipt of a complete application, including plans and appropriate fees, the Department shall review the application for conformance with these regulations and issue written approval where applicable.

(B) No person shall commence construction of a new facility or replacement tank system until a written letter of approval has been issued by the Director authorizing the installation.

(C) Letters of approval shall be valid for a period of one year. Approval may be extended by the Director upon written request by the owner.

8.08 Issuance of Registration Certificates:

(A) For Existing Facilities: The Department shall issue a certificate of registration to the owner/operator of an existing tank or existing tank facility upon review and approval of an application and receipt of fees pursuant to this Section.

(B) For New Facilities and Replacement UST Systems: The Department shall issue a certificate of registration to the owner/operator of a tank facility at which new or replacement tanks have been installed in accordance with an approved application, and upon receipt and approval of the following:

(1) Complete application form;

(2) Applicable fee payment;

(3) Installation plans; stamped by a professional engineer for new facilities.

(4) A completed installation certification form, as specified in Appendix D, signed by the installer and owner;

(5) A completed manufacturer's installation checklist, signed by the contractor; and

(6) Precision test results for the tank(s) and piping, which indicates that the tank system, as installed, is not leaking.

8.09 Renewal of Registration Certificates: All facility owners/operators, except those listed as exempt in part (C) below, shall renew their certificate(s) of registration annually as follows:

(A) During the first quarter of each fiscal year (July 1 to September 30), the Department shall send renewal notices and invoices for the payment of registration fees to each owner/operator of registered underground storage tanks. Each owner/operator shall return the invoice with payment of fees set forth in this section no later than forty-five (45) days from the date of said notices and invoices.

(B) Certificates of registration shall be valid for one year from July 1 through June 30 (fiscal year); or through 45 days after the date of invoice for the subsequent fiscal year.

(C) The following owners/operators of underground storage tank facilities, while required to meet the obligations of these regulations, are exempt from annual registration fees:



- (1) Federal, state and local governments and any agency or department of those governments;
- (2) Nonprofit fire districts;
- (3) Owners/occupiers of one, two, or three family dwellings that utilize tanks, of a capacity of greater than 1,100 gallons, solely for storing fuel for residential heating purposes;
- (4) Owners/operators of farm tanks of greater than a capacity of 1,100 gallons storing fuel for heating purposes;
- (5) Owners/operators of underground storage tanks that have been closed in accordance with these regulations.
- (6) Receipt of a registration certificate DOES NOT necessarily indicate compliance with all applicable sections of these regulations.

8.10 Registration Renewal Fees: All facility owners/operators who hold valid certificates of registration issued by the Director under these regulations shall pay to the Department an annual registration fee of seventy five dollars (\$75.00) for each underground storage tank so registered at the facility.

8.11 New Registrations Fee: Owners/operators of new facilities shall pay a registration fee according to this schedule:

<u>Registration Approval Date:</u>	<u>Fee Per Tank</u>
July 1 - September 30	\$75.00
October 1 - December 31	\$38.00
January 1 - March 31	\$25.00
April 1 - June 30	\$12.00

Thereafter such owner/operator shall pay the full amount of the registration fee as a renewal of registration as set forth in part 8.10 of these regulations.

8.12 Multi-compartment Tanks: The registration fee for UST's with multi-compartment will be based upon the number of compartments.

8.13 Payment of Fees:

(A) All persons who register or renew registration of underground storage tank facilities shall submit registration fees in the form of a check made payable to: "Treasurer, State of Rhode Island," which will be placed in a restricted receipt account to be used for the UST Program.

(B) All payments must be for the full amount of the registration fee, including late fees where applicable.

(C) The Director shall deposit all monies collected pursuant to this section into the Water and Air Protection Program as established in General Laws section 42-17.1-2(z).

8.14 Late Fees: Owners/operators who fail to pay a registration fee within the time frames specified above shall be subject to a late fee charge of \$35.00 per tank per year.

8.15 Acceptance of Fees: The Director's acceptance of registration fees does not indicate that the tanks are in compliance with all UST regulations.

8.16 Penalties:

(A) Failure to obtain a certificate of registration in accordance with these regulations shall constitute a violation of these regulations and may subject the owner/operator to penalties.

(B) Where an owner/operator of a Facility who fails to obtain a certificate of registration from the Department, the Director may order the owner/operator to immediately implement closure procedures in accordance with Section 15.00 of these regulations.

8.17 Modifications of Certificates of Registration:

(A) Changes in Ownership: Changes in ownership of a tank or tank facility are subject to Section 18.00, entitled Transfer of Registration.

(B) Change in Registration Information: Excepting a change in ownership, which is subject to Section 18.00, owners/operators of a UST facility shall:

1. Report any change in information contained on the registration form to the DEM in writing within (10) ten days of that change.

2. Maintain a continuous and accurate record of the name, address and length of time during which particular persons operated a facility. The record shall be maintained by the owner/operator until such time as the facility is closed in accordance with Section 15.00 of these regulations. Upon request, the written record of operators shall be made available by the owner to the Department.

8.18 Revocation of Registration: The Director may, after (10) ten days written notice to the person or persons affected, and after a hearing, if requested by the affected person or persons, suspend, modify or revoke a certificate of registration for cause including, but not limited to:

(A) The information submitted by the application was incomplete, false or misleading;

(B) Circumstances on which the certificate was based have materially and substantially changed since the certificate was issued;

(C) Failure to pay registration fees; or

(D) Noncompliance with these Regulations.

- 8.19 Closure of Facilities with Revoked Registrations: Upon the denial or revocation of the certificate of registration the owner/operator shall immediately implement facility closure procedures in accordance with Section 15.00 of these regulations.
- 8.20 Record of UST Notice in Land Evidence Records: A notice of the existence of regulated USTs shall be recorded in the land evidence records for the City/Town wherein the Facility is located. The Notice shall be on a form provided by the Director and shall state that the property on which the facility is located contains USTs regulated by the Director; identify the facility's identification number; and indicate that any transfer of ownership of the property must be made in accordance with Section 18.00 of these Regulations.
- (A) Existing Facilities: DEM shall be responsible for filing information on all tanks registered with the Department before February 1, 1994.
- (B) New Facilities: For any USTs not registered with the Department after February 1, 1994, the owner/operator must record a copy of a UST Notice in the appropriate city/town land evidence records within thirty (30) days of registration, and provide to the Department a copy of the Notice with the recorded book and page number.
- 8.21 Release of UST Notice: If all UST systems located at a facility are shown to have been closed in accordance with Section 15.00 of these Regulations, then the Department shall, upon written request by the property owner/operator, issue and record a Release of UST Notice in the land evidence records indicating that all UST systems registered with the Department as being located at the facility have been closed in accordance with the Regulations.

## **9.00 SECTION 9.00 FINANCIAL RESPONSIBILITY**

- 9.01 Applicability: This section shall apply to all owners/operators of petroleum underground storage tank systems required to register under these regulations with the following exceptions:
- (A) USTs used for storage of hazardous wastes regulated by RCRA.
- (B) USTs used solely for the storage of heating or fuel oils consumed on the facility premises.
- (C) Farm or residential USTs with capacity of 1,100 gallons or less and used solely for the storage of motor fuel which is not for resale.
- (D) Airport hydrant fueling systems.
- (E) UST facilities owned by the state or federal government which, consistent with EPA requirements, have been deemed to be inherently capable of meeting financial responsibility requirements.
- 9.02 Compliance Dates: Owners of petroleum underground storage tanks are required to comply with the requirements of this Section in a manner consistent with 40 CFR 280, as amended, by the following dates:
- (A) By January 24, 1989: All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of \$20 million or more to the U.S. Securities

and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration;

(B) By October 26, 1989: All petroleum marketing firms owning 100-999 USTs;

(C) By April 26, 1991: All petroleum marketing firms owning 13-99 USTs at more than one facility;

(D) By December 31, 1993: All other petroleum UST owners, including municipal governments, not described in paragraphs (A), (B), or (C) of this section.

9.03 Demonstration of Financial Responsibilities:

(A) Unless otherwise exempted from these rules, the owner of any UST system shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from an underground storage tank system in a manner and in amounts consistent with 40 CFR part 280, as amended, which is contained in Appendix C of these regulations.

(B) The amount of financial assurance required in part 9.03 (A) shall exclude legal defense costs.

(C) The amount of financial responsibility required shall not limit liability of the owner/operator for damages caused by a release.

9.04 Reserved (State UST Clean-up Fund)

Note: As of the date of filing of these regulations, legislation to create and provide funding for a state administered UST clean-up fund program has not been adopted in Rhode Island.
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**10.00 SECTION 10.00 MINIMUM EXISTING FACILITY REQUIREMENTS**

10.01 Applicability: This section shall apply to all existing facilities, except those tanks storing heating oil of any grade that is consumed on-site are exempt from parts 10.03, 10.06, 10.07, 10.08, 10.09, subpart 10.10 (B) and 10.12.

10.02 General operations and maintenance:

(A) All USTs shall be maintained and operated by trained personnel in compliance with the applicable national codes of practice for the handling and storage of petroleum or hazardous materials as listed in Appendix B.

(B) Facilities subject to leak detection requirements, shall post or provide in a location available to the operators of UST systems, written instructions pertaining to the operation of leak detection equipment, as well as spill response procedures.

(C) Compatibility: All new or replacement tank and/or piping systems shall be made of, or lined with, materials that are compatible with the substance(s) stored.

10.03 Mandatory Upgrade Requirements for Tank Systems: Except as provided in part 10.01, above, the owners/operators of existing UST facilities shall provide for corrosion protection of all steel tanks and steel piping no later than December 22, 1998. Facilities shall provide for corrosion protection by either:

(A) Closing all tank systems which do not meet corrosion protection standards, and installing new or replacement tanks and piping which comply with Section 11.00.

(B) Upgrading existing tanks and piping to provide for corrosion protection through:

(1) Interior lining; and/or

(2) Cathodic protection.

10.04 Approval of Upgrade: Underground storage tanks systems can be upgraded once provided that:

(A) The upgrade is properly conducted in accordance with national codes of practice as listed in Appendix B;

(B) The Director receives a written description of the proposed upgrade method at least 30 days prior to the upgrade;

(C) The upgrade proposal is approved in writing by the Director;

(D) The tank is precision tested following the tank upgrade, and no leaks are detected;

(E) The method for upgrade is compatible with the product or material being or intended to be stored;

(F) At the time of upgrade or repair, the UST system is structurally sound and upgraded in a manner that will prevent releases due to structural failure or corrosion during its operating life;

(G) Written verification of this upgrade must be submitted by the owner/operator to the Director with fifteen (15) calendar days of installation.

10.05 Interior Lining: Upgrading of a tank by interior lining will only be approved as a variance to these regulations (see Section 20.00), where the applicant demonstrates economic hardship and conforms to Rule 10.04(A) through (F).

10.06 Leak Detection for Existing Tanks: Except as provided in Rule 10.01 above, the owners/operators of all existing facilities shall comply with one of the following leak detection requirements:

(A) Continuous Monitoring:

(1) For double-walled USTs, install and operate interstitial continuous monitoring consistent with requirements in Section 11.00;

(2) For single-walled tanks, install and operate an approved continuous monitoring system compatible with the product and tank material and perform a precision test of the tank at five year intervals following the installation of the monitoring device, until such time as the tank has been installed for a period of twenty years, thereafter precision tests shall be conducted once every two years.

(B) Precision Testing:

(1) For USTs for which the date of installation is known and verifiable, perform a precision test of the tank system in accordance with the following schedule:

	UST Installed Prior to January 1, 1965	UST Installed on or after January 1, 1965
Initial Precision Test Due Date	May, 1986	May, 1987
Subsequent Precision Test Due Dates	Annually	5, 8, 11 and 13 years after installation and annually thereafter

(2) For any UST for which the date of installation is not known, perform a precision test of the tank system no later than May, 1986 and annually thereafter.

(3) For USTs installed between January 1980 and May 1985, the Director may require annual precision testing for those USTs which are not provided with corrosion protection.

(4) For USTs upgraded in accordance with Rule 10.03, precision testing, in conjunction with inventory control, shall be a permissible leak detection method for a period no longer than ten years after the date of the upgrade. After ten years, a leak detection method that provides for continuous monitoring must be installed consistent with Section 11.00.

(5) Owners/operators of USTs subject to a registration deadline of January 1, 1993 in Rule 8.03, and not otherwise exempted from leak detection requirements, shall comply with the precision testing schedule in subparts (1) and (2) above, excepting that there shall be an exemption of the requirement to perform a test on any due date which preceded the effective date of these regulations.

(6) Each precision test result submitted to DEM shall include at minimum the following information:

- (a) Date the test was performed;
- (b) Facility name and address;
- (c) Facility owner name and address;
- (d) Identification of the USTs tested, including volume, stored material and DEM's tank identification number;
- (e) Brand name and type of precision test equipment used for the test;
- (f) Identification of the UST system components tested; e.g., UST and lines, tank only;

- (g) Identification of who performed the test, including the names of any persons assisting in the test;
- (h) Data sheets with the test readings recorded;
- (i) Calculations pertaining to the test method and test results;
- (j) Location of monitoring or observation well, if used in the test procedure;
- (k) Description of the method used to measure the water table if required, and the result;
- (l) Signature of a licensed tester attesting to the accuracy of the information submitted in the test result;
- (m) DEM facility ID number;
- (n) Site plan identifying all tanks on site with tank numbers on cover sheet corresponding to tank numbers on the site plan.

(7) Failure to provide the information specified in subparagraph (6), above, may render the test invalid.

(8) Precision tests must be capable of detecting a 0.1 gallon per hour leak rate from the full tank system, accounting for the effects of thermal expansion or contraction of product, vapor pockets, tank deformation, evaporation, condensation, and the location of the water table. The probability of detection shall be no less than 95 percent and the probability of a false alarm shall be no more than 5 percent.

(9) Precision test results required in this section shall be caused to be submitted by the owner/operator to the Director within fifteen (15) calendar days of the date of test completion; or in the event of a leak/release, in accordance with Section 14.00, Leak Response.

(10) Any licensed tester or testing company who offers to, or otherwise undertakes the burden of, submitting test results to the Department on behalf of the owner/operator of a UST or UST facility must submit said test results in accordance with the requirements of these Regulations and forward copies of the test results to the owner/operator who contracted for the tests. Failure of the licensed tester to comply with this section will make the tester and the company that employs the tester jointly and severally liable for any penalty assessed by the Department against the owner/operator for the late filing or failure to file the results of these tests.

10.07 Leak Detection for Piping: Except as provided in Rule 10.01 above, all existing piping associated with UST facilities shall comply with one or more of the following:

(A) Double Walled Piping: Interstitial or annular space monitoring consistent with Section 11.00.

(B) Single Walled Piping: Release detection requirements as follows:

(1) All tank systems equipped with pressurized piping shall have performed a line tightness test upon installation and annually thereafter.

(2) All tank systems equipped with suction piping shall have a line tightness test performed upon installation, 5, 8, 11 and 13 years following installation and annually thereafter.

(3) Piping pressure tightness tests shall have a detection limit of 0.1 gallon per hour at 1.5 times normal operating pressure.

(4) The schedules for tightness testing piping do not apply to time periods preceding the date of registration required by these regulations for a UST facility.

(C) Alternative leak detection methods for piping that are equivalent in accuracy and reliability to the methods listed may be approved by the Director pursuant to Section 20.00, Variances.

10.08 Line Leak Detection: All underground storage tanks at existing facilities that are equipped with pressurized piping are required to have been fitted with a line leak detection system by May 8, 1987.

10.09 Operation of Leak Monitoring Equipment:

(A) Leak monitoring devices shall be: installed, calibrated, operated and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running conditions. All leak monitoring devices shall be tested annually to insure proper operation. All records pertaining to the equipment manufacturer, warranties, maintenance requirements, repairs, maintenance, and testing shall be maintained on-site for the life of the system or at an alternate location approved by the Director in writing.

(B) Leak monitoring devices shall not be shut off or deactivated at any time except for repair. Any malfunction shall be repaired within fifteen (15) working days of its first occurrence. If the device(s) cannot be repaired within 15 days, the affected system(s) shall be temporarily closed until satisfactory repairs are made. Any deactivation of a monitoring device shall be immediately reported to the department by the owner/operator.

(C) Leak monitoring devices shall employ an audible alarm and a visual indicator, which shall be so located as to be readily heard and seen by the owner/operator or other personnel during normal working hours.

(D) All monitoring devices shall be conspicuously marked or labeled as being monitoring devices and shall be secured against vandalism, incidental damage and improper deactivation.

(E) All continuous monitoring systems and alarms shall be tested by the owner/operator on a monthly basis to ensure that they are operating effectively. Records of such tests shall be maintained in accordance with subpart 10.09(A) and Section 13.00, Maintaining Records.

(F) Continuous monitoring systems must be designed, constructed, and installed so as to detect a 0.2 gallon per hour leak rate from any portion of tank system that routinely contains product. The probability of detection shall be no less than 95 percent and the probability of a false alarm shall be no more than 5 percent.

10.10 Spill and Overfill Protection:

(A) **Spill Containment Basins**: All underground storage tanks at existing facilities are required to have been fitted with spill containment basins around all fill pipes with the exception of



aboveground fill pipes, by May 8, 1987. Spill containment basins installed after the implementation of these Regulations must be capable of holding a minimum of three gallons. All tanks containing No. 2, 4, 5, 6 heating oil required to be registered according to Section 8.00 of these Regulations must have spill containment basins installed by 1 January 1993.

(B) **Overfill Protection:** Except for USTs used to store heating fuels consumed on-site, all underground storage tanks at existing facilities shall be retrofitted with overfill protection by January 1, 1996.

(C) Written verification of this upgrade must be submitted by the owner/operator to the Director within fifteen (15) calendar days of installation.

10.11 **Fill Pipe Labeling:** No later than January 1, 1993 the owner/operator shall permanently affix a label to, or otherwise permanently mark, the fill pipe so that the product inside the tank is identified. The American Petroleum Institute Publication 1637, "Product Identification at Service Stations" may be used to satisfy this requirement.

10.12 **Record Keeping:** Owners/operators of existing facilities shall maintain records documenting compliance with the provisions of Section 10.00, Existing Facility Requirements, in accordance with Section 13.00, Maintaining Records.

#### **11.00 SECTION 11.00 NEW FACILITY AND REPLACEMENT TANK SYSTEM REQUIREMENTS**

11.01 **Applicability:** This section shall apply to all new or replacement USTs under these regulations except those tank systems to be used to store heating oil consumed solely on-site are exempt from parts 11.06, 11.07, 11.14, 11.15 and 11.16.

11.02 **Prohibitions:**

(A) The installation of new USTs wherein the groundwater is designated as a wellhead protection area for a community well, pursuant to RIGL 46-13.1, is prohibited. However, facilities registered prior to the effective date of these regulations shall be permitted to upgrade in accordance with the provisions of these regulations.

(B) The installation of bare steel or metal USTs for storage of petroleum products or hazardous materials is prohibited.

(C) No person shall commence construction of a new facility or replacement tank system, and no substantial modification (including product piping replacement) may be made to any UST facility for which an application for a certificate of registration is required, without prior written notification to and approval by the Director.

11.03 **General Requirements:**

(A) All USTs shall be maintained and operated in compliance with all national codes of practice for handling and storing of petroleum or hazardous materials as listed in Appendix B.

(B) All USTs equipped with cathodic protection shall be maintained by personnel trained in cathodic protection in accordance with national codes of practice.

11.04 Compatibility: All new or replacement tank and/or piping systems shall be made of or lined with materials that are compatible with the substance(s) stored. The owner/operator shall not introduce, or allow to be introduced, any material into a UST system that is incompatible with the UST system.

11.05 Tanks - Design and Manufacturing Standards: All new USTs installed in Rhode Island shall provide for secondary containment of the tank and associated piping and shall be constructed in accordance with one of the national codes and requirements listed below:

(A) All new and replacement USTs shall be of double-walled construction.

(B) All USTs constructed of fiberglass-reinforced plastic shall comply with the following national codes, as amended:

(1) Underwriter's Laboratories Standard 1316: "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products",

(2) Underwriters Laboratories of Canada CAN 4-5615-M83: "Standard for Reinforced-Plastic Underground Tanks for Petroleum Products".

(C) All USTs constructed of steel shall be cathodically protected and shall comply with one of the following national codes, as amended:

(1) Underwriters Laboratories of Canada CAN 4-56030M85 "Standard for Steel Underground Tanks for Flammable and Combustible Liquids" and CAN 4-603.1M85: "Standard for Galvanic Corrosion Protection Systems for Underground tanks for Flammable and Combustible Liquids" and CAN 4-5631-M84: "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems;"

(2) National Association of Corrosion Engineers Standard RP-02-85: "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems: and Underwriters Laboratories Standard 58: "Standard for Steel Underground Tanks for Flammable and Combustible Liquids".

(D) All USTs constructed of a steel-fiberglass-reinforced plastic composite shall comply with the: Association of Composite Tanks ACT-100: "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks", as amended;

(E) Outer jackets made of steel shall meet design and construction standards in accordance with the Steel Tank Institute: "Standard for Dual-Wall Underground Storage Tanks" and shall provide corrosion protection in accordance with Underwriters Laboratories Standard 1746: "External Corrosion Protection Systems for Steel Underground Storage Tanks".

11.06 Wear Plates: All new and replacement USTs shall have steel wear plates centered under all openings with minimum dimensions of 8" x 8" in area and at least 1/4" thick.

- 11.07 Submerged Fill Tube: All new and replacement USTs shall have a submerged fill tube.
- 11.08 Manufacturer's Test: Prior to installation, all new and replacement USTs shall be factory tested at a minimum of five pounds per square inch gauge and shall be guaranteed tight by the manufacturer. This guarantee shall be filed with the DEM at the time of installation application.
- 11.09 Installation Standard:
- (A) All tanks, piping, and other related facility components shall be installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as listed in Appendix B and in accordance with the manufacturer's instructions.
  - (B) The installer shall be certified or licensed as may be required by the RI Department of Labor, Division of Professional Regulation. (See RI General Laws Chapter 28-27 regarding the installation of commercial gasoline or diesel UST systems.)
  - (C) The local city/town building official shall be notified prior to the commencement of installation.
- 11.10 Precision Testing Upon Installation:
- (A) All new and replacement facility components shall be precision tested upon completion of installation and before commencing regular UST operations. In accordance with Rule 10.06, the results of this initial precision test shall be submitted to the Director within 15 calendar days of test completion or, in the event of a leak, in accordance with Section 14.00, Leak Response.
  - (B) Precision tests must be capable of detecting a 0.1 gallon per hour leak rate from the full tank system, accounting for the effects of thermal expansion or contraction of product, vapor pockets, tank deformation, evaporation, condensation, and the location of the water table. The probability of detection shall be no less than 95 percent and the probability of a false alarm shall be no more than 5 percent.
- 11.11 Piping - Design Construction and Installation: All new or replacement underground piping that routinely contain regulated substances, including fittings and connections, shall be designed and constructed in accordance with the following:
- (A) Fiberglass reinforced plastic piping and nonmetallic flexible piping shall be made of materials listed by Underwriters Laboratories or Underwriters Laboratories of Canada; and be equipped with secondary containment.
  - (B) All steel or metal piping which routinely contains a regulated substance shall be equipped with secondary containment, and all such piping that is in contact with the ground shall be cathodically protected in the following manner:
    - (1) By coating the piping with suitable dielectric material;
    - (2) Except where cathodic protection is provided by impressed current, underground piping systems shall have dielectric bushings, washers, sleeves or gaskets installed at the end to electrically isolate the piping system from the tank and the dispenser. These

dielectric connectors shall be chemically compatible with any and all substances stored and be resistant to corrosive soils; and

(3) All cathodic protection systems shall be designed, installed, operated and maintained in accordance with the national codes of practice cited in Rule 11.05 (B).

(C) The use of copper piping is restricted to No. 2 heating oils and to diesel fuel serving generators and must employ secondary containment. In all cases this piping must be protected from damage.

11.12 Spill and Overfill Prevention Equipment: All new and replacement USTs systems shall be provided with equipment and procedures to prevent spilling and overfilling during product transfers to the tank in accordance with the following:

(A) Spill prevention equipment that will prevent a release of regulated substance to the environment in the area of the fill pipe. A containment basin may be used to satisfy this requirement. Basins installed after July, 1993 must be capable of holding a minimum of three (3) gallons; and,

(B) Overfill prevention equipment; and

(C) All dispensers of motor fuels under pressure from a remote pumping system shall be equipped with a shear valve (impact valve) which is located in the supply line at the inlet of the dispenser. This valve shall be designed to close automatically in the event that the dispenser is accidentally dislodged from the inlet pipe.

11.13 Approved Equal Systems: Any alternate containment system, spill and/or overfill prevention system may be approved by the Director pursuant to Section 20.00, Variances, provided that the owner/operator demonstrates by clear and convincing evidence that the proposed alternate system or equipment provides an equivalent level of protection to the systems and/or equipment required herein.

11.14 Leak Detection for New and Replacement Underground Storage Tanks:

(A) Leak monitoring shall be installed and continuously operated for all new USTs.

(B) The interstitial space in all double-walled USTs shall be continuously monitored for the presence of both the regulated substance and water.

(C) All leak monitoring devices shall be able to detect the substance stored in the UST, and its vapors if the substance is a volatile organic compound or mixture with a vapor pressure less than gasoline, as well as water.

(D) Continuous monitoring systems must be designed, constructed, and installed so as to detect a 0.2 gallon per hour leak rate from any portion of tank system that routinely contains product. The probability of detection shall be no less than 95 percent and the probability of a false alarm shall be no more than 5 percent.

#### 11.15 Leak Detection for New and Replacement Underground Piping Systems:

(A) All new and replacement pressurized piping systems shall be equipped with a line leak detection system. Written verification of this upgrade must be submitted by the owner/operator to the Director with fifteen (15) calendar days of installation.

(B) All new and replacement pressurized piping systems shall employ a UL-approved line leak detector capable of detecting a line leakage rate of at least 3 gallons per hour at 10 pounds per square inch. If a leak is detected, said leak detection system shall shut-off or restrict product flow and otherwise notify the operator of the detection of a leak.

(C) The interstitial space of double-walled piping or the annular space between the primary piping and secondary containment system shall be continuously monitored to detect the presence of the regulated substance, and its vapors if the substance is a volatile organic compound or mixture with a vapor pressure less than gasoline.

(D) The piping collection sump and the submersible pump head containment structure shall employ a leak monitor activated by the regulated substance or its vapors.

(E) All new or replacement suction piping shall be equipped with a check valve located underneath the dispensing unit.

#### 11.16 Operation of Leak Monitoring Equipment

(A) Leak monitoring devices shall be: installed, calibrated, operated and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running conditions. All leak monitoring devices shall be tested annually to insure proper operation. All records pertaining to the equipment manufacturer, warranties, maintenance requirements, repairs, maintenance, and testing shall be maintained on-site for the life of the system or at an alternate location approved by the Director in writing.

(B) Leak monitoring devices shall not be shut off or deactivated at any time except for repair. Any malfunction shall be repaired within fifteen (15) working days of its first occurrence. If the device(s) cannot be repaired within 15 days, the affected UST system(s) shall be temporarily closed in accordance with Rule 15.03 of these Regulations until satisfactory repairs are made. Any deactivation of a monitoring device shall be immediately reported to the department by the owner/operator.

(C) Leak monitoring devices shall employ an audible alarm and a visual indicator, which shall be so located as to be readily heard and seen by the owner/operator or other personnel during normal working hours.

(D) All monitoring devices shall be conspicuously marked or labeled as being monitoring devices and shall be secured against vandalism, incidental damage and improper deactivation.

(E) All continuous monitoring systems shall be tested by the owner/operator on a monthly basis to ensure that they are operating effectively. Records of such tests shall be maintained in accordance with Rule 11.16(A) and Section 13.00, Maintaining Records.

11.17 Monitoring Wells: For purposes of leak detection the Director may require, as a condition of approval for new or replacement UST systems located in environmentally sensitive areas, that the owner/operator install one or more groundwater monitoring wells meeting the following specifications:

(A) The well or wells shall be located so as to be likely to detect any release from the facility. The location of the well and/or the requirement of additional wells is subject to the approval of the Director.

(B) Monitoring wells shall be constructed as described below:

(1) The screen portion of the wells shall extend a minimum of five (5) feet below the average dry season water table elevation at the site. The screen shall be open to the water table at all times.

(2) The screen shall be of sufficient length to compensate for seasonal fluctuations in the water table.

(3) All wells shall have a minimum inside diameter of two (2) inches and be constructed using a minimum of schedule 40 PVC piping.

(4) All wells shall have bottom caps.

(5) All wells shall be gravel packed and grouted.

(6) Where possible, all wells shall have a mounded surface seal around the well casing and an above grade locking security cover. If the well must be finished at ground level, a tamper resistant cover that prevents surface runoff from entering the wells shall be used.

(7) The requirement to complete monitoring wells may be waived by the Director if groundwater is not encountered within 30 feet of the ground surface.

(C) Monitoring well check: Where groundwater monitoring wells are installed, the water in the monitoring well shall be bailed and evaluated visually for the presence of free product no less than once per year. Written records of all well check observations shall be kept in accordance with record-keeping requirements in Section 13.00.

(D) Access to wells: Upon request, the owner/operator shall provide access to the monitoring wells for the purpose of leak detection or other investigative purposes to the Department or its agents. 11.18 Reporting: Written verification of compliance with 11.05, 11.06, 11.07, 11.08, 11.09, 11.10, 11.11, 11.12, 11.14, 11.15, 11.16 and 11.17 shall be submitted by the owner/operator in a manner consistent with Section 11.00 and Section 13.00.

## **12.00 SECTION 12.00 FACILITY MODIFICATION**

12.01 Prohibition: No substantial modification may be made to any UST facility for which an application for a certificate of registration is required, without prior written notification to and approval by the Director.

- 12.02 Modification Standard: Any modification to or replacement of facility components shall be made to conform with the requirements of Section 11.00, New Facility and Replacement Tank System Requirements.
- 12.03 Reuse of Tanks: Used USTs meeting the specifications given in Section 11.00, New Facility Requirements, may only be installed after:
- (A) The owner/operator makes a written request for and receives written approval from the Director of the proposed modification;
  - (B) Documentation is provided that the used tanks have been inspected and tested by the manufacturer;
  - (C) Documentation is provided that the used tank has been certified by the manufacturer to be reusable for the product to be stored; and
  - (D) Documentation is provided that the used tank is given the same warranty by the manufacturer as given to a new tank.
- 12.04 Approval of Repairs or Upgrades: USTS and/or their associated piping can be repaired or upgraded once, provided that:
- (A) The repair or upgrade is properly conducted in accordance with the material code of practice as listed in Appendix B and manufacturer's specifications;
  - (B) The Director has approved the repair or upgrade method;
  - (C) The tank system is precision tested within 30 days of the completion of the tank repairs or upgrade, and no leaks are detected; results of precision tests must be submitted to the Director within fifteen (15) calendar days of test completion.
  - (D) The method of repair or upgrade is compatible with the product or material to be stored;
  - (E) All metal pipe sections and fittings that have released product as a result of corrosion or other damage are replaced; and
  - (F) At the time of the upgrade or repair, the UST system is structurally sound and upgraded or repaired in a manner that will prevent releases due to structural failure or corrosion during their operating lives.

### **13.00 SECTION 13.00 MAINTAINING RECORDS**

- 13.01 Applicability: All owners/operators of new and existing facilities shall maintain records in accordance with the following section except that the provisions of 13.02 (B) shall not apply to tanks used for storing heating oils consumed on-site.
- 13.02 Records: All owners/operators of new and existing facilities shall maintain on the facility premises or at an alternate location approved by the Director, for the period of time specified below, records of the following:

(A) **Permanent Records:** The following shall be maintained for three years or for the life of the facility, whichever is greater:

- (1) All data used to complete the application for the certificate of registration.
- (2) All repairs, upgrades or modifications to pipes, fittings or other components of underground storage tank systems.
- (3) Any monitoring, leak detection system, inventory control system and/or UST testing results.
- (4) Records of closure activities.
- (5) Records of leaks, spills, overfills, site investigations, and remedial response activities taken.
- (6) Precision test results including all of the information required in 10.06(B)(6).
- (7) Certificate of installation.

(B) **Routine Record-keeping:** The following records shall be maintained for a minimum period of three years from the date made, or for such longer periods as required by the Director in the resolution of enforcement actions:

- (1) Records of all calibration and standard maintenance performed.
- (2) Records of strip charts, electronic recall device and/or manual recordings for any continuous monitoring instrumentation.
- (3) Records of monthly tests of continuous monitoring systems as required in Sections 10.00 and 11.00.
- (4) All records pertaining to the operation and maintenance of approved corrosion protection method.
- (5) During those days when the UST facility is in operation, a daily written inventory of the product or material stored, including the following minimum information:
  - (a) a record of all inflows;
  - (b) a record of all outflows;
  - (c) a daily reconciliation between inflows, outflows and volume on hand;
  - (d) written daily entries of any unusual occurrences that might affect the inflow, outflow or volume on hand;
  - (e) written entries explaining in detail any adjustments to the records.

13.03 **Inventory Leak Reporting:** If inventory record keeping indicates a discrepancy of 1% or more of the flow-through plus 130 gallons on a monthly basis, the owner/operator shall report such discrepancy in accordance with Section 14.00, Leak and Spill Response.



13.04 Access to Records: The owner/operator shall make available to the Director, upon request, all records which the Director determines may be pertinent to the enforcement of these rules and regulations.

13.05 Change of Ownership: In the event of a change of ownership, records pertaining to the facility shall be transferred in accordance with Section 18.00.

#### **14.00 SECTION 14.00 LEAK AND SPILL RESPONSE**

14.01 Applicability: These regulations shall apply to all new, existing, and abandoned facilities at which petroleum products and/or hazardous materials are stored underground as specified in Sections 5.00 and 7.00.

14.02 General Requirements: All owners/operators of underground storage tank systems storing petroleum or hazardous materials must report, investigate, and clean up any spills, overfills, or releases in accordance with this Section and other applicable provisions of local, state and federal statutes, rules and regulations.

14.03 Investigation of Suspected Releases: All owners/operators must promptly investigate all suspected releases, including, but not limited to, instances where:

(A) unusual operating conditions, release detection signals or environmental conditions at the site suggest a release may have occurred; and

(B) investigation is required by the Department agency to determine the source of a release.

14.04 Release Reporting Requirements:

(A) All persons shall immediately report all confirmed and suspected releases from USTs to:

(1) the Department;

(2) the appropriate local fire official;

(3) the local public water supplier, in the event a spill occurs in a public supply watershed or in a wellhead protection area for community water supply wells.

(B) Persons reporting releases to the Department shall provide the following information:

(1) Name and phone number of person reporting the release;

(2) Location of the release and name of the facility;

(3) Date and time of the release;

(4) Type, and to the extent known - the amount, of material released;

(5) Name and phone number of potentially responsible party if known.

(C) Precision test results which indicate a leak in the system shall be reported to the Director by the tester within two (2) hours of the test.

Note: During normal working hours reports of releases should be made to the DEM UST Section at (401)-277-2234; fax (401)-521-4230. At all other times, reports can be made to the DEM 24-hour Emergency Response Hotline at (401)-277-3070.

14.05 Initial Abatement Actions: Unless directed by DEM to do otherwise, when a confirmed release occurs, the owner/operator shall take the following actions:

(A) Arrange for and within 24 hours and as soon as practicable, complete removal of the contents of the UST system to prevent further release into the environment;

(B) Contain all discharged oil, oil-contaminated debris and hazardous waste. Such materials shall be handled, stored and disposed of in accordance with the state Oil Pollution Control Regulations and other applicable state and federal statutes, rules and regulations;

(C) Assess fire, health and safety hazards and take reasonable steps to mitigate any such hazards; local fire officials should be consulted as conditions require.

(D) Inspect any exposed releases and take steps to prevent the migration of any released regulated substance into the environment, including soils, groundwater or surface waters;

(E) Investigate for the presence of free product and, if present, initiate free product removal consistent with part 14.06; and

(F) Carry out other actions as directed by the DEM pursuant to Oil Pollution Control regulations, or other local, state and federal statutes, rules and regulations.

14.06 Free Product Removal:

(A) At sites where free product is present, the owner/operator shall remove the free product in a manner that minimizes the spread of contamination.

(B) Discharges and by-products from free product recovery and disposal operations shall be treated or disposed of in compliance with all applicable state and federal statutes, rules and regulations;

(C) Free product removal systems shall be designed to maximize the removal of free product;

(D) Documentation of all free product removal measures shall be submitted to DEM with the Release Characterization Report and Site Investigation Report as required pursuant to rules 14.07 and 14.09 respectively, and shall contain the following information:

(1) Names of persons implementing the free product removal measures;

(2) Estimated quantity, type and thickness of free product observed or measured;

- (3) Type of system used to remove free product;
- (4) Locations of any discharges associated with free product recovery activities;
- (5) Type of treatment applied to any water pumped for the purpose of free product removal; and
- (6) Disposition of recovered free product.

14.07 Release Characterization Report:

Within seven (7) days after confirmation of a release, the owners/operators shall submit a written report to the Department summarizing the events related to the release from a UST or UST system and describing the results of initial abatement steps. Such report shall include:

- (A) Data on the nature and estimated quantity of the release;
- (B) Data from available sources and site investigations concerning these factors:
  - (1) surrounding populations;
  - (2) water quality;
  - (3) use and approximate locations of wells potentially affected by the release;
  - (4) subsurface soil conditions;
  - (5) locations of subsurface sanitary sewers and stormwater lines;
  - (6) climatological conditions, where pertinent; and
  - (7) land use.
- (C) Names, addresses, and plat and lot numbers of the owners of all properties that abut the facility.
- (D) All pertinent data obtained from actions taken as Initial Abatement Actions pursuant to 14.05.

14.08 Site Investigation:

- (A) Upon completion of an initial Release Characterization Report, owners/operators shall conduct a full investigation of the release and the on-site and off-site areas known or potentially affected by the release. Upon request, the Director may waive the requirement to conduct a full site investigation when the initial Release Characterization Report establishes, to the satisfaction of the Director, that no free product is present, no contaminated soils are present and that there is no present or potential groundwater or surface water impact from the release.

(B) The Director may require that a site investigation be conducted at any UST facility where one or more of the following conditions exists:

- (1) The facility has closed USTs storing hazardous materials;
- (2) Groundwater or surface waters adjacent to the facility have been affected by a release of petroleum product or hazardous material;
- (3) An inspection of a tank closure reveals soil or groundwater contamination; or
- (4) Other evidence of a release exists.

(C) The Director may require the site investigation be conducted by and a Site Investigation Report prepared under the supervision of a professional engineer, certified professional geologist or a person of appropriate qualifications and relevant professional experience that is acceptable to the Director.

(D) The results of a site investigation shall be reported to the Department within 60 days or within an alternate deadline pre-approved by DEM in the format of a site investigation report pursuant to part 14.09.

#### 14.09 Site Investigation Report:

(A) The purpose of the Site Investigation Report shall be to define the nature and extent of contamination and identify threats to the public health and environment.

(B) The Site Investigation Report shall include, but not be limited to, the following information:

- (1) A locus map using the U.S. Geological Survey 7.5 minute quadrangle map;
- (2) A description of past and present activities on the site, including a list of past owners and operators of the site and the approximate time periods of their ownership and operation;
- (3) A compliance history of the site including, but not limited to, any and all past environmental enforcement actions and documentation of any past releases; repairs and leak detection results.
- (4) A site plan, drawn to scale, showing the location and the immediately surrounding area, and identifying the following items:
  - (a) Property boundaries;
  - (b) Buildings and other structures;
  - (c) Roads;
  - (d) Surface topography;
  - (e) Surface water courses and wetlands;
  - (f) Water wells;
  - (g) Groundwater monitoring wells;
  - (h) Public sewer and water lines;

- (i) Individual sewage disposal systems and other waste disposal areas;
  - (j) Present and former locations of USTs and associated piping;
  - (k) Dry wells; and
  - (l) Locations of soil boring, test pits or piezometers.
- (5) A description of the site's hydrogeology, including, but not limited to:
- (a) Depth to groundwater, including water table contour map, where applicable;
  - (b) Groundwater flow direction;
  - (c) Description of the unconsolidated materials (in both the unsaturated and saturated zones), including permeability, porosity, degree of stratification, and the capacity for contaminant attenuation;
  - (d) Depth to bedrock and bedrock characteristics;
  - (e) Aquifer characteristics including saturated thickness, hydraulic conductivity, and transmissivity; and
  - (f) The presence and effects of both natural and man-made barriers to and conduits for contaminant migration.
- (6) A description of the area surrounding the site, including, but not limited to, the location of properties served by private wells and the location of public wells, which wells would be potential contaminant receptors, and the classification of groundwater and surface waters surrounding the site;
- (7) The nature of contamination, addressing both groundwater and soil; including isopleth maps on groundwater contaminants, where applicable;
- (8) The results of any analytical testing of groundwater or soil on the site, including identification of methods used and sampling protocols;
- (9) Any other factors necessary for or that contribute to an adequate site characterization;
- (10) Conclusions and recommendations, including:
- (a) A description of the source or potential sources(s) of the contamination;
  - (b) A description of the current extent of contamination in the soil and groundwater, as well as in surface water, groundwater, and the presence of vapors;
  - (c) Identification of potential receptors; and
  - (d) Recommendations for further investigation and corrective action.
- (11) The Site Investigation Report shall include the following signed statements:
- (a) A statement signed by an authorized representative of the person who prepared the report certifying the accuracy of the information contained in the report; and
  - (b) A statement signed by the facility owner/operator responsible for the preparation and submittal of the report certifying that the report is a complete and accurate representation, and that it includes all known facts about the discharge or release that has resulted, or may result, in the exceedance of a groundwater quality standard promulgated pursuant to RIGL 46-13.1 and 46-12.

14.10 Additional Information:

The Director may require the collection and submission of additional information where a Site Investigation Report is found to be incomplete or deficient or does not provide sufficient data to identify the extent of a contamination plume.

14.11 Corrective Action Plan:

(A) Based upon the site investigation or other data, the Department may require owners/operators to develop a Corrective Action Plan, within a time frame specified by the Director, to address contaminated soils or groundwater or other related environmental or public health impacts. The Corrective Action Plan shall be prepared by a person or persons of appropriate qualifications and relevant professional experience and signed or stamped by a professional engineer or certified professional geologist.

(B) In order to be approved, the Corrective Action Plan must protect human health and the environment in a manner acceptable to the DEM. Where the Director determines that additional investigation work is required to further assess the nature and extent of the contamination resulting from a release from a UST facility, the Director may require that additional Site Investigation Reports be prepared and submitted prior to the approval of a Corrective Action Plan.

14.12 Contents of Corrective Action Plan:

(A) A Corrective Action Plan shall, at minimum, consist of the following:

(1) A summary of findings from the Site Investigation Report and any additional information the Director may require;

(2) A description of the proposed method for remediation, including, but not be limited to, the following:

(a) Justification of the ability of the chosen remedial method(s) to meet the remediation objectives;

(b) Design standards and technical specifications for the equipment necessary for the proposed remediation;

(c) Diagrams of piping routes, instrumentation, and process flows; and

(d) Proposed plans for the disposal of any products or by-products from the remediation activities;

(3) A proposed schedule for implementation of the corrective action plan; and

(4) A proposed groundwater monitoring program.

(B) The groundwater remediation plan and any associated progress reports shall include the following signed statements:

(1) A statement signed by an authorized representative for the person preparing the groundwater remediation plan certifying, to the best of their knowledge, the accuracy of the information contained in the plan; and

(2) A statement signed by the facility owner/operator responsible for the preparation and submittal of the groundwater remediation plan certifying, to the best of their knowledge, that the plan is complete and accurate.

14.13 Approval of Corrective Action Plans:

(A) The Director shall approve, approve with conditions or reject Corrective Action Plans based upon the following criteria:

(1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

(2) The hydrogeologic characteristics of the facility and the surrounding area;

(3) The proximity, quality, and current and future uses of nearby surface water and groundwater;

(4) The potential effects of residual contamination on nearby surface water and groundwater; and

(5) Reliability and technical feasibility of the proposed corrective action technologies as to their potential to achieve contamination removal.

(B) Groundwater Certification: Proposed Corrective Action Plans shall be certified as consistent with groundwater quality regulations promulgated by the DEM prior to final approval of the plan by the Department.

(C) Orders of Approval: Upon approval of the Corrective Action Plan, the Department shall issue an Order of Approval governing the Corrective Action Plan consistent with Section 14 and the Groundwater Quality Regulations. Owners/operators shall implement the plan in accordance with the provisions of the Order of Approval, and any conditions, established by the Department contained therein.

14.14 Corrective Action Prior to Issuance of Orders of Approval: Owners and operators may begin cleanup of soil and groundwater before the Corrective Action Plan is approved provided that they:

(A) Notify the Department of their intention to begin cleanup;

(B) Comply with any conditions imposed by the Department, including halting cleanup or mitigating adverse consequences from cleanup activities; and

(C) Incorporate these self-initiated cleanup measures in the Corrective Action Plan that is submitted to the Department for approval.

14.15 Public Notification:

(A) DEM shall provide written notice to the town or municipality of the on-going investigation of confirmed releases from UST facilities.

(B) DEM shall provide written notice of approved Corrective Action Plans to the town or municipality and may require the responsible party to provide wider notice by block advertisement, legal advertisement letters to individual property owners.

(C) DEM shall provide written notice to the town or municipality of consideration to terminate an Order of Approval in the event that the Corrective Action Plan referenced in the order does not achieve the established clean up levels originally required.

(D) The public notice provided in sub-paragraphs (A), (B), and (C), above, shall be provided by letter and directed to the chief executive municipal officer or mayor, if performing similar responsibilities, and shall direct the letter to be posted in the city or town hall.

14.16 Recording of Orders of Approval: Orders of Approval relating to Corrective Action Plan shall be recorded in the municipal land evidence records.

**15.00 SECTION 15.00 CLOSURE**

15.01 Applicability: This Section shall apply to all facilities where petroleum product(s) and/or hazardous materials are or were stored as defined in Section 5.00. Rules 15.10 (A) pertaining to closure assessments, and 15.08C pertaining to consultants, shall not apply to the following:

(A) USTs which store fuel oil consumed solely on-site;

(B) USTs of less than 1,100 gallons in capacity which store motor fuels at farm or residential sites, provided that the fuel is for on-site use; or

(C) Holding tanks.

15.02 Prohibitions:

(A) The abandonment of any UST or UST system is prohibited.

(B) The removal, filling, or other permanent closure of any UST or UST system that is required to be registered with the Department under Section 5.00 is prohibited without the prior approval of the Department.

15.03 Temporary Closure: The owner/operator of any underground storage tank that is removed from service for more than 90 days but less than 180 days shall:

(A) Cap and secure all fill lines against tampering;

(B) Secure manways, pumps and other components;



(C) Pump out suction lines;

(D) Keep the vent lines open;

(E) Maintain records regarding:

(1) UST location and size;

(2) The date on which USTs were taken out of operation;

(3) The procedures used to maintain the facility in a safe condition;

(F) Continue to comply with all general operating requirements, including but not limited to, maintenance of corrosion protection, release reporting and investigation, and leak and spill response and corrective action requirements; and,

(G) Continue to comply with all release detection requirements if regulated substances are stored in the UST or if greater than 1 inch of residue is measured in the tank bottom following evacuation of liquids.

15.04 Extension of Temporary Closure: The Director may extend the period of temporary closure to more than 180 days upon a showing of good cause by the owner/operator. Written requests for an extension must be filed with the Director no later than 150 days from the date the underground storage tank(s) was/were temporarily removed from service. Owners/operators requesting an extension of a temporary closure for a period of greater than 12 months shall perform a closure assessment consistent with part 15.10 prior to such an extension being granted.

15.05 Permanent Closure: All owners/operators that have removed any underground storage tank from operation for more than 180 days and have not been granted an extension of temporary closure by the Director or who have abandoned any UST or who desire to permanently close a UST shall comply with the procedures for closing underground storage tank(s) in accordance with the provisions of this Section and appropriate national codes of practice.

15.06 Closure Applications: All persons wishing to close one or more USTs shall apply to the Director for a certificate of closure at least ten (10) days prior to the date the UST is to be permanently removed from service. Such application shall be made on forms provided by the Department and shall include; but not be limited to:

(A) The date the UST is to be or was permanently removed from service;

(B) The age of the UST;

(C) The type of substance or material that was stored in the UST;

(D) The closure method to be used and contractor to perform the work;

(E) The size, type and location of the UST if it is to remain in the ground;

(F) The proposed date of UST excavation if it is to be removed from the ground;

(G) Appropriate documentation demonstrating compliance with the approved closure procedures including, but not limited to:

- (1) method(s) to be used to empty the tank prior to excavation;
- (2) method to be used to remove the tank from the excavation;
- (3) method(s) to be used to comply with the closure assessment requirements of Rule 15.10, below;
- (4) a description of the method(s) to be used to properly and safely vent the tank, and to properly make openings in the UST(s); including:
  - (i) appropriate venting must be carried out both before any cutting of the tank, and before offsite transport of any tank which has not been completely cleaned per Rule 15.11(C), below.
  - (ii) a description of the instruments to be used to verify that the tanks have been properly vented.
- (5) a description of how any residues in the tank will be managed; and

(H) Appropriate documentation demonstrating notification of local fire officials.

15.07 Closure Application Fees:

- (A) There shall be a fee for processing a closure application which shall be submitted with the application forms.
- (B) The fee shall be \$75.00 per UST to be closed.
- (C) Payment of the fee shall be made in the full amount. Checks or money orders shall be made payable to the "Treasurer, State of Rhode Island" to be placed in a restricted receipt account to be used for the UST Program.

15.08 Notification and Inspection of Closures:

- (A) The owner/operator shall notify the Department at least three working days prior to the proposed date of excavation or closure of the UST(s). Notification may be made by a contractor acting on the owner's behalf.
- (B) The owner/operator shall make arrangements such that, the UST(s) to be closed and the excavation zone shall be made available to be viewed and inspected by DEM personnel during the closure process.
- (C) The owner/operator is required to retain consultants to be present on the site during the tank removal process in order to ensure that an adequate closure assessment is performed.

15.09 Emergency Closures: The time frame requirements in parts 15.06 and 15.08 may be waived by the Director in the event of an emergency UST closure.

15.10 Closure Assessments:

(A) Except as otherwise provided in Rule 15.01, the owner/operator of any UST which is to be permanently closed, shall have performed a Closure Assessment to detect the presence of contamination at the UST site at those locations where contamination is most likely to be found.

(B) Closure Assessments shall be performed in accordance with DEM guidelines and indicate whether contamination was detected at the closure site. Closure Assessments shall be submitted to the DEM in writing and include, but not be limited to:

- (1) Physical descriptions of all USTs removed or otherwise closed;
- (2) An inspection of the condition of the USTs; including identification of any holes;
- (3) Observations of the soil conditions in the excavation zone;
- (4) Observations of any groundwater encountered in the excavation zone or observed via monitoring or observation wells;
- (5) Descriptions of an analytical methods used to evaluate site conditions and resulting data; and
- (6) The name and qualifications of the person preparing the Closure Assessment.

(C) The Closure Assessment shall be submitted to the Department within 30 days after the date of the UST closure; or as specified by the Director.

(D) The Director may waive the requirement for a Closure Assessment if the following conditions, documented in writing by the facility owner/operator, are met at the time of the proposed closure:

- (1) The facility has complied with all leak detection requirements for the USTs proposed to be closed and the leak detection data indicates the USTs system is tight; and
- (2) Groundwater monitoring data is available for the site that is deemed to be representative of the area which is likely to be affected by a release from the USTs; and such data which indicates that a release has not occurred.

(E) In response to conditions identified by a representative of the Department, the Director, or his or her designee may require one or more of the following actions at any site on which USTs are closed:

- (1) The collection and analysis of soil samples in and around the UST excavation zone done in accordance with standard EPA methods and protocols or other methods approved by DEM;

- (2) Soil removal in and around the UST excavation;
- (3) Installation and sampling of groundwater monitoring wells in a manner consistent with standard EPA methods and protocols or other methods approved by DEM;
- (4) That a site investigation be conducted by the owner/operator in accordance with Section 14.00;
- (5) Free product removal consistent with Section 14.00; and
- (6) Other remedial activities applicable under Section 14.00 of these rules, the Oil Pollution Control Regulations or other state and federal statutes, rules or regulations.

(F) When required by the Director, the owner/operator of a UST system permanently closed before December 22, 1988 shall assess the excavation zone in accordance with this section if, in the judgement of the DEM, releases from the UST pose a potential threat to human health or the environment.

15.11 UST Removal: Upon approval by DEM of an application to close USTs, and with proper notification to DEM pursuant to part 15.08, the owner/operator may permanently close underground storage UST by removing the USTs and related facility components provided that:

- (A) All product is removed from the UST(s) and connecting lines;
- (B) Local fire safety officials have been notified of the date, time, and place of removal activities;
- (C) The UST is cleaned to remove any remaining product or residual material and such product or residual material is disposed of in accordance with applicable federal, state and local statutes, ordinances, rules and regulations;
- (D) The gaseous vapors are released at the site in a safe manner consistent with national codes of practice, and in accordance with the closure application submitted to and approved by the Department;
- (E) Before final disposal, openings shall be made in the UST(s) to render it unfit for further use;
- (F) Any excavated contaminated soil or debris is stored, handled and disposed of in accordance with appropriate state and federal statutes, rules or regulations; and
- (G) The owner/operator of the facility, as well as the person responsible for transporting any residues or contaminated soil generated by the closure, must keep records indicating the final destination for all such materials, the date(s) of such shipment(s), and the person or company responsible for the transportation. In the case of material managed as a hazardous waste, the manifest required by the Department's Rules and Regulations for Hazardous Waste Management will satisfy this requirement.

15.12 UST Closure in Place: Upon approval by DEM of an application to close USTs, and with proper notification to the DEM pursuant to Rule 15.08, the owner of a Facility may permanently close

underground storage tanks by allowing the UST(s) and/or associated facility components to remain in the ground provided that:

(A) The UST(s) and associated piping are precision tested, the test results reveal no leaks, and all results are furnished to the Director;

(B) All product is removed from the UST and from all connecting lines;

(C) The UST is cleaned to remove any remaining product or residual material and such product or residual material is disposed of in accordance with applicable federal, state and local statutes, ordinances, rules and regulations;

(D) All fill, gauge, pump and vent lines are disconnected and all inlets and outlets are permanently capped or plugged; and

(E) All USTs are filled completely with an inert solid material and all remaining underground piping associated with the USTs are permanently capped and secured against tampering.

#### 15.13 Certificate of Closure:

(A) Following DEM inspection of a closure, the Director shall:

(1) Issue a Certificate of Closure; or

(2) Issue a Certificate of Closure subject to additional requirements as determined by the Director, including but not limited to:

(a) The correction of certain specified deficiencies within a specific time frame prior to issuing a Certificate of Closure; or

(b) Additional or continuing, monitoring, reporting or site restoration requirements.

(B) No conditional Certificate of Closure shall be transferred to a new owner/operator without conforming with the requirements of Section 18, Transfer of Certificates of Registration and Closure.

(C) All Certificates of Closure issued under the "Emergency Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials", adopted 9 October, 1984 shall remain in full force and effect provided that the owner/operator submit a written certification in accordance with Section 17.00 of these regulations.

(D) DEM shall not issue a Certificate of Closure until it is satisfied that all residues and contaminated soil generated as a result of the closure have been properly transported to an authorized facility.

**16.00 SECTION 16.00 LEAK DETECTION METHODS AND PRECISION TESTER LICENSING REQUIREMENTS**

16.01 Applicability: This section applies to all persons who manufacture precision testing equipment for use in Rhode Island and to all persons who conduct precision tests on underground storage tanks located in Rhode Island.

16.02 Prohibition:

(A) No person shall conduct precision testing on underground storage tanks or tank components in Rhode Island except as in compliance with the licensing and other provisions of this section.

(B) A licensed tester shall not authorize any other person to conduct precision testing under his/her license.

(C) A licensed tester shall not transfer his/her license to any person.

(D) Licensed testers shall perform precision tests in accordance with protocols provided by the developer or manufacturer of the testing equipment.

16.03 Approval of Leak Detection Methods:

(A) The Department shall maintain a list of leak detection methods that have been approved for use in Rhode Island.

(B) To obtain approval of a leak detection method, the manufacturer or developer of the method shall submit to DEM:

(1) The protocols, performance data, third party validation and other pertinent information that demonstrates by clear and convincing evidence that the leak detection method satisfies the requirements of 40 CFR 281.33 and the method can be performed reliably and effectively in Rhode Island;

(2) Verification that the method requires certification of testers who perform entire test;

(3) Copies of approval or acceptance letters from other states;

(4) Verification that the method is included in EPA's list of "Leak Detection Methods that appear to have met or exceed the accuracy requirements stated in the Federal UST Regulations"; and

(5) Agreement to provide certified training in the approved method to DEM employees, at no cost to the Department.

#### 16.04 Licensing Application Procedures:

(A) Any individual wishing to be licensed to conduct precision-tests in Rhode Island shall submit a completed application to the Department which includes, but may not be limited to, the following:

(1) A copy of a certificate issued by the manufacturer of the equipment of a DEM accepted precision test method that indicates that the applicant has successfully completed all training courses pertaining to the operation of the test equipment;

(2) Identification of the owner(s) of the equipment to be used by the applicant to perform tests; and identification of who has and will maintain and calibrate the equipment;

(3) A copy of a certificate of liability insurance specifying precision-testing activities for the entity which owns or operates the equipment which provides for coverage of bodily injury of at least \$100,000 per person and an aggregate of \$300,000, per occurrence, and provides for property damage of at least \$50,000 per accident with an aggregate of \$100,000;

(4) A description of the applicant's relevant experience; and

(5) An initial application license fee of \$100.00. Checks or money orders shall be made payable to "Treasurer, State of Rhode Island, Water and Air Protection Fund".

(B) Upon review and approval of a license application, either new or renewed, the Director shall issue a license.

(C) All precision tester licenses shall expire annually on September 30.

(D) Persons registered to precision test in Rhode Island on the effective date of these regulations may continue to conduct testing activities, in accordance with test protocols, until October 1, 1992. After that date, only licensed testers may conduct tests.

(E) A licensee shall notify the Director of any change in his or her business address within thirty (30) days of such change.

#### 16.05 Renewal of License:

(A) Each license shall be valid for no more than one (1) year from the date of issuance, and it shall be the responsibility of each licensed tester to renew that license in accordance with the provisions of this section.

(B) At least thirty (30) days prior to the expiration of a license, a tester shall submit a complete license renewal application on forms as provided by DEM, accompanied by a renewal fee of \$100.00.

(C) An application is considered submitted if it includes all of the required information. A precision tester who fails to submit a complete application at least thirty (30) days prior to the

expiration of his/her license, shall be subject to a late fee charge of \$25.00. Should the processing time of a untimely renewal application extend beyond the expiration date of the previous license, the tester may not conduct any precision tests in Rhode Island until after the license renewal is issued.

16.06 Signature on test results: All licensed testers shall sign all precision test results submitted to this Department or provided to the owner/operator of the UST(s) tested.

16.07 Suspension or revocation of license:

(A) Whenever the Director has reasonable grounds to believe that a licensed precision-tester has not acted in compliance with these regulations or has conducted precision-tests in such a way as to violate Chapters 23-19.1, 42-17.1 or 46-12 of the General Laws of Rhode Island, the Director may suspend or revoke that person's precision testing license. A suspension or revocation of a precision-testing license may also include, but not be limited to, the following:

(1) An assessment of penalties;

(2) An order directing the licensee and/or licensee's employer to submit documentation pertaining to his/her past UST testing activities; and

(3) An order directing the licensee and/or licensee's employer to arrange for another licensed third party tester to re-test certain named USTs or UST systems at the expense of the alleged violator and/or testing company.

(B) The Director shall revoke a precision-testing license whenever it is determined that the licensee did not act in compliance with these regulations or conducted precision-tests in violation of Chapters 23-19.1, 42-17.1 or 46-12 of the General Laws of Rhode Island. The Director reserves the right, upon notice to the alleged violator, to upgrade any license suspension to a license revocation based upon newly discovered information.

16.08 Procedure for suspension and revocation:

(A) Upon learning of reasonable grounds to believe that a violation has occurred, the Director shall notify the licensee, by certified mail, of the facts and/or conduct warranting the intended suspension or revocation. Such notice shall be for the purpose of allowing the licensee an opportunity to show compliance with all lawful requirements for the retention of his/her license.

(B) If the licensee fails to show compliance with the requirements for retaining his/her license to the satisfaction of the Director, then the Director shall issue a Notice of Suspension or Revocation enumerating the facts or conduct warranting the suspension or revocation and the statutes and/or regulations violated.

(C) All Notices of Suspension or Revocation shall be forwarded to the licensee by certified mail or served upon the licensee in accordance with the Rhode Island Superior Court Rules of Civil Procedure. In addition, all Notices of Revocation shall also be forwarded to the person who issued the certification of completion.



- 16.09 Requests for Hearings: Persons wishing to request a hearing in regard to the suspension or revocation of a precision-testing license may do so by filing a hearing request with the Department's Administrative Adjudication Division in accordance with the "Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Adjudication Division within ten (10) days of the licensee's receipt of the Notice of Suspension or Revocation. Whenever a hearing request is not filed in a timely fashion, the Notice of Suspension or Revocation shall automatically become a Compliance Order of the Department enforceable in Superior Court.
- 16.10 Upon upholding by AAD of the suspension or revocation of a license, and unless appealed to Superior Court, the Director shall notify the manufacturer of the precision testing equipment of the suspension or revocation and request concurrent action.

**17.00 SECTION 17.00 SIGNATORIES TO REGISTRATION AND CLOSURE APPLICATIONS**

- 17.01 Signatures: No person may sign an application for a Certificate of Registration or Closure except in the manner set forth in this section:

(A) For a corporation: The application shall be signed by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

- (1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or
- (2) The manager of one or more facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$21 million (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note: DEM does not require specific assignments or delegations of authority to responsible corporate officers identified in subpart 17.01(A)(1). The DEM will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under subparts 17.01(A) or (B) rather than to specific individuals.

(B) For a partnership, limited partnership or sole proprietorship; by a general partner or the proprietor, respectively;

(C) For a municipality, state, federal, or other public agency; by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:

- (1) The chief executive officer of the agency, or
- (2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

(D) For a military installation; by the Installation Commander of a rank of 06 or higher, if the installation employs more than 250 persons and authority to sign permit applications has been assigned or delegated to the Installation Commander in accordance with applicable Department of Defense (DOD) procedures. If an Installation Commander does not meet these requirements, the permit application must be signed by a superior officer who meets the requirements.

In addition, where a tenant is present on the installation and has authority or responsibility for any aspect of the regulated activity, the Tenant Commander (rank of 06 or higher) must also sign the application. The Tenant Commander must also employ more than 250 persons and have been assigned or delegated authority to sign permit applications in accordance with applicable DOD procedures. Again, if the Tenant Commander does not meet these requirements, the permit application must be signed by a superior officer meeting the requirements.

17.02 Reports: All reports required by these regulations and other information requested by the Director shall be signed by a person described in rule 17.01 of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(A) The authorization is made in writing by a person described in rule 17.01 of this section;

(B) The authorization specifies either an individual or a position having responsibility for overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(C) The written authorization is submitted to the Director.

17.03 Changes to authorization: If an authorization under part 17.01 or 17.02 of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

17.04 Certification: All documents required to be signed in accordance with Rule 17.01 shall contain the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to be the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

## **18.00 SECTION 18.00 TRANSFER OF CERTIFICATES OF REGISTRATION OR CLOSURE**

18.01 Prohibition: No person shall transfer ownership of a UST facility or facility component without prior notification to the Director as provided in 18.02.

#### 18.02 Transfer of Registration Certificates:

(A) An owner of a facility may only transfer a Certificate of Registration to a new owner after providing written notification of the proposed transfer to the Director by certified mail at least thirty (30) days prior to the proposed "transfer date" and shall include the following information:

- (1) Name, registration number and address of the Facility;
- (2) Name and address(es) of the current owner(s) and operator(s);
- (3) Names and address(es) of the proposed owners(s) and operator(s);
- (4) Names and addresses of the persons upon whom legal process can be served for both the present and proposed owners(s) and operator(s);
- (5) A notarized statement, signed by a duly authorized officer or agent of the new owner/operator stating that he/she :
  - (a) Has read the original application for a Certificate of Registration or Closure and
  - (b) Believes, to the best of his or her knowledge, that there has been no substantial modification in the operations of the Facility since the Certificate was issued; and
  - (c) Has included a description of all the changes that have occurred since the Certificate was issued.
- (6) A proposed transfer date on which the new owner will assume the Certificate and all accompanying responsibility.

(B) Accompanying the notification from the current owner shall be payment of any due or past due registration fees pertaining to the facility.

(C) The Director shall notify the existing certificate holder and the proposed new certificate holder, within thirty (30) days of receipt of notice of proposed transfer, in the event that additional information is needed or of an intent to modify, revoke or revoke and reissue the certificate. If the applicant does not receive such notice, the transfer is effective on the date specified in the notice provided to the Director pursuant to subpart 18.02 (A) of this section.

#### 18.03 Transfer of Closure Certificates:

Where the owner of a facility has been issued a Conditional Certificate of Closure, ownership of the property shall not be transferred without prior notification to the Director of the proposed transfer. Notification shall be made in writing at least (30) thirty days prior to the proposed transfer date and shall include the following:

- (A) Name and address of the current owner;
- (B) Address of facility, and facility registration number;

(C) Name and address of the new owner(s) and operator(s);

(D) Name and address of all persons upon whom legal process can be served for both the present and proposed owner's and operator(s); and

(E) A notarized statement signed by the new owner/operator stating that he or she agrees to abide by the conditions of the Closure Certificate issued for the facility site.

18.04 Transfer of Records: The existing Certificate holder shall deliver to the new owner or operator all documents and information related to the UST, facility or system, including, but not limited to, the following:

(A) Inventory reconciliations for the previous three years;

(B) The installation of any and all UST related equipment;

(C) Release detection;

(D) Closures;

(E) Monitoring;

(F) Sampling and analysis;

(G) Site assessment;

(H) Equipment maintenance;

(I) Repairs;

(J) Precision test results;

(K) All other records required to be maintained in Section 13.00.

## **19.00 SECTION 19.00 USTS/HOLDING TANKS SERVING FLOOR DRAINS**

19.01 Applicability: Except as provided by 5.03, all owners and operators of UST systems used to contain the discharge of non-sanitary wastewaters and other pollutants shall be subject to this section.

19.02 Registration: The owner/operator of a holding tank facility shall apply for and obtain a certificate of registration from the Director in accordance with the following schedule:

(A) New and Replacement Facilities: The owner/operator shall apply for a certificate of registration before commencing installation of the holding tank.

(B) Existing facilities: The owner/operator shall have applied for and obtained a certificate of registration prior to July 1, 1994.

19.03 Application for Registration: To apply for a certificate of registration, the facility owner/operator shall complete, certify, and submit to DEM, application forms which shall be available from the Department.

19.04 Minimum Requirements for Existing Holding Tank Systems: The owner/operator of a holding tank in operation prior to the commencement of these regulations, shall meet the following requirements:

(A) Verify that the holding tank and associated piping are made of or lined with materials that are compatible with the material(s) being stored.

(B) Verify that the holding tank and associated piping are solid, non-leaching, and in good operational condition.

(C) Obtain written approval from the Director, prior to any upgrade of a holding tank and its associated piping.

19.05 New Holding Tank System Requirements:

(A) Prohibitions:

(1) The installation of new holding tanks wherein the groundwater is designated as a wellhead protection area for a community well, pursuant to RIGL 46-13.1, is prohibited. However, facilities in existence prior to the effective date of these regulations shall be permitted to upgrade in accordance with the provisions of these regulations.

(2) The installation of bare steel or metal holding tanks is prohibited.

(3) No new or replacement holding tanks may be installed without prior written approval from the Director.

(B) Compatibility: All new or replacement holding tanks and/or piping systems shall be made of or lined with materials that are compatible with the substance(s) stored. The owner/operator shall not introduce, or allow to be introduced, any material into a holding tank system that is incompatible with the holding tank system.

(C) Tanks - Design and Manufacturing Standards: All new holding tanks installed in Rhode Island shall provide for secondary containment of the tank and associated piping, unless otherwise noted, and shall be constructed in accordance with one of the national codes and requirements listed below:

(1) All new and replacement holding tanks shall be of double-walled construction.

(2) All holding tanks constructed of fiberglass-reinforced plastic shall comply with the following national codes, as amended:

(i) Underwriter's Laboratories Standard 1316: "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products",

(ii) Underwriters Laboratories of Canada CAN 4-5615-M83: "Standard for Reinforced-Plastic Underground Tanks for Petroleum Products".

(3) All holding tanks constructed of steel shall be cathodically protected and shall comply with one of the following national codes, as amended:

(i) Underwriters Laboratories of Canada CAN 4-56030M85 "Standard for Steel Underground Tanks for Flammable and Combustible Liquids" and CAN 4-603.1M85: "Standard for Galvanic Corrosion Protection Systems for Underground tanks for Flammable and Combustible Liquids" and CAN 4-5631-M84: "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems;"

(ii) National Association of Corrosion Engineers Standard RP-02-85: "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems: and Underwriters Laboratories Standard 58: "Standard for Steel Underground Tanks for Flammable and Combustible Liquids".

(4) All holding tanks constructed of a steel-fiberglass-reinforced plastic composite shall comply with the: Association of Composite Tanks ACT-100: "Specifications for External Corrosion Protection on FRP Composite Steel Underground Storage Tanks", as amended.

(5) Outer jackets made of steel shall meet design and construction standards in accordance with the Steel Tank Institute: "Standard for Dual-Wall Underground Storage Tanks" and shall provide corrosion protection in accordance with Underwriters Laboratories Standard 1746: "External Corrosion Protection Systems for Steel Underground Storage Tanks".

(D) Manufacturer's Test: Prior to installation, all new and replacement holding tanks shall be factory tested at a minimum of five pounds per square inch gauge and shall be guaranteed tight by the manufacturer. This guarantee shall be filed with the DEM at the time of installation application.

(E) Installation Standard:

(1) All tanks, piping, and other related facility components shall be installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as listed in Appendix B and in accordance with the manufacturer's instructions.

(2) The local city/town building official shall be notified prior to the commencement of installation.

(F) Precision Testing Upon Installation: All new and replacement facility components shall be precision tested upon completion of installation. In accordance with Rule 10.06 the results of this initial precision test shall be submitted to the Director within 15 calendar days of test completion or in the event of a leak, in accordance with Section 14.00, Leak Response. No further precision testing will be required beyond installation, unless the Director has reason to believe the holding tank or its secondary containment has been breached.

(G) Piping - Design Construction and Installation: All new or replacement underground piping that routinely contain regulated substances, including fittings and connections, shall be designed and constructed in accordance with the following:

(1) Fiberglass reinforced plastic piping and nonmetallic flexible piping shall be made of materials listed by Underwriters Laboratories or Underwriters Laboratories of Canada; and be equipped with secondary containment.

(2) All steel or metal piping which routinely contains a regulated substance shall be equipped with secondary containment, and all such piping that is in contact with the ground shall be cathodically protected in the following manner:

(i) By coating the piping with suitable dielectric material;

(ii) Except where cathodic protection is provided by impressed current, underground piping systems shall have dielectric bushings, washers, sleeves or gaskets installed at the end to electrically isolate the piping system from the tank. These dielectric connectors shall be chemically compatible with any and all substances stored and be resistant to corrosive soils; and

(iii) All cathodic protection systems shall be designed, installed, operated and maintained in accordance with the national codes of practice cited in Rule 11.05 (B).

(H) Existing Piping: Existing piping from a closed UIC disposal system may be utilized provided it is proven to be sound and compatible with the stored materials. All corroded and noncompatible piping shall be removed and replaced.

(I) Overfill Prevention Equipment: All new and replacement holding tank systems shall be provided with equipment to prevent overfilling during normal operation.

19.06 Facility Modification: No substantial modification may be made to any holding tank facility for which an application for a certificate of registration is required, without prior written notification to and approval by the Director.

19.07 Maintenance Requirements:

(A) All wastes shall be removed from the holding tank as necessary and in accordance with appropriate state, local, and federal rules and regulations.

(B) Records of all waste removals must be maintained on site for a minimum of five years.

(C) All tanks and associated piping must be maintained in accordance with manufacturers standards.

(D) On a yearly basis, the space between the secondary containment and the holding tank, shall be physically monitored to verify that neither the tank nor the secondary containment have been breached. If either has been breached, the Department shall be notified in accordance with Rule 14.04 of these regulations.

(E) Upon reasonable notice, the owner/operator shall make available for inspection by DEM, any records required under this subsection.

## **20.00 SECTION 20.00 VARIANCES**

20.01 Variance Requests: Any owner/operator of a facility may submit a written request to the Director for a variance from some or all provisions of these regulations. Such request for a variance must, at the minimum, contain the following:

(A) The name and address of the facility owner/operator;

(B) The name, location, and registration number of the facility for which the owner/operator seeks a variance;

(C) A list of the names and addresses of the owners and tenants of all properties that abut the facility;

(D) A short and plain statement of all of the reasons for which the facility owner/operator seeks a variance. The person seeking the variance should separately and by number list each reason and any other mitigating factor he believes the Director should consider; and

(E) The signature of the facility owner/operator or an authorized person as set forth in Section 17.00.

20.02 Variance Decisions:

(A) The owner/operator shall have the burden of proving by clear and convincing evidence that a variance should be granted because alternative design or operating standards are substantially equivalent to the regulations and will have no adverse effect on public health and the environment.

(B) If the Director determines that there is widespread public interest or that the variance request raises major issues that could affect other facilities, then the Director may schedule a public hearing to solicit public comment prior to rendering a decision on the variance request.

(C) The Director's decision to grant or deny a variance shall be in writing and may, as a condition of granting the variance, impose appropriate requirements necessary to protect the public health and environment.

20.03 Appeal of Variance Denials: Any person affected by the grant or denial of a variance request may, in accordance with the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters, file an appeal to review the initial decision. All appeals must be received by the Administrative Adjudication Division within ten (10) days of receipt of the denial of the variance.



## **21.00 SECTION 21.00 APPEALS**

Any person affected by a decision of the Director pursuant to these regulations may, in accordance with Administrative Rules of Practice and Procedure for the Department of Environmental Management, file a claim for an adjudicatory hearing to review the decision. The party appealing a Department decision bears the burden of providing that their application or actions comply with all requirements of the rules and regulations herein.

## **22.00 SECTION 22.00 PENALTIES**

The Director shall assess all penalties for violation of these regulations in accordance with the provisions of Rhode Island General Laws Chapters 46-12, 42-17.1, 42-17.6 and 23-19.1 and the "Rules and Regulations for Assessment of Administrative Penalties".

The foregoing rules and regulations, after due notice and hearing, are hereby adopted and filed with the Secretary of State, this 11th day of June, 2002, to become effective twenty (20) days thereafter, in accordance with the provisions of Chapter 42-35 of the General Laws of Rhode Island, 1956, as amended.

The foregoing regulations are hereby approved for filing with the Secretary of State in accordance with chapters 42-45, 42-17.1, 42-17.6, 76-12, 46-13.1, 23-18.9 and 23-9.1 of the general laws of Rhode Island, 1956 as amended.

ATTEST A TRUE COPY:

\_\_\_\_\_  
Jan Reitsma,  
Director of Environmental Management

\_\_\_\_\_  
Date

I hereby certify that the enclosed is a true and accurate copy of the regulations being filed with the Secretary of State on the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:\_\_\_\_\_

## **APPENDIX A: DEFINITION OF HAZARDOUS SUBSTANCE**

Hazardous substance, as defined by section 101(14) of CERCLA, means (a) any substance designated pursuant to section 311(b)(2)(A) of the CWA; (b) any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; (c) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress); (d) any toxic pollutant listed under section 307(a) of the CWA; (e) any hazardous air pollutant listed under section 112 of the Clean Air Act; and (f) any imminently hazardous chemical substance or mixture with respect to which the Administrator of EPA has taken action pursuant to section 7 of the Toxic Substances Control Act. The terms do not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (a) through (f) of this paragraph, and the term does not include natural gas, natural gas liquids, liquified natural gas or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

## **APPENDIX B: APPLICABLE NATIONAL CODES OF PRACTICE**

### **Installation:**

API Publication 1615, March 1996

"Installation of Underground Petroleum Storage Systems," Recommended Practice, 5th Edition

NFPA 31, 1997

"Standard for the Installation of Oil-Burning Equipment"

PEI/RP100-87, 1997

"Recommended Practices for Installation of Underground Liquid Storage Systems"

### **UST Design and Manufacturing Standards**

UL Standard 1316, April 2, 1996

"Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures", 2nd Edition

ASTM Standard D4021-92, 1992

"Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks"

STI sti-P3 , April 24, 1996

"Sti-P3 Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks"

UL Standard 1746, April 11, 1995

"Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks", 2nd Edition

UL Standard 58, July 26, 1994

"Standard for Steel Underground Tanks for Flammable and Combustible Liquids", 8th Edition

STI ACT-100, 1991

"Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks"

### **Corrosion Protection**

API 1632, May 1996

"Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", Recommended Practice, 3rd Edition

NACE RP-0169-96, 1996

"Recommended Practice: Control of External Corrosion on Underground or Submerged Metallic Piping Systems"

NACE RP0285-95, 1995

"Recommended Practice: Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"

Also UL 1746 (See Above)

### Lining

API Publication 1631, 1992

"Interior Lining of Underground Storage Tanks" Recommended Practice, 3rd Edition

NLPA Standard 631, 1991

"Entry, Cleaning, Interior Inspection, Repair and Lining of Underground Storage Tanks"

### General

API Publication 1635, 1987

"Management of Underground Petroleum Storage Systems at Marketing and Distribution Facilities", Recommended Practice, 3rd Edition

NFPA 30, 1990

"Flammable and Combustible Liquids Code"

NFPA 30A, 1993

"Automobile and Marine Service Station Code"

NFPA 385, 1993

"Tank Vehicles for Flammable and Combustible Liquids"

### Closure

API Publication 1604, March 1996

"Closure of Underground Petroleum Storage Tanks" Recommended Practice, 3rd Edition

API Publication 2015, May 1994

"Planning and Managing Tank Entry from Decommissioning Through Recommissioning", Fire and Safety Coordination, 5th Edition

API Publication 1637, 1986

"Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals", 1st Edition

APPENDIX C: FINANCIAL RESPONSIBILITY REQUIRED  
40 CFR 280 SUBPART H, AS AMENDED

**PART 280--TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS**

1. The authority citation for Part 280 continues to read as follows:

**Authority:** 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(h).

2. Appendices I through III following Subpart G are designated as Appendices I through III to Part 280.

3. 40 CFR Part 280 is amended to add a new Subpart H as follows:

**Subpart H--Financial Responsibility**

Sec.

[§ 280.90 Applicability](#)

[§ 280.91 Compliance dates](#)

[§ 280.92 Definition of Terms](#)

[§ 280.93 Amount and scope of required financial responsibility](#)

[§ 280.94 Allowable mechanisms and combinations of mechanisms](#)

[§ 280.95 Financial test of self-insurance](#)

[§ 280.96 Guarantee](#)

[§ 280.97 Insurance and risk retention group coverage](#)

[§ 280.98 Surety bond](#)

[§ 280.99 Letter of credit](#)

[§ 280.100 Use of state-required mechanism](#)

[§ 280.101 State fund of other state assurance](#)

[§ 280.102 Trust Fund](#)

[§ 280.103 Standby trust fund](#)

[§ 280.104 Substitution of financial assurance mechanisms by owner or operator](#)

[§ 280.105 Cancellation or nonrenewal by a provider of financial assurance](#)

[§ 280.106 Reporting by owner or operator](#)

[§ 280.107 Recordkeeping](#)

[§ 280.108 Drawing on financial assurance mechanisms](#)

[§ 280.109 Release from the requirements](#)

[§ 280.110 Bankruptcy or other incapacity of owner or operator or provider of financial assurance](#)

[§ 280.111 Replenishment of guarantees, letters of credit, or surety bonds](#)

[§ 280.112 Suspension of enforcement](#)

[Reserved]

\* \* \* \* \*

**Subpart H--Financial Responsibility**

**§ 280.90 Applicability.**

(a) This subpart applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this section.

(b) Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the date for compliance established in § 280.91.

(c) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subpart.

(d) The requirements of this subpart do not apply to owners and operators of any UST system described in § 280.10 (b) or (c).

(e) If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in § 280.91

#### **§ 280.91 Compliance dates.**

Owners of petroleum underground storage tanks are required to comply with the requirements of this subpart by the following dates:

(a) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of \$20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration; January 24, 1989.

(b) All petroleum marketing firms owning 100--999 USTs; October 26, 1989.

(c) All petroleum marketing firms owning 13--99 USTs at more than one facility; April 26, 1991.

(d) All petroleum UST owners not described in paragraphs (a), (b), or (c) of this section, excluding local government entities; October 26, 1990.

#### **§ 280.92 Definition of terms.**

When used in this subpart, the following terms shall have the meanings given below:

a) "Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

b) "Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

c) "Controlling interest" means direct ownership of at least 50 percent of the voting stock of another entity.

d) "Director of the Implementing Agency" means the EPA Regional Administrator, or, in the case of a state with a program approved under section 9004, the Director of the designated state or local agency responsible for carrying out an approved UST program.

e) "Financial reporting year" means the latest consecutive twelve--month period for which any of the following reports used to support a financial test is prepared:

(1) a 10--K report submitted to the SEC;

(2) an annual report of tangible net worth submitted to Dun and Bradstreet; or

(3) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration.

"Financial reporting year" may thus comprise a fiscal or a calendar year period.

f) "Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought,

(1) By EPA or a state to require corrective action or to recover the costs of corrective action;

(2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(3) By any person to enforce the terms of a financial assurance mechanism.

g) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

**Note:** This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

h) "Owner or operator", when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

i) "Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

j) "Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

k) "Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

l) "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in §§ 280.95-- 280.103, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state--required mechanism, or a state.

m) "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

n) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

### **§ 280.93 Amount and scope of required financial responsibility.**

(a) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility 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 in at least the following per--occurrence amounts:

(1) For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million.

(2) For all other owners or operators of petroleum underground storage tanks; \$500,000.

(b) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility 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 in at least the following annual aggregate amounts:

(1) For owners or operators of 1 to 100 petroleum underground storage tanks, \$1 million; and

(2) For owners or operators of 101 or more petroleum underground storage tanks, \$2 million.

(c) For the purposes of paragraphs (b) and (f) of this section, only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in paragraph (e) of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(1) Taking corrective action;

(2) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

(3) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in paragraphs (a) and (b) of this section.

(e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance by the first--occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(g) The amounts of assurance required under this section exclude legal defense costs.

(h) The required per--occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

### **§ 280.94 Allowable mechanisms and combinations of mechanisms.**

(a) Subject to the limitations of paragraphs (b) and (c) of this section, an owner or operator, may use any one or combination of the mechanisms listed in §§280.95 through 280.103 to demonstrate financial responsibility under this subpart for one or more underground storage tanks.

(b) An owner or operator may use a guarantee or surety bond to establish financial responsibility only if the Attorney(s) General of the state(s) in which the underground storage tanks are located has (have) submitted a written statement to the implementing agency that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in that state.



(c) An owner or operator may use self--insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

#### **§ 280.95 Financial test of self--insurance.**

(a) An owner or operator, and/or guarantor, may satisfy the requirements of § 280.93 by passing a financial test as specified in this section. To pass the financial test of self--insurance, the owner or operator, and/or guarantor must meet the criteria of paragraph (b) or (c) of this section based on year--end financial statements for the latest completed fiscal year.

(b)(1) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(i) The total of the applicable aggregate amount required by § 280.93, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to EPA under this section or to a state implementing agency under a state program approved by EPA under 40 CFR part 281;

(ii) The sum of the corrective action cost estimates, the current closure and post--closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 264.101, 264.143, 264.145, 265.143, 165.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR part 271; and

(iii) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR part 145.

(2) The owner or operator, and/or guarantor, must have a tangible net worth of at least \$10 million.

(3) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in paragraph (d) of this section.

(4) The owner or operator, and/or guarantor, must either:

(i) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(ii) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

(5) The firm's year--end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(c)(1) The owner or operator, and/or guarantor must meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in § 280.93 (b)(1) and (b)(2) for the "amount of liability coverage" each time specified in that section.

(2) The fiscal year--end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(3) The firm's year--end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(4) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in paragraph (d) of this section.

(5) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(i) He has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year--end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and

(ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(d) To demonstrate that it meets the financial test under paragraph (b) or (c) of this section, the chief financial officer of the owner or operator, or guarantor, must sign, within 120 days of the close of each financial reporting year, as defined by the twelve--month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

#### **LETTER FROM CHIEF FINANCIAL OFFICER**

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self--insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by

[insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test or a financial test under an authorized State program by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or a financial test under a State program approved under 40 CFR part 281. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test or a financial test under a State program authorized under 40 CFR part 281 by the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22 or the corresponding State requirements.]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR parts 271 and 145:

<b>EPA Regulations</b>	<b>Amount</b>
Closure (§§ 264.143 and 265.143)	\$_____
Post--Closure Care (§§ 264.145 and 265.145)	\$_____
Liability Coverage (§§ 264.147 and 265.147)	\$_____
Corrective Action (§§ 264.101(b))	\$_____
Plugging and Abandonment (§ 144.63)	\$_____
Closure	\$_____
Post--Closure Care	\$_____
Liability Coverage	\$_____
Corrective Action	\$_____
Plugging and Abandonment	\$_____
Total	\$_____

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of paragraph (b) of § 280.95 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of paragraph (c) of § 280.95 are being used to demonstrate compliance with the financial test requirements.]

#### **Alternative I**

- Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee. \$\_\_\_\_\_
- Amount of corrective action, closure and post--closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee. \$\_\_\_\_\_
- Sum of lines 1 and 2 . \$\_\_\_\_\_
- Total tangible assets. \$\_\_\_\_\_
- Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]. \$\_\_\_\_\_
- Tangible net worth [subtract line 5 from line 4]. \$\_\_\_\_\_
- Is line 6 at least \$10 million? **Yes** **No**  
\_\_\_\_\_
- Is line 6 at least 10 times line 3? \_\_\_\_\_
- Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? \_\_\_\_\_
- Have financial statements for the latest fiscal year been filed with the Energy Information Administration? \_\_\_\_\_
- Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? \_\_\_\_\_
- Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] \_\_\_\_\_

#### **Alternative II**

- Amount of annual UST aggregate coverage being assured by a test, and/or guarantee. \$\_\_\_\_\_
- Amount of corrective action, closure and post--closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee. \$\_\_\_\_\_

3.	Sum of lines 1 and 2.	\$	_____
4.	Total tangible assets.	\$	_____
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6].	\$	_____
6.	Tangible net worth [subtract line 5 from line 4].	\$	_____
7.	Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.].	\$	_____
		<b>Yes</b>	<b>No</b>
8.	Is line 6 at least \$10 million?	_____	_____
9.	Is line 6 at least 6 times line 3?	_____	_____
10.	Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11.]	_____	_____
11.	Is line 7 at least 6 times line 3? [Fill in either lines 12--15 or lines 16--18:]	_____	_____
12.	Current assets.	_____	_____
13.	Current liabilities.	_____	_____
14.	Net working capital [subtract line 13 from line 12].	_____	_____
15.	Is line 14 at least 6 times line 3?	_____	_____
16.	Current bond rating of most recent bond issue.	_____	_____
17.	Name of rating service.	_____	_____
18.	Date of maturity of bond.	_____	_____
19.	Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration?	_____	_____

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4--18 above and the financial statements for the latest fiscal year.]  
[For both Alternative I and Alternative II complete the certification with this statement.]  
I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR part 280.95(d) as such regulations were constituted on the date shown immediately below.

[Signature]  
[Name]  
[Title]  
[Date]

- (e) If an owner or operator using the test to provide financial assurance finds that he or she 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.
- (f) The Director of the implementing agency may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the Director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of § 280.95(b) or (c) and (d), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.
- (g) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she 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 he or she no longer meets the requirements of the financial test, the owner or operator must notify the Director of such failure within 10 days.

## § 280.96 Guarantee.

- (a) An 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:
- (1) A firm that (i) possesses a controlling interest in the owner or operator; (ii) possesses a controlling interest in a firm described under paragraph (a)(1)(i) of this section; or, (iii) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or,
  - (2) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.
- (b) Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of § 280.95 based on year--end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in § 280.95(d) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the Director of the implementing agency notifies the

guarantor that he no longer meets the requirements of the financial test of § 280.95 (b) or (c) and (d), the guarantor must notify the owner or operator within 10 days of receiving such notification from the Director. In both cases, 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 § 280.110(c).

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

## **GUARANTEE**

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state 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 [owner or operator] of [business address].

### **Recitals.**

(1) Guarantor meets or exceeds the financial test criteria of 40 CFR 280.95 (b) or (c) and (d) and agrees to comply with the requirements for guarantors as specified in 40 CFR 280.96(b).

(2) [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 280.22 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" or "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) [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 an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to [implementing agency] and to any and all third parties that: In the event that [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 280.108, in an amount not to exceed the coverage limits specified above.

In the event that the [Director] 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 40 CFR part 280, subpart F, the guarantor upon written instructions from the [Director] shall fund a standby trust in accordance with the provisions of 40 CFR 280.108, 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 fund a standby trust in accordance with the provisions of 40 CFR 280.108 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 the financial test criteria of 40 CFR 280.95 (b) or (c) and (d), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [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 [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 [insert 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 owner or operator] arising from, and in the course of, employment by [insert 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 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 280.93.

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

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 280.96(c) 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: \_\_\_\_\_

(d) An owner or operator who uses a guarantee to satisfy the requirements of § 280.93 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Director of the implementing agency under § 280.108. This standby trust fund must meet the requirements specified in § 280.103.

#### **§ 280.97 Insurance and risk retention group coverage.**

(a) An owner or operator may satisfy the requirements of § 290.93 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in paragraph (b)(1) of this section, or evidenced by a certificate of insurance worded as specified in paragraph (b)(2) of this section, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

##### **(1) Endorsement**

Name[name of each covered location] : \_\_\_\_\_

Address[address of each covered location] : \_\_\_\_\_

Policy Number : \_\_\_\_\_

Period of Coverage[current policy period] : \_\_\_\_\_

Name of [Insurer or Risk Retention Group] : \_\_\_\_\_

Address of [Insurer or Risk Retention Group] : \_\_\_\_\_

Name of Insured : \_\_\_\_\_

Address of Insured : \_\_\_\_\_

##### **ENDORSEMENT:**

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[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 280.22, or the corresponding state requirement, and the name and address of the facility.]

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" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different

tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e);

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third--party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95--280.102.

c. Whenever requested by [a Director of an implementing agency], the ["Insurer" or "Group"] agrees to furnish to [the Director] a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non--payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non--payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims--made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non--renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in 40 CFR 280.97(b)(1) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

## **(2) Certificate of Insurance**

Name [name of each covered location] : \_\_\_\_\_

Address [address of each covered location] : \_\_\_\_\_

Policy Number : \_\_\_\_\_

Endorsement (if applicable) : \_\_\_\_\_

Period of Coverage [current policy period] : \_\_\_\_\_

Name of [Insurer or Risk Retention Group] : \_\_\_\_\_

Address of [Insurer or Risk Retention Group] : \_\_\_\_\_

Name of Insured : \_\_\_\_\_

Address of Insured: \_\_\_\_\_

### **Certification:**

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[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 280.22, or the corresponding state requirement, and the name and address of the facility.]

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" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third--party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95--280.102.

c. Whenever requested by [a Director of an implementing agency], the ["Insurer" or "Group"] agrees to furnish to [the Director] a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non--payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non--payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims--made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non--renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in 40 CFR 280.97(b)(2) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(c) Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

## **§ 280.98 Surety bond.**

(a) An owner or operator may satisfy the requirements of § 280.93 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

## **PERFORMANCE BOND**

Date bond executed: \_\_\_\_\_

Period of coverage: \_\_\_\_\_

Principal [legal name and business address of owner or operator]: \_\_\_\_\_

Type of organization [insert "individual," "joint venture," "partnership," or "corporation"]]: \_\_\_\_\_

State of incorporation (if applicable): \_\_\_\_\_

Surety(ies) [name(s) and business address(es)]: \_\_\_\_\_

Scope of Coverage: [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 280.22, or the corresponding state requirement, and the name and address of the facility. List the coverage guaranteed by the bond: "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" "arising from operating the underground storage tank"].

Penal sums of bond:

Per occurrence \$ \_\_\_\_\_

Annual aggregate \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to [the implementing agency], in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, to provide financial assurance 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" or "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 underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with 40 CFR part 280, subpart F and the Director of the state implementing agency's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 40 CFR part 280, subpart H, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert 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 owner or operator] arising from, and in the course of, employment by [insert 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 owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury 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 280.93.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by [the Director of the implementing agency] that the Principal has failed to ["take corrective action, in accordance with 40 CFR part 280, subpart F and the Director's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with 40 CFR part 280 and the Director's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by [the Regional Administrator or the Director] under 40 CFR 280.108.

Upon notification by [the Director] that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that [the Director] has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by [the Director] under 40 CFR 280.108.



The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond. The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 280.98(b) as such regulations were constituted on the date this bond was executed.

### **Principal**

[Signature(s)]  
[Names(s)]  
[Title(s)]  
[Corporate seal]

### **Corporate Surety(ies)**

[Name and address]  
[State of Incorporation: \_\_\_\_\_]  
[Liability limit: \$ \_\_\_\_\_]  
[Signature(s)]  
[Names(s) and title(s)]  
[Corporate seal]

[For every co--surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ \_\_\_\_\_

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per--occurrence and annual aggregate penal sums.

(d) The owner or operator who uses a surety bond to satisfy the requirements of § 280.93 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Director under § 280.108. This standby trust fund must meet the requirements specified in § 280.103.

### **§ 280.99 Letter of credit.**

(a) An owner or operator may satisfy the requirements of § 280.93 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in each state where used and whose letter--of--credit operations are regulated and examined by a federal or state agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

### **IRREVOCABLE STANDBY LETTER OF CREDIT**

[Name and address of issuing institution]  
[Name and address of Director(s) of state implementing agency(ies)]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ---- in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation [insert, if more than one Director of a state implementing agency is a beneficiary, "by any one of you"] of

(1) your sight draft, bearing reference to this letter of credit, No. ----, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit may be drawn on to cover [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" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[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 280.22, or the corresponding state requirement, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of [insert 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 owner or operator] arising from, and in the course of, employment by [insert 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 owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury 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 280.93.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 40 CFR 280.99(b) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of § 280.93 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Director of the implementing agency will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Director under § 280.108.

This standby trust fund must meet the requirements specified in § 280.103.

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

#### **§ 280.100 Use of state--required mechanism.**

(a) For underground storage tanks located in a state that does not have an approved program, and where the state requires owners or operators of underground storage tanks to demonstrate financial responsibility for taking corrective action and/or for compensating third parties for bodily injury and property damage, an owner or operator may use a state--required financial mechanism to meet the requirements of § 280.93 if the Regional Administrator determines that the state mechanism is at least equivalent to the financial mechanisms specified in this subpart.

(b) The Regional Administrator will evaluate the equivalency of a state--required mechanism principally in terms of: certainty of the availability of funds for taking corrective action and/or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The Regional Administrator may also consider other factors as is necessary.

(c) The state, an owner or operator, or any other interested party may submit to the Regional Administrator a written petition requesting that one or more of the state--required mechanisms be considered acceptable for meeting the requirements of § 280.93. The submission must include copies of the appropriate state statutory and regulatory requirements and must show the amount of funds for corrective action and/or for compensating third parties assured by the mechanism(s). The Regional Administrator may require the petitioner to submit additional information as is deemed necessary to make this determination.

(d) Any petition under this section may be submitted on behalf of all of the state's underground storage tank owners and operators.

(e) The Regional Administrator will notify the petitioner of his determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this subpart. Pending this determination, the owners and operators using such mechanisms will be deemed to be in compliance with the requirements of § 280.93 for underground storage tanks located in the state for the amounts and types of costs covered by such mechanisms.

#### **§ 280.101 State fund or other state assurance.**

(a) An owner or operator may satisfy the requirements of § 280.93 for underground storage tanks located in a state, where EPA is administering the requirements of this subpart, which assures that monies will be available from a state fund or state assurance program to cover costs up to the limits specified in § 280.93 or otherwise assures that such costs will be paid if the Regional Administrator determines that the state's assurance is at least equivalent to the financial mechanisms specified in this subpart.

(b) The Regional Administrator will evaluate the equivalency of a state fund or other state assurance principally in terms of: Certainty of the availability of funds for taking corrective action and/or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The Regional Administrator may also consider other factors as is necessary.

(c) The state must submit to the Regional Administrator a description of the state fund or other state assurance to be supplied as financial assurance, along with a list of the classes of underground storage tanks to which the funds may be applied. The Regional Administrator may require the state to submit additional information as is deemed necessary to make a determination regarding the acceptability of the state fund or other state assurance. Pending the determination by the Regional Administrator, the owner or operator of a covered class of USTs will be deemed to be in compliance with the requirements of § 280.93 for the amounts and types of costs covered by the state fund or other state assurance.

(d) The Regional Administrator will notify the state of his determination regarding the acceptability of the state's fund or other assurance in lieu of financial mechanisms specified in this subpart. Within 60 days after the Regional Administrator notifies a state that a state fund or other state assurance is acceptable, the state must provide to each owner or operator for which it is assuming financial responsibility a letter or certificate describing the nature of the state's assumption of responsibility. The letter or certificate from the state must include, or have attached to it, the following information: the facility's name and address and the amount of funds for corrective action and/or for compensating third parties that is assured by the state. The owner or operator must maintain this letter or certificate on file as proof of financial responsibility in accordance with § 280.107(b)(5).

#### **§ 280.102 Trust fund.**

(a) An owner or operator may satisfy the requirements of § 280.93 by establishing a trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(b) The wording of the trust agreement must be identical to the wording specified in § 280.103(b)(1), and must be accompanied by a formal certification of acknowledgement as specified in § 280.103(b)(2).

(c) The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

(d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the Director of the implementing agency for release of the excess.

(e) If other financial assurance as specified in this subpart is substituted for all or part of the trust fund, the owner or operator may submit a written request to the Director of the implementing agency for release of the excess.

(f) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraph (d) or (e) of this section, the Director of the implementing agency will instruct the trustee to release to the owner or operator such funds as the Director specifies in writing.

#### **§ 280.103 Standby trust fund.**

(a) An owner or operator using any one of the mechanisms authorized by §§ 280.96, 280.98, or 280.99 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal agency or an agency of the state in which the fund is established.

(b)(1) The standby trust agreement, or trust agreement, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

## **TRUST AGREEMENT**

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of \_\_\_\_" or "a national bank"], the "Trustee."

[Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. (This paragraph is only applicable to the standby trust agreement.)]

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);]

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

### **Section 1. Definitions**

As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

### **Section 2. Identification of the Financial Assurance Mechanism**

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

### **Section 3. Establishment of Fund**

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of [implementing agency]. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to [the Director of the implementing agency's] instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by [the state implementing agency].

### **Section 4. Payment for ["Corrective Action" and/or Third-Party Liability Claims"]**

The Trustee shall make payments from the Fund as [the Director of the implementing agency] shall direct, in writing, to provide for the payment of the costs of [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" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert 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 owner or operator] arising from, and in the course of employment by [insert 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 owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury 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 280.93.

The Trustee shall reimburse the Grantor, or other persons as specified by [the Director], from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as [the Director] shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as [the Director] specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

## **Section 5. Payments Comprising the Fund**

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

## **Section 6. Trustee Management**

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a--2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

## **Section 7. Commingling and Investment**

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a--1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

## **Section 8. Express Powers of Trustee**

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central

depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

## **Section 9. Taxes and Expenses**

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

## **Section 10. Advice of Counsel**

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

## **Section 11. Trustee Compensation**

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

## **Section 12. Successor Trustee**

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

## **Section 13. Instructions to the Trustee**

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by [the Director of the implementing agency] to the Trustee shall be in writing, signed by [the Director], and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or [the director] hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or [the Director], except as provided for herein.

## **Section 14. Amendment of Agreement**

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and [the Director of the implementing agency] if the Grantor ceases to exist.

## **Section 15. Irrevocability and Termination**

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and [the Director of the implementing agency], if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

#### **Section 16. Immunity and Indemnification**

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or [the Director of the implementing agency] issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

#### **Section 17. Choice of Law**

This Agreement shall be administered, construed, and enforced according to the laws of the state of [insert name of state], or the Comptroller of the Currency in the case of National Association banks.

#### **Section 18. Interpretation**

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 280.103(b)(1) as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

**Attest:**

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of the Witness]

[Title]

[Seal]

(2) The standby trust agreement, or trust agreement must be accompanied by a formal certification of acknowledgement similar to the following. State requirements may differ on the proper content of this acknowledgment.

State of \_\_\_\_\_

County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

(c) The Director of the implementing agency will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Director determines that no additional corrective action costs or third--party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(d) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

#### **§ 280.104 Substitution of financial assurance mechanisms by owner or operator.**

(a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subpart, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of § 280.93.

(b) After obtaining alternate financial assurance as specified in this subpart, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

#### **§ 280.105 Cancellation or nonrenewal by a provider of financial assurance.**

(a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) Termination of insurance or risk retention coverage, except for non-payment or misrepresentation by the insured, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in §280.114, the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the Director of the implementing agency of such failure and submit:

(1) The name and address of the provider of financial assurance;

(2) The effective date of termination; and

(3) The evidence of the financial assistance mechanism subject to the termination maintained in accordance with §280.107(b).

#### **§ 280.106 Reporting by owner or operator.**

(a) An owner or operator must submit the appropriate forms listed in §280.111(b) documenting current evidence of financial responsibility to the Director of the implementing agency:

(1) Within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under §280.53 or §280.61;

(2) If the owner or operator fails to obtain alternate coverage as required by this subpart, within 30 days after the owner or operator receives notice of:

(i) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,

(ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(iii) Failure of a guarantor to meet the requirements of the financial test,

(iv) Other incapacity of a provider of financial assurance; or

(3) As required by §280.95(g) and §280.109(b).

(b) An owner or operator must certify compliance with the financial responsibility requirements of this part as specified in the new tank notification form when notifying the appropriate state or local agency of the installation of a new underground storage tank under §280.22.

(c) The Director of the Implementing Agency may require an owner or operator to submit evidence of financial assurance as described in §280.111(b) or other information relevant to compliance with this subpart at any time.

(The information requirements in this section have been approved by the Office of Management and Budget and assigned OMB control number 2050--0066).

#### **§ 280.107 Recordkeeping.**

(a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subpart for an underground storage tank until released from the requirements of this subpart under §208.113. An owner or operator must maintain such evidence at the underground storage tank site or the owner's or operator's place of work. Records maintained off-site must be made available upon request of the implementing agency.

(b) An owner or operator must maintain the following types of evidence of financial responsibility:



- (1) An owner or operator using an assurance mechanism specified in §§280.95 through 280.100 or §280.102 must maintain a copy of the instrument worded as specified.
- (2) An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test must maintain a copy of the chief financial officer's letter based on year-- end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.
- (3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
- (4) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.
- (5) An owner or operator covered by a state fund or other state assurance must maintain on file a copy of any evidence of coverage supplied by or required by the state under §280.101(d).
- (6) An owner or operator using an assurance mechanism specified in §§280.95 through 280.102 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

### **Certification of Financial Responsibility**

[Owner or operator] hereby certifies that it is in compliance with the requirements of subpart H of 40 CFR part 280. The financial assurance mechanism(s) used to demonstrate financial responsibility under subpart H of 40 CFR part 280 is (are) as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "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."]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

(The information requirements in this section have been approved by the Office of Management and Budget and assigned OMB control number 2050--0066.)

### **§ 280.108 Drawing on financial assurance mechanisms.**

(a) Director of the implementing agency shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

- (1)(i) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and
  - (ii) The Director determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the Director pursuant to subparts E or F of a release from an underground storage tank covered by the mechanism; or
  - (2) The conditions of paragraph (b)(1) or (b)(2) (i) or (ii) of this section are satisfied.
- (b) The Director of the implementing agency may draw on a standby trust fund when:
- (1) The Director makes a final determination that a release has occurred and immediate or long--term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under 40 CFR part 280, subpart F; or
  - (2) The Director has received either:
    - (i) Certification from the owner or operator and the third-- party liability claimant(s) and from attorneys representing the owner or operator and the third--party liability claimant(s) that a third--party 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 principals and as legal representatives of [insert: owner or operator] and [insert: name and address of third--party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[\_\_\_\_\_].

[Signatures]

Owner or Operator

Attorney for Owner or Operator

(Notary) Date

[Signatures]

Claimant(s)

Attorney(s) for Claimant(s)

(Notary) Date

or (ii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this subpart and the Director determines that the owner or operator has not satisfied the judgment.

(c) If the Director of the implementing agency determines that the amount of corrective action costs and third--party liability claims eligible for payment under paragraph (b) of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The Director shall pay third-- party liability claims in the order in which the Director receives certifications under paragraph (b)(2)(i) of this section, and valid court orders under paragraph (b)(2)(ii) of this section.

#### **§ 280.109 Release from the requirements.**

An owner or operator is no longer required to maintain financial responsibility under this subpart for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by 40 CFR part 280, subpart G.

#### **§ 280.110 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.**

(a) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the Director of the implementing agency by certified mail of such commencement and submit the appropriate forms listed in §280.107(b) documenting current financial responsibility.

(b) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in §280.96.

(c) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self--insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state--required mechanism. The owner or operator must obtain alternate financial assurance as specified in this subpart within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he must notify the Director of the implementing agency.

(d) Within 30 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third--party compensation costs, the owner or operator must obtain alternate financial assurance.

**§ 280.111 Replenishment of guarantees, letters of credit, or surety bonds.**

(a) If at any time after a standby trust is funded upon the instruction of the Director of the implementing agency with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(1) Replenish the value of financial assurance to equal the full amount of coverage required, or

(2) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by §280.93 of this subpart. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

**§ 280.112 Suspension of enforcement. [Reserved]**

## 40 CFR Part 280

[FRL-4086-5]

### Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is today promulgating a rule to amend the financial responsibility requirements for underground storage tanks (USTs) containing petroleum that appeared in the Federal Register on October 26, 1988 (53 FR 43322), as amended October 31, 1990 (55 FR 46022). Specifically, this rule modifies the compliance dates under 40 CFR 280.91(d). Under the modification, all petroleum marketing firms owning 1 to 12 USTs at more than one facility or fewer than 100 USTs at a single facility and non-marketers with net worth of less than \$20 million are required to comply with the requirements of 40 CFR part 280 subpart H-Financial Responsibility-by December 31, 1993. Today's rule extends the deadline from the previous date of October 26, 1991. This change will provide additional time for the development of financial assurance mechanisms (especially State assurance funds) to enable this group to comply.

**EFFECTIVE DATE:** The amendment to 40 CFR 280.91(d) contained in this rulemaking is effective December 23, 1991.

**ADDRESSES:** The public docket for this rule is in room M2427, U.S. EPA, 401 M St., SW., Washington, DC 20460. Call (202) 260-9327 for an appointment to review docket materials.

**FOR FURTHER INFORMATION CONTACT:** The RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (703) 920-9810 in Virginia. For technical questions, contact Andrea Osborne in the Office of Underground Storage Tanks at (703) 308-8883.

**SUPPLEMENTARY INFORMATION:** On October 26, 1988, EPA promulgated financial responsibility requirements applicable to owners and operators of underground storage tanks (USTs) containing petroleum (53 FR 43322). In the final rule, EPA established a phased schedule of compliance for owners and operators of petroleum USTs. Petroleum marketing firms with 1 to 12 USTs at more than one facility or fewer than 100 USTs at a single facility, local government entities, and non-marketers whose net worth is less than \$20 million were required to comply with the financial responsibility requirements by October 26, 1990. The principal reason for adopting the phased compliance approach was to provide the time necessary for providers (including private insurance companies and States intending to establish State assurance funds) of financial assurance mechanisms to develop new policies and programs or conform their policies and programs with EPA requirements. (See 53 FR 43324.)

On October 31, 1990, EPA published regulations (55 FR 46022) extending for one year (to October 26, 1991) the compliance deadline for marketers with 1 to 12 USTs at more than one facility or fewer than 100 USTs located at a single facility and non-marketers whose net worth is less than \$20 million. The compliance deadline for local governments was extended until one year after the promulgation of a final rule providing additional mechanisms for local governments. Additional mechanisms for local governments were proposed on June 18, 1990 (55 FR 24692).

Since October 1990, EPA has continued to monitor the development of financial assurance markets, especially (1) insurance for corrective action and third party liability and (2) State assurance funds, to determine whether financial assurance mechanisms are becoming available to satisfy the needs of the regulated community. Based on this on-going review, EPA believes that tank owners required to comply by October 26, 1991, need additional time to meet insurers' standards for coverage. Also, States need additional time to develop State assurance funds, to submit them to EPA for review and approval as financial assurance mechanisms, and to make any modifications necessary for approval. Therefore, EPA is extending the compliance date for marketers with 1 to 12 USTs at more than one facility or fewer than 100 USTs at a single facility and non-marketers whose net worth is less than \$20 million from October 26, 1991 to December 31, 1993. The Agency believes that this 26-month extension for Category IV tank owners will provide adequate time for tank owners and operators to obtain assurance. By October 1990, when the deadline was previously extended, EPA had approved 14 State assurance funds and had begun to review 11 State assurance funds that were submitted to EPA for approval. (It is important to note that upon submission of a State assurance fund, the fund is considered to be approved unless and until EPA disapproves it.) During the subsequent 12 months, an additional 13 State assurance funds have been approved by EPA to serve as financial responsibility compliance mechanisms. Currently, 27 State assurance funds have been approved by EPA and an additional 9 State assurance funds have been submitted to EPA for approval. EPA expects State assurance fund development to continue during the 26-month extension. The Agency notes, however, that States are not required to develop assurance funds and that several States have indicated that they do not intend to develop State fund programs. Nevertheless, EPA anticipates that the extension will allow all States intending to develop State funds adequate time to do so.

Additionally, States will have more time to develop and implement financial assistance programs (e.g., direct loan programs, loan guarantee programs, grant programs) which help owners and operators pay for technical improvements such as tank upgrading, which, in turn, helps owners and operators qualify for insurance. Four States-Alaska, Hawaii, Maryland, and Washington-indicated that they have or are developing State financial assistance programs, and that an extension would

provide more time for qualified owners and operators to obtain financial assistance to upgrade their UST facilities to meet insurance underwriting criteria. Finally, extension of the compliance deadline to December 31, 1993 will relate the compliance deadline for Category IV owners and operators to the final compliance date for implementation of release detection. Implementation of a release detection program is a critical element of the underwriting criteria for many insurers, and the ability to demonstrate that tanks are not leaking will allow more owners and operators to obtain insurance. Under EPA's phased schedule for release detection, all owners and operators must implement release detection no later than December 23, 1993.

## **I. Authority**

These regulations are issued under the authority of Sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9009 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, and 6991h).

## **II. Effective Date**

This rule will be effective on December 23, 1991 pursuant to 5 U.S.C. 553(d). This rule may be made effective immediately because it extends a deadline for compliance in existing regulations and therefore is a "substantive rule which grants or recognizes an exemption or relieves a restriction." 5 U.S.C. 553(d)(1). The Agency also finds that there is good cause to make the rule effective immediately because the regulated community does not need time to come into compliance. 5 U.S.C. 553(d)(3).

## **III. Background**

When devising the phased compliance approach, the Agency wanted to achieve the best balance between the need to demonstrate financial responsibility for UST releases and the time necessary for owners and operators to obtain assurance mechanisms. The Agency attempted to establish compliance dates that were as early as possible, considering the type of assurance different types of facilities were likely to obtain. Petroleum marketers owning or operating 1,000 or more USTs and nonmarketers with more than \$20 million in tangible net worth were required to comply by January 24, 1989, based primarily on their ability to qualify for self-insurance. Petroleum marketers with 100 to 999 USTs were required to comply by October 26, 1989. These marketers were estimated to be relatively more likely to be able to obtain insurance; some of them were also expected to qualify as self-insurers. Petroleum marketers owning 13 to 99 USTs at more than one facility were originally required to comply by April 26, 1990. However, on May 2, 1990, the Agency published a rule (55 FR 18566) extending this compliance date to April 26, 1991. These marketers were thought to be less likely to be able to obtain insurance than members of the October 26, 1989, compliance group. Petroleum marketers owning or operating fewer than 13 USTs at more than one facility or owning or operating only one facility with fewer than 100 USTs, and UST owners and operators who were not petroleum marketers (including local government entities) were required to comply by October 26, 1990. This group was expected to rely primarily on State assurance funds for compliance. On October 31, 1990, EPA extended the compliance deadline for one year for small marketers (marketers with fewer than 13 USTs or fewer than 100 USTs at a single facility) and small nonmarketers (non-marketers with less than \$20 million in net worth). This extension was based on the rate of development of State assurance funds. In addition, EPA extended the compliance deadline for local governments until one year after publication of a final rule with additional mechanisms for local governments to demonstrate compliance. Additional mechanisms for local governments were proposed on June 18, 1990 (55 FR 24692). The deadline for compliance by local governments is not affected by this rule.

Through monitoring the development of financial assurance mechanisms, the Agency has learned more about the way insurers operate in the UST insurance market. EPA now believes that the extended compliance date of October 26, 1991 for Category IV tank owners (marketers owning 1 to 12 USTs or fewer than 100 USTs at one facility and nonmarketers whose net worth is less than \$20 million) did not allow adequate time for compliance. When devising the original and revised phased compliance schedule, the Agency expected that members of this compliance group would rely on insurance and State assurance funds. The Agency had originally believed that 24 months from promulgation of the final financial responsibility rule would provide adequate time for owners and operators to upgrade their USTs to meet insurers' requirements and for States to develop and submit assurance funds to EPA. Since promulgation of the 1988 final rule, however, EPA has learned that tank owners and operators require additional time to comply with conditions imposed on them by the insurance industry. Some of these conditions include operation of only tanks younger than 15 years of age, clean site conditions, a reliable method of leak detection, etc. For example, some insurers have informed EPA that they have rejected UST coverage applications because of existing contamination, poor tank management, and inadequate leak detection monitoring. Many members of this compliance group may not be able to meet these standards by October 26, 1991, and thus would be required to seek an alternative financial assurance mechanism.

On August 14, 1991, EPA proposed to extend the compliance deadline for this group (56 FR 40292). EPA based the proposal on its understanding that more members of this compliance group than the Agency had originally projected must rely on State assurance funds, rather than on insurance, to demonstrate compliance with the financial responsibility requirements. EPA believed that, in order for owners and operators to rely on State assurance funds as compliance mechanisms, States must have more time to submit their State assurance funds to EPA for approval.

At this time, EPA has approved 27 State assurance funds to serve as financial responsibility compliance mechanisms that provide full or partial coverage; 9 more have formally submitted their State assurance funds to EPA for approval.

In addition to State assurance funds, which serve as financial responsibility compliance mechanisms, some States, such as Alaska, Hawaii, Oregon, Washington, and Maryland, are developing financial assistance programs, such as grant programs and loan programs, to assist UST owners in upgrading their facilities to meet insurance underwriting standards. The State of Washington has also implemented a reinsurance program, under which the State relies on private insurers to sell insurance but provides reinsurance coverage to limit the insurers' risk and reduce premium costs.

Comments on the proposed rule were received from 57 commenters. A Response to Comments Document is in the public docket for the rule. Most commenters supported the extension of the compliance deadline for Category IV owners and operators. Commenters asserted that the proposed extension would allow the time needed for owners and operators seeking insurance to meet insurers' standards for coverage. They also stated that an extension would allow the time necessary for States that do not have State assurance funds or financial assistance programs to develop such funds and programs; whereas in States where these funds and programs exist, the extension would provide States with more time to develop outreach programs, and would provide owners and operators with more time to participate.

Some commenters argued against extending the compliance deadline, however, stating that affordable private insurance is available to both marketers and nonmarketers, and that an extension would discourage UST owners from taking the necessary steps toward compliance and would undermine the credibility of the UST program. Some of the comments regarding the availability and affordability of insurance in certain States were countered directly by comments from UST owners in those States that they were able to obtain only minimal pollution liability coverage, with high deductibles, and that the costs for this coverage were prohibitive. Some of the commenters opposing a general extension acknowledged that an extension was justified in States without State assurance funds.

One commenter, who removed tanks before the proposal to extend the compliance deadline, argued that an additional extension places those who have already complied with the regulations at a competitive disadvantage with respect to those who have not. The Agency believes that this situation is an unfortunate result of the regulatory development process, but is not indicative of the potential effects on the majority of the regulated community. The Agency is unable to determine whether an extension is necessary until near the deadline for compliance, however, and so is unable to provide more advanced notice of the extension. This difficulty is exacerbated by statutory requirements to obtain public participation in the rulemaking process, which further restricts EPA's ability to provide definitive answers about forthcoming changes in the regulations. The Agency regrets any problems experienced by specific UST owners and operators as a result of the changes in the regulatory deadline.

Regarding the length of an extension, many commenters supported the proposal to extend the compliance deadline to December 31, 1992. One commenter proposed a shorter extension of the deadline to allow States more time to develop State assurance funds, yet not undermine the financial responsibility requirements through excessive delay of compliance deadlines. Several commenters favored an extension until December 31, 1993. These included the Hawaii Department of Health, which requested the extra time to implement its loan program for UST owners, and the National Air Transportation Association, which advocated synchronizing the compliance schedule for financial responsibility requirements with that for release detection requirements. Other commenters also suggested longer extensions; two of these requested an indefinite extension.

Based on a review of the comments, EPA has decided to extend the compliance date to December 31, 1993, for small petroleum marketing firms (those with fewer than 13 USTs or fewer than 100 USTs at a single facility) and nonmarketers with net worth of less than \$20 million. This 26-month extension will allow all States that intend to develop State assurance funds or financial assistance programs to do so, and will allow UST owners and operators in these States to participate. It will also delay the need for meeting financial responsibility requirements until after the December 22, 1993 compliance deadline for release detection under 40 CFR 280.40. Installing release detection may be a requirement for obtaining insurance in some areas; this extension will assure that all UST owners seeking insurance would have already complied with Federal release detection requirements. The Agency notes that the extension provided by this rule does not preclude States from adopting an earlier deadline; in those States where a State assurance fund exists, States may find it appropriate to maintain the previous deadlines for compliance with financial responsibility requirements. This final rule applies to the Federal compliance date only, and does not preclude different State compliance deadlines.

Several commenters requested that the extension be broadened to include owners and operators in compliance Category III, which were required to have complied by April 26, 1991. Commenters argued that these owners and operators are also having difficulty obtaining insurance or otherwise demonstrating financial responsibility, and that extending the compliance deadline for owners and operators in Category IV only would place owners and operators in Category III at a competitive disadvantage. EPA believes, however, that owners and operators with financial assurance mechanisms may have

an advantage over competitors without these mechanisms since the infrequent, unknown and possibly large costs associated with a leak may be greater than the regular, known, and possibly smaller costs of the financial assurance mechanism. In addition, EPA analysis suggests that up to 80% of the owners and operators in Category III have already obtained assurance mechanisms through State funds and private insurance. The Agency emphasizes that its intention has been and continues to be to require demonstration of financial responsibility at the earliest date reasonably achievable, which for Category III has already passed. UST owners and operators in Category III were required to have demonstrated compliance with the financial responsibility requirements more than six months ago. The Agency believes that "extending" the deadline at this time would penalize those owners and operators who have made a good faith effort to comply with the requirements.

Several commenters argued for special treatment for USTs owned by Indian Tribes and for USTs located on tribal lands. The commenters claimed that these USTs are not covered by State assurance funds, are not eligible for coverage by the LUST Trust Fund, are located in geographic regions that offer a low potential for contamination of groundwater supplies, and have limited access to insurance. While Indian Tribes cannot get State program grants or LUST Trust Fund Cooperative Agreements (as States can), they are eligible to receive LUST Trust Fund dollars from EPA under certain circumstances. State financial assurance funds do not necessarily exclude tribally-owned tanks; however, since States do not have taxing powers over tribal lands, States cannot collect the taxes and fees that are usually required for participation and access to these State funds unless the Tribe or individual owner opts to pay the fee voluntarily to participate in the fund.

The Agency anticipates that the extension will provide additional time for many owners and operators of USTs located on tribal lands to obtain financial assurance mechanisms. Nevertheless, EPA acknowledges the concerns expressed by these commenters. As discussed below, EPA intends to continue to monitor the development of financial assurance mechanisms during the extension period to determine whether specific groups of UST owners and operators, including owners and operators of USTs located on tribal lands, may require additional consideration.

USTs directly owned or operated by Tribal governments are not within the scope of this rule because the Agency treats them as local governments for the purposes of the financial responsibility requirements. Tribal governments will be eligible to use the new mechanisms being developed for local governments by the Agency and will be required to comply within 12 months of publication of the new mechanisms for demonstrating financial responsibility.

#### **IV. Discussion of Options Considered But Not Proposed**

In addition to the proposed rule, EPA considered, but did not propose, two additional options to grant relief to UST owners and operators. Under the first option, a subset of those entities currently required to comply by October 26, IR91 would be granted an additional extension. Under the second option, any UST facility meeting certain Federally-specified conditions as determined by the States would receive an extension.

Under the first option, retail marketers in Category IV that provided essential services such as being the sole source of petroleum products for a rural community and whose tanks posed minimal environmental risks would be granted an extension of the compliance deadline of up to 90 days following the final date for compliance with the technical standards for new tanks (i.e., March 22, 1999). Owners and operators must generally meet these technical requirements (which include tank upgrading, leak detection, etc.) to qualify for private insurance.

If EPA were to adopt the second option, EPA would extend the federal deadline for any facility, regardless of its compliance category, if the State made certain findings based on federally determined criteria. The extension would last up to 90 days following the final date for compliance with the technical standards for new tanks (March 22, 1999). The specified criteria could include facilities that (1) had been identified by States as entities in need of an extension, (2) sold petroleum products on a retail basis, (3) were the sole provider of a class of petroleum transportation fuels (e.g., gasoline or diesel fuel) within a 25-mile radius, and (4) met certain environmental criteria such as that the underground storage tank not be too close to groundwater or that the percentage of the local population that relies on groundwater as their drinking water source not exceed a certain number. Under this option, the federal extension could be granted to local governments, especially those in isolated rural areas that provide essential community services (e.g., public health and safety). Additionally, EPA could allow extensions for Indian tribes owning and operating USTs on Indian lands or to owners and operators of USTs on Indian lands that provided essential services.

Most commenters opposed Option 1. Some claimed that the definitions of "rural" or "sole source provider" would prove unworkable. Others claimed that non-marketers have an equivalent need for an extended compliance deadline. A few commenters stated that the definitions could provide some firms with unfair competitive advantages. A few commenters supported Option 1. Commenters in favor of Option 1 stated that current UST regulations are reducing the retail availability of petroleum products in rural areas where retail outlets for these products may already be scarce. Commenters also proposed definitions of "rural area" for EPA to consider if the Agency were to propose Option 1.

Many more commenters supported Option 2, under which any facility unable to comply with the financial responsibility deadline, or having difficulty in obtaining financial assurance, could be granted an extension in States where certain findings are made based on Federally determined criteria. Others advocated extensions when neither State assurance funds, financial assistance programs, nor affordable insurance were available. Some commenters challenged the use of "sole

provider" as a criterion, while others suggested definitions for "sole provider" for EPA's consideration if the Agency were to propose Option 2. Commenters also proposed environmental criteria to be considered for use under Options 1 or 2.

Three commenters requested that EPA review the special circumstances of tribal governments and of UST owners and operators on tribal lands. The commenters noted that Indian tribes do not impose taxes and therefore do not have the financial resources to self-insure. At the same time, they said that State assurance funds generally do not apply to tribes, because States do not have the authority to levy and collect taxes on Indian lands. EPA acknowledges the concerns expressed by these commenters. EPA intends to use the time available during this extension period to continue to monitor the development of financial assurance mechanisms and to determine whether specific groups of UST owners and operators, including owners and operators of USTs located on tribal lands, may require additional consideration. Under today's rule, however, category IV USTs on Tribal lands that are not owned by Tribal governments must demonstrate financial responsibility by December 31, 1993.

USTs directly owned or operated by Tribal governments are not within the scope of today's rule. The Agency treats Indian Tribes as local governments for the purposes of the financial responsibility requirements. Consequently, USTs owned by Tribal governments will be required to comply within one year of the publication of the final rule providing additional mechanisms for local governments to demonstrate financial responsibility; these mechanisms were proposed on June 18, 1990 (55 FR 24692).

EPA appreciates the efforts of commenters in providing information relative to Options 1 and 2. These comments suggest that some specific classes or categories of UST owners or facilities may face exceptional or unique difficulty in complying with the financial responsibility requirements by December 31, 1993. Although neither option is being adopted in today's rule, EPA is continuing to review how and whether some variation of Option 2 should be adopted. EPA will use the 26 month period provided by today's rule to continue to monitor the development of programs to assist the most affected segments of the regulated community and to determine whether additional relief may be necessary. If further relief is determined to be appropriate, after considering all statutory, environmental, economic, and programmatic concerns, EPA will determine the best method, if any, to provide the relief. The Agency believes, however, that more information will be necessary to characterize fully the segments that may require further assistance and to develop appropriate criteria. To obtain this information, EPA intends to continue its dialogue with States and the regulated community.

## **V. Economic Impacts**

This section provides an estimate of the economic impacts of the proposed rule. Because the proposed rule will not cause an annual impact on the economy of \$100 million or more and will not cause an increase in the costs of production or the prices charged by the affected community, a Regulatory Impact Analysis is not required. Instead, EPA has prepared an economic impact analysis to estimate the number of affected facilities and the costs to affected facilities under the proposed and alternate options, and has evaluated the impacts on small entities as required by the Regulatory Flexibility Act.

### *A. Economic Impact Analysis*

The economic analysis examines the potential economic effects of extending the compliance deadline. It provides an estimate of the number of potentially affected entities, a comparison of the financial condition of affected entities with and without a State assurance fund, and an analysis of rural stations.

EPA analyses have suggested that a large number of USTs and UST-owning entities are subject to the October 26, 1991 deadline. Of the approximately 1.7 million USTs subject to the technical and financial responsibility standards, about 790,000 are owned by petroleum marketers with 12 or fewer USTs, by marketers that own or operate fewer than 100 USTs at a single facility, or by non-marketers with net worth of less than \$20 million. These USTs are located at about 216,000 facilities, and are owned by about 213,000 firms (for an average of 3.8 USTs per owner). As a result, the extension of the compliance deadline will affect a significant proportion of the UST-owning population.

The development of State assurance funds and State financial assistance programs provides relief to UST owners and operators, particularly those with fewer facilities and USTs. Small service stations (including single-outlet stations) required to obtain private insurance or otherwise cope with cleanup costs without State aid face potentially severe impacts. EPA estimates that 45 percent of small stations could suffer severe financial distress, and 41 percent could fail. (The figure for severe financial distress includes those firms that would fail; thus, about 60 percent of those firms suffering financial distress would fail.) Small stations in rural areas may be even more heavily affected, because they tend to have a smaller revenue base and are less financially robust than stations in metropolitan areas.

In general, State assurance funds can reduce instances of failure over the next ten years if their deductibles are small enough. State assurance funds with \$10,000 deductibles can reduce failures from 41 percent to only 14 percent. State assurance funds with \$50,000 deductibles are predicted to reduce failures by a much smaller amount. State financial assistance programs that help firms upgrade their USTs can also help by alleviating some of the burden associated with obtaining insurance.



## *B. Regulatory Flexibility Analysis*

The Regulatory Flexibility Act generally requires all federal agencies to review the impact of their regulations to determine whether the regulations will have a significant economic impact on a substantial number of small entities. If so, the Agency must prepare a Regulatory Flexibility Analysis. EPA believes that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed extension of the compliance date will provide relief to members of this compliance group by allowing them additional time to comply with the financial responsibility requirements. Accordingly, the Agency has concluded that the law does not require a Regulatory Flexibility Analysis, and certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

### **List of Subjects in 40 CFR Part 280**

Administrative practice and procedure, Environmental protection, Hazardous materials insurance, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control.

Dated: December 16, 1991.

**William K. Reilly**, *Administrator*.

For the reasons set out in the preamble, part 280 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

### **PART 280-TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)**

1. The authority citation for part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), and 6991(h).

2. Section 280.91 is amended by revising paragraph (d) to read as follows:

#### **§ 280.91 Compliance dates.**

\* \* \* \* \*

(d) All petroleum UST owners not described in paragraphs (a), (b), or (c) of this section, excluding local government entities; December 31, 1993.

APPENDIX D: INSTALLATION CHECKLIST AND CERTIFICATION FORM  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Environmental Management  
Office of Waste Management  
UNDERGROUND STORAGE TANK SECTION

235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-2797

RI DEM FACILITY ID NO. \_\_\_\_\_

CERTIFICATE OF INSTALLATION OR MODIFICATION OF UST

I, \_\_\_\_\_, hereby certify that on \_\_\_\_\_, 20\_\_\_\_, I performed certain installation or modification work on underground storage tanks, piping, and/or other related UST facility components located at:

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I further certify that:

1. All work was performed in accordance with: all applicable national codes of practice as listed in "Appendix B" of the Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials (the "UST Regulations"); the manufacturer's instructions; and the prior written approval of DEM.

2. All work specified in the manufacturer's installation checklist has been completed. **(A copy of the installation checklist, signed by the contractor submitting this Certificate, must be attached hereto.)**

3. I am certified or licensed as may be required by the R.I. Department of Labor, Division of Professional Regulation. (See R.I. Gen. Laws Chapter 28-27 regarding installation of commercial gasoline or diesel UST systems.)

4. The City/Town building official was notified prior to the commencement of the installation or modification work.

5. Compliance with all proper installation procedures is assured by at least one of the following (check all that apply):

☐ I am certified by the appropriate equipment manufacturers.

☐ The work performed was inspected and approved by, a registered professional engineer in the State of Rhode Island having education and experience with UST equipment installation or modification.

☐ The work was performed in compliance with the following DEM-approved method(s) for assuring proper installation or modification:

**(A copy of DEM's written approval of the above methodology must be attached hereto.)**

### **INSTALLER'S CERTIFICATION**

I hereby certify and attest that the information provided herein is true and accurate. I understand that the provision of false or misleading information could subject me to civil and/or criminal penalties, loss of licensure and/or imprisonment as may be provided by statute or regulation.

_____ Signature	_____ Date
Name (Print) :	_____
Title :	_____
Business Name :	_____
Address :	_____
	_____
Phone Number :	_____

### **OWNER'S CERTIFICATION**

I hereby certify that I am the registered owner of the above-referenced facility and/or USTs and that the work described herein was undertaken at my direction.

_____ Signature	_____ Date
Name (Print) :	_____
Title :	_____
Business Name :	_____
Address :	_____
	_____
Phone Number :	_____