

DEPARTMENT OF ENVIRONMENTAL QUALITY

STORAGE TANK DIVISION
UNDERGROUND STORAGE TANKS

Filed with the Secretary of State on **December 18, 1998**.
These rules take effect 15 days after filing with the Secretary of State
(**January 2, 1999**).

(By authority conferred on the department of environmental quality by
section 21106 of Act No. 451 of the Public Acts of 1994, as amended,
being § 324.21106 of the Michigan Compiled Laws)

R 29.2101, R 29.2103, R 29.2107, R 29.2108, R 29.2109, R 29.2111,
R 29.2113, R 29.2117, R 29.2119, R 29.2121, R 29.2123, R 29.2125,
R 29.2127, R 29.2129, R 29.2131, R 29.2133, R 29.2137, R 29.2139,
R 29.2151, R 29.2153, R 29.2155, R 29.2157, R 29.2159, R 29.2161,
R 29.2163, R 29.2165, R 29.2167, and R 29.2169 of the Michigan
Administrative Code are amended, and R 29.2122, R 29.2126, R 29.2160,
R 29.2163a, R 29.2163b, R 29.2163c, R 29.2163d, R 29.2163e, R 29.2166,
R 29.2166a, R 29.2168, R 29.2168a, R 29.2168b, R 29.2168c, R 29.2168d,
R 29.2170, R 29.2171, R 29.2172, and R 29.2173 are added to the Code, to
read as follows:

R 29.2101 Adoption of standards by reference.

Rule 1. The provisions of 40 C.F.R. part 280, subparts A to H,
(1988), entitled "Technical Standards and Corrective Action Requirements
for Owners and Operators of Underground Storage Tanks," as amended by 54
F.R. November 9, 1989, pages 47081 to 47092, and as amended by 58 F.R.
February 18, 1993, pages 9050 to 9059, are adopted by reference in these
rules. Copies of the adopted regulations may be obtained from the
Department of Environmental Quality, Storage Tank Division, P.O. Box
30157, Lansing, Michigan 48909-7657, or from the United States
Environmental Protection Agency, 401 M Street S.W., Washington, DC
20460. As of the time of adoption of these rules, the adopted
regulations may be obtained without cost.

AMENDMENTS TO ADOPTED FEDERAL REGULATIONS
SUBPART A. PROGRAM SCOPE AND INTERIM PROHIBITION

R 29.2103 Applicability.

Rule 3. Section 280.10 is amended to read as follows:

Section 280.10. (a) The requirements of these rules apply to all
owners and operators of a UST system.

(b) Deleted.

(c) Deferrals. Subparts B, C, D, E, and G do not apply to any of the
following types of UST systems:

(1) A wastewater treatment tank system.

(2) Any UST system which contains radioactive material and which is
regulated under the provisions of the atomic energy act of 1954, as
amended, 42 U.S.C. §2011 et seq.

(3) Any UST system that is part of an emergency generator system at
nuclear power generation facilities regulated by the nuclear regulatory
commission under the provisions of 10 C.F.R. part 50, appendix A,
(1989).

(4) Airport hydrant fuel distribution systems.

(5) UST systems that have field-constructed tanks.

(d) Deferrals. Subpart D does not apply to any UST system that stores
fuel solely for use by emergency power generators.

(e) Prohibitions.

(1) Upon notification by the implementing agency, a person shall not
deliver a regulated substance into any UST system if the system is not
in compliance with these rules. Such notification may include verbal or
written communication or an affixed written notification on the UST
system.

(2) A person shall not tamper with, remove, or disregard written notification affixed to the UST system.

(3) Any UST system or practice that is not in compliance with these rules shall be considered to be in violation of these rules.

(4) An owner and operator shall not continue to use a UST system that is causing a release. If the release is from the piping, then the piping shall be emptied of any liquid product until repaired and tested or replaced. If the release is from the tank, or if the origin of the release cannot be determined, then the UST system shall be expeditiously emptied of all liquid product until repaired and tested or replaced.

(f) An implementing agency may order, at the expense of the owner, a tightness test of a UST system in accordance with the provisions of sections 280.43(c) and 280.44(b), the installation of dry well test holes, or the emptying of a UST system in accordance with the provisions of section 280.71 when there is reason to believe that the UST system is releasing a regulated substance.

(g) UST systems installed on or before January 3, 1991, in accordance with the provisions of 40 C.F.R. part 280, (1988), the United States environmental protection agency UST rules, shall be deemed to be in compliance with new UST system requirements.

(h) A person may request a variation of the application of a rule by applying to the department with a satisfactory explanation of why compliance is not possible. If the requested variation involves a substantive rule as opposed to a procedural rule, such as time deadlines, then the department shall notify affected state and local agencies of the nature of, and the reasons for, the request and consider any input provided within 10 days of receipt of the notice by affected state and local agencies. The department may make a variation upon finding that the variation does not result in an increased hazard to life, property, or the environment. The findings shall be transmitted to the person requesting the variation and shall be maintained at the facility.

(i) A person aggrieved by a final decision of the department on a request for variance may appeal to the circuit court within 21 days of the decision.

(j) All UST systems shall comply with the provisions of R 29.4103 to R 29.4104 and R 29.4201 to R 29.4319 of the Michigan Administrative Code. These rules shall supersede any conflicting provision of R 29.4103 to R 29.4101 and R 29.4201 to R 29.4319 of the Michigan Administrative Code.

(k) UST systems installed on or before the effective date of these amendatory rules in accordance with the provisions of R 29.2101 through R 29.2169 then in effect shall be deemed to be in compliance with these amendatory rules.

§ 280.11 Interim prohibition for deferred UST systems.

(a) No person may install an UST system listed in §280.10(c) for the purpose of storing regulated substances unless the UST system (whether of single or doublewall construction):

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

(b) Notwithstanding paragraph (a) of this section, an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this paragraph for the remaining life of the tank.

NOTE: The National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used as guidance for complying with paragraph (b) of this section.

R 29.2107 Definitions.

Rule 7. Section 280.12 is amended to read as follows:

Section 280.12.

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

"Active UST system" means a UST system that has been in use within the past 12 months.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Approved" means acceptable to the department, unless specifically indicated otherwise in the rule.

"Belowground release" means any release to the subsurface of the land or to groundwater. This includes releases such as those from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"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 and who has education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems. The person shall be certificated as being qualified by the national association of corrosion engineers (NACE) international, steel tank institute (STI), or any other organization that is acceptable to the department.

"CERCLA" means the comprehensive environmental response, compensation, and liability act of 1980, as amended, 42 U.S.C. § 9601 et seq.

"Compatible" means the 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.

"Connected piping" means all underground piping, including valves, fittings, joints, flanges, and flexible connectors attached to a tank system, through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins 2 UST systems shall be allocated equally between the systems.

"Consumptive use," with respect to heating oil, means consumed on the premises.

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. The person

shall be certificated as being qualified by the NACE international as a senior corrosion technologist, a cathodic protection specialist, or a corrosion specialist or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Deminimis concentration." A UST meets the requirements of exclusion (xv) for deminimis concentration of regulated substances, under the definition of "UST system," if both of the following conditions are met:

(i) The concentration of a regulated substance in a UST system, when mixed with a nonregulated substance, is less than 110 gallons of regulated substance when the storage tank is full.

(ii) The UST system, of any size or capacity, contains less than the reportable quantity of hazardous substance or substances in the product stored, as identified in the United States environmental protection agency Table 302.4 list of hazardous substances and reportable quantities, when the storage tank is full.

"Deminimis quantity" means that the total quantity of a hazardous substance mixed with petroleum in a full UST is less than the reportable quantity for the substance as specified on the CERCLA list. This does not apply to motor fuel additives and blends that are added at the refinery or shipped via pipeline with the finished product, or both.

"Department" means the department of environmental quality.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric fittings are used to electrically isolate portions of the UST system, for example, the tank from piping.

"Director" means the director of the department.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Excavation zone" means the volume containing the tank system and backfill materials bounded by the ground surface, walls, and placed at the time of installation.

"Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation is considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and either a continuous on-site physical construction or installation program has begun or the owner operator has entered into contractual obligations - that cannot be canceled or modified without substantial loss. These obligations include the physical construction at the site or installation of the tank system to be completed within a reasonable time.

"Farm tank" means a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank shall be located on the farm property. "Farm" includes fish hatcheries, rangeland, and nurseries that have growing operations.

"Field-constructed tank" means a tank which has a capacity of more than 50,000 gallons and which is constructed on-site.

"Flow-through process tank" means a tank that forms 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 and the tank is utilized to carry out or control the heating, cooling, mixing, blending, separating, metering, or chemical action of materials. The processing is done on a regular basis and it is the primary function of the tank. Flow-through process tanks do not include tanks used for the storage of materials before their introduction into the production process or for the storage of finished products or by-products from the production process or tanks that are only used to recirculate materials.

"Free product" means a regulated substance that is present as a non-aqueous phase liquid (for example, liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in section 101(14) of the comprehensive environmental response compensation and liability act of 1980, 42 U.S.C. 9601, (but not including waste under subtitle C) or any mixture of such substances and petroleum, unless the mixture is a petroleum product.

"Heating oil" means petroleum that is no. 1, no. 2, no. 4-light, no. 4-heavy, no. 5-light, no. 5-heavy, and no. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Implementing agency" means the department or a local unit of government delegated authority under Part 211 of Act No. 451 of the Public Acts of 1994, as amended, being § 324.21101 et seq. of the Michigan Compiled Laws.

"Integral secondary containment system" means a tank or piping system that has the primary containment tank or piping system fully jacketed by an external, 360-degree, unbonded, nonmetallic material, that provides for external corrosion protection, liquid interstitial space communication and monitoring, and product compatibility to contain a release from the primary containment tank or piping system. The jacketing material for the tank shall be a minimum of 100 mils in thickness. The integral secondary containment system shall be acceptable to the department.

"In use" means that an underground storage tank or underground storage tank system contains more than 2.5 centimeters (1 inch) of a regulated substance.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations, including gas production plants, for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream or may collect and separate liquids from a gas stream.

"Local unit of government" means a city, village, township, county, or governmental authority or any combination of cities, villages, townships, counties, or governmental authorities.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

"Motor fuel" means petroleum or a petroleum-based substance which is motor gasoline, aviation gasoline, no. 1 or no. 2 diesel fuel, or any grade of gasohol and which is typically used in the operation of a motor vehicle.

"New tank system" means a tank system which will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988. See also "existing tank system".

"Noncommercial purposes," with respect to motor fuel, means, not for resale.

"On the premises where stored," with respect to heating oil, means UST systems located on the same property where the stored oil is used.

"Operational life" means the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under subpart G.

"Operator" means a person who is presently, or was at the time of a release, in control of, or responsible for, the operation of an underground storage tank system.

"Out of service" (see definition of "out of use").

"Out of use" means that an underground storage tank system is not in use. (See definition of "in use"). The system shall be reported as either temporarily closed or permanently closed.

"Overfill release" means a release that occurs when a tank is filled beyond its capacity and results in a discharge of the regulated substance into the environment.

"Owner" means a person who holds, or at the time of a release held, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which a UST system is located, such as, a trust, vendor, vendee, lessor, or lessee. However, "owner" does not include a person or a regulated financial institution acting in a fiduciary capacity that, without participating in the management of an underground storage tank system and without being otherwise engaged in petroleum production, refining, or marketing relating to the underground storage tank system, holds indicative of ownership primarily to protect the person's or the regulated financial institution's security interest in the underground storage tank system or the property on which it is located or to implement the terms of a trust agreement.

"Person" means any of the following:

- (a) An individual.
- (b) A partnership.
- (c) A joint venture.
- (d) A trust.
- (e) A firm.
- (f) A joint stock company.
- (g) A corporation, including a government corporation.
- (h) An association.
- (i) A local unit of government.
- (j) A commission.
- (k) The state.
- (l) A political subdivision of a state.
- (m) An interstate body.
- (n) The federal government.
- (o) A political subdivision of the federal government.
- (p) Any other legal entity.

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum that has additives and de minimis quantities of other regulated substances. The systems include those containing any of the following:

- (a) Motor fuels.
- (b) Jet fuels.
- (c) Distillate fuel oils.
- (d) Residual fuel oils.
- (e) Lubricants.
- (f) Used oils.

"Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials and includes connected piping.

"Pipeline facilities," including gathering lines means new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"Public water supply" has the same meaning as defined in Act No. 399 of the Public Acts of 1976, as amended, being § 325.1001 et seq. of the Michigan compiled Laws, and rules promulgated under Act No. 399 of the Public Acts of 1976.

"Regulated substance" means either of the following:

- (a) A substance defined in section 101(14) of title I of the comprehensive environmental response, compensation and liability act of 1980, Public Law 96-510, 42 U.S.C. § 9601 et seq., but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act of 1965, title II of Public Law 89-272, as amended, 42 U.S.C. § § 6921 to 6931 and 6933 to 6939b.

(b) Petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). Petroleum includes mixtures of petroleum that have de minimis quantities of other regulated substances and also includes petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, or finishing, such as any of the following:

- (i) Motor fuels.
- (ii) Jet fuels.
- (iii) Distillate fuel oils.
- (iv) Residual fuel oils.
- (v) Lubricants.
- (vi) Petroleum solvents.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST into groundwater, surface water, or subsurface soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore a tank or UST system component. Repairs that involve the replacement of more than 50% of the length of any underground piping between the tank and the dispenser at any 1 time shall be considered a replacement of the underground piping and shall meet the requirements of the new UST system underground piping in section 280.20(b).

"Residential tank" means a tank located on property used primarily for dwelling purposes.

"Residential tank" means a tank located on property used primarily for dwelling purposes.

"SARA" means the superfund amendments and reauthorization act of 1986, 42 U.S.C. § 9601 et seq. as amended by 1986 Pub. L. 99-499.

"Secondary containment," where required for a petroleum UST system, means at least a 330-degree double-walled tank or a 360-degree integral secondary containment system and, for piping, a 360-degree double-walled pipe or a 360-degree integral secondary containment system or other method of containment indicated in section 280.42(b)(5). Secondary containment systems shall meet the requirements of section 280.42(b)(1), (2), and (4).

"Septic tank" is a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"State fire marshal" deleted.

"Storm-water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water runoff resulting from precipitation or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment, except where incidental to conveyance.

"Surface impoundment" means a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials, although it may be lined with man-made materials, that is not an injection well.

"Tank" means a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials, for example, concrete, steel, or plastic, that provide structural support.

"Underground area" means an underground room, such as a basement, cellar, shaft, or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any belowground release.

"Underground storage tank system" or "UST system" or "tank system" means a tank or combination of tanks, including underground pipes connected to the tank or tanks or underground ancillary equipment containment systems, if any, which is, was, or may have been, used to contain an accumulation of regulated substances and the volume of which, including the volume of underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. An underground storage tank system does not include any of the following:

(i) A farm or residential tank which has a capacity of 1,100 gallons or less and which is used for storing motor fuel for noncommercial purposes.

(ii) A tank used for storing heating oil for consumptive use on the premises where the oil is stored.

(iii) A septic tank.

(iv) A pipeline facility, including gathering lines, regulated under either of the following:

(A) The natural gas pipeline safety act of 1968, Public Law 90-481, as amended, 49 U.S.C. appendix §§1671 to 1677, 1679A to 1682, and 1683 to 1687.

(B) Sections 201 to 215 and 217 of the hazardous liquid pipeline safety act of 1979, as amended, title II of Public Law 96-129, 49 U.S.C. appendix §2001.

(v) A surface impoundment, pit, pond, or lagoon.

(vi) A stormwater or wastewater collection system.

(vii) A flow-through process tank.

(viii) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(ix) A storage tank situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel, if the storage tank is situated on or above the surface of the floor.

(x) Any pipes connected to a tank that is described in subparagraphs (i) to (ix) and (xi) to (xvi) of this paragraph.

(xi) An underground storage tank system holding hazardous wastes listed or identified under the provisions of subtitle C of the solid waste disposal act of 1965, title II of Public Law 89-272, as amended, 42 U.S.C. §§6921 to 6931 and 6933 to 6939b, or a mixture of the hazardous waste and other regulated substances.

(xii) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under the provisions of section 307(b) of title III or section 402 of title IV of the federal water pollution control act of 1972, as amended, 33 U.S.C. §§1317 and 1342.

(xiii) Equipment or machinery that contains regulated substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks.

(xiv) An underground storage tank system that has a capacity of 110 gallons or less.

(xv) An underground storage tank system that contains a de minimis concentration of regulated substances. Please see the definition of "de minimis concentration."

(xvi) An emergency spill or overflow containment underground storage tank system that is emptied within 10 days after use.

"Upgrade" means the addition or retrofit of some systems, such as cathodic protection, lining, or spill and overflow controls, to an existing tank system to improve the ability of an underground storage tank system to prevent the release of product.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

"Wellhead protection area" means the surface and subsurface area which surrounds a water well or well field that supplies a public water supply and through which contaminants are reasonably likely to move toward and reach the water well or well field.

R 29.2108 Testing methods.
 Rule 8. Section 280.13 is deleted.
 Section 208.13 Deleted.

SUBPART B. UST SYSTEMS; DESIGN, CONSTRUCTION, INSTALLATION, AND NOTIFICATION.

R 29.2109 Performance standards for new UST systems.
 Rule 9. Section 280.20 is amended to read as follows:
 Section 280.20. (a) Tanks. Each tank shall be properly designed and constructed. Any portion of a tank which is underground and which routinely contains product shall be protected from corrosion as follows:
 (1) The tank shall be constructed of fiberglass-reinforced plastic.
 (2) The tank shall be constructed of steel and be cathodically protected in the following manner:
 (i) The tank shall be coated with a suitable dielectric material.
 (ii) Factory-installed or field-installed cathodic protection systems shall be designed by a corrosion expert.
 (iii) Impressed current systems shall be designed to allow a determination of current operating status as required in section 280.31(c).
 (iv) Cathodic protection systems shall be operated and maintained in accordance with section 280.31 or according to procedures acceptable to the department.
 (3) The tank shall be constructed of a steel-fiberglass-reinforced-plastic composite. The fiberglass reinforced plastic shall be a minimum of 100 mils thick.
 (4) Deleted.
 (5) The tank construction and corrosion protection shall be determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is at least as protective of human health and the environment as the protections specified in subdivisions(1) to (3) of this subsection.
 (b) Piping. All pressurized piping in contact with the ground shall be equipped with secondary containment as defined in section 280.12. Any piping that routinely contains regulated substances and is in contact with the ground shall be properly designed, constructed, and protected from corrosion in compliance with 1 of the following provisions:
 (1) The piping shall be constructed of fiberglass-reinforced plastic.
 (2) The piping shall be constructed of metal and be cathodically protected in the following manner:
 (i) The piping shall be coated with a suitable dielectric material.
 (ii) Field-installed cathodic protection systems shall be designed by a corrosion expert.
 (iii) Impressed current systems shall be designed to allow a determination of current operating status as required in section 280.31(c).
 (iv) Cathodic protection systems shall be operated and maintained in accordance with the provisions of section 280.31 or procedures acceptable to the department.
 (v) Metallic secondary containment underground piping systems shall have corrosion protection as specified in subdivision (2)(i) to (iv) of this subsection.
 (3) Deleted.
 (4) The piping construction and corrosion protection shall be determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is at least as protective of human health and the environment as the protections specified in subdivisions (1) and (2) of this subsection.
 (c) The following provisions apply to spill and overfill prevention equipment:
 (1) Except as provided in subdivision (2) of this subsection, to prevent spilling and overflowing associated with product transfer to the UST system, owners and operators shall use the following spill and overfill prevention equipment:

(i) Spill prevention equipment that will prevent the release of product to the environment when the transfer hose is detached from the fill pipe, for example, a spill catchment basin.

(ii) Overfill prevention equipment for tanks that have a capacity of 4,000 gallons or less shall do 1 of the following:

(A) Automatically shut off flow into the tank when the tank is not more than 95% full.

(B) Alert the transfer operator when the tank is not more than 90% full by restricting the flow into the tank or by triggering a high-level alarm. For suction pump systems, a pressure regulator valve or other suitable device shall be installed in the suction piping if the flow restrictor causes a pressure buildup in the tank when activated.

(iii) Overfill prevention equipment for tanks that have a capacity of more than 4,000 gallon shall do 1 of the following:

(A) Restrict the flow from the delivery truck into the tank 30 minutes before overflow.

(B) Sound an audible alarm 1 minute before overflow.

(C) Automatically shut off the flow into the tank not less than 30 seconds before overflow.

(2) Owners and operators are not required to use the spill and overflow prevention equipment specified in subdivision (1) of this subsection if alternative equipment is used that is determined by the department to be at least as protective of human health and the environment as the equipment specified in subdivision (1)(i) or (ii) of this subsection.

(d) All tanks and piping shall be properly designed, constructed, installed, operated, and maintained in accordance with R 29.4101 et seq. of the Michigan Administrative Code. All of the following provisions shall also apply:

(1) Except at an active UST system location installed on or before January 3, 1991, a person shall not install a UST system unless the UST system, with or without secondary containment, is more than the following distances from the following items:

(i) Fifty feet from a single-family drinking water well, as defined in part 127 of Act No. 368 of the Public Acts of 1978, as amended, being §333.12701 et seq. of the Michigan Compiled Laws, and rules promulgated under Act No. 368 of the Public Acts of 1978.

(ii) Seventy-five feet from a type IIb and III noncommunity public water well, as defined in Act No. 399 of the Public Acts of 1976, as amended, being §325.1001 et seq. of the Michigan Compiled Laws, and rules promulgated under Act No. 399 of the Public Acts of 1976.

(iii) Two hundred feet from a type I community and type IIa noncommunity public water well, as defined in Act No. 399 of the Public Acts of 1976, as amended, being §325.1001 et seq. of the Michigan Compiled Laws, and rules promulgated under Act No. 399 of the Public Acts of 1976, and from a public surface water intake.

(iv) Tanks may not be installed at a location where loads from adjacent structures of any kind can be transmitted to the tank. A structure or foundation of a structure shall not be erected or constructed within a minimum of 10 feet from any point on the tank surface unless footings extend to the bottom of the tank excavation.

(2) For an active UST system location that was installed on or before January 3, 1991, as specified in subdivision (1) of this subsection, a person shall not install a UST system without secondary containment, as defined in section 280.12, within any of the following distances of the following items:

(i) Fifty feet of a single-family drinking water well, as defined in part 127 of Act No. 368 of the Public Acts of 1978, as amended, being §333.12701 et seq. of the Michigan Compiled Laws, and rules promulgated under Act No. 368 of the Public Acts of 1978.

(ii) Seventy-five feet of type IIb noncommunity or type III public drinking water wells, as defined in Act No. 399 of the Public Acts of 1976, as amended, being §325.1001 et seq. of the Michigan Compiled Laws, and rules promulgated under Act No. 399 of the Public Acts of 1976.

(iii) Two hundred feet of type I community or type IIa noncommunity drinking water wells, as defined in Act No. 399 of the Public Acts of 1976, as amended, being §325.1001 et seq. of the Michigan Compiled Laws, and rules promulgated under Act No 399 of the Public Acts of 1976, and from a public surface water intake.

(3) A person shall not install a UST system, excluding the replacement of a UST system, without secondary containment, as defined in section 280.12, unless the UST system is more than the following distances from the following items:

(i) Three hundred feet from a single-family drinking water well, as defined in part 127 of Act No. 368 of the Public Acts of 1978, as amended, being §333.12701 et seq. of the Michigan Compiled Laws, and rules promulgated under Act No. 368 of the Public Acts of 1978.

(ii) Eight hundred feet from type IIb and III noncommunity drinking water wells, as defined in Act No. 399 of the Public Acts of 1976, as amended, being §325.1001 et seq. of the Michigan Compiled Laws, and rules promulgated under Act No. 399 of the Public Acts of 1976.

(iii) Two thousand feet from a type I community and type IIa noncommunity drinking water wells, as defined in Act No. 399 of the Public Acts of 1976, as amended, being §325.1001 et seq. of the Michigan Compiled Laws, and rules promulgated Act No. 399 of the Public Acts of 1976, and from a public surface water intake.

(4) The requirements of subdivisions (1), (2), and (3) of this subsection may be modified if a person can demonstrate, using hydrogeological study information satisfactory to the department, that the UST installation is, or is not, within the wellhead zone of influence.

(5) If the proposed location of a UST system presents an unacceptable risk of contamination to surface water, wetlands, or an aquifer, then the department may require that the UST system be located or use secondary containment, or both, so as to eliminate or minimize the danger of potential contamination or may disapprove a proposed UST installation.

(6) Holiday testing of composite tanks shall be performed on-site before installation, and holidays shall be repaired according to the manufacturer's recommendations.

(7) A double-wall UST system or a single-wall UST system that has integral secondary containment shall be designed to provide liquid communication through the interstitial space so that any release from the primary wall or any ingress (inflow) of groundwater through the outer wall can be detected in the interstitial space. These UST systems shall be tested as follows:

(i) The tank manufacturer must be able to demonstrate to the department that the requirements of this subdivision and subdivisions (1) to (6) of this subsection are met.

(ii) At the installation site for verifying the integrity of both the inner and the outer walls of the tank, the interstitial space shall be tested by a positive pressure of not less than 3 pounds per square inch gauge (psig) for a minimum of 1 hour. The entire exterior shall be checked for leaks with a suitable bubbling leak detection solution or by negative pressure (vacuum) of not less than 13 inches of mercury for a minimum of 12 hours, or 24 hours for tanks larger than 10,000 gallons, with a vacuum decrease of not more than 5 inches of mercury. If a hydrostatic test is chosen, then the interstitial space shall be dried after the testing, unless the liquid is part of a leak detection method for the tank that is acceptable to the department. All testing shall be conducted according to the manufacturer's recommendations.

(iii) At the installation site for verifying the integrity of both the inner and the outer walls of the underground piping, the primary piping shall be tested by a positive pressure of not less than 50 psig for a minimum of 1 hour and the secondary piping shall be tested by a positive pressure of not less than 5 psig for a minimum of 1 hour. The entire exterior shall be checked for leaks with a suitable bubbling leak detection solution.

(8) After December 22, 1998, a person shall not install a UST system, including the replacement of a UST system, without secondary containment, as defined in section 280.12, if the UST or proposed UST is located within an approved delineated wellhead protection area.

(9) The requirements of subdivision (8) of this subsection may be modified if a person can demonstrate, using hydrogeological information satisfactory to the department, that the UST installation would not present a hazard to a public water supply.

(10) In addition to all of the provisions in this section, new hazardous substance UST systems shall comply with the requirements of section 280.42(b).

(e) Certification of installation. All owners and operators shall ensure that 1 or more of the following methods of certification, testing, or inspection are used to demonstrate compliance with subsection(d) of this section by providing a certification of compliance on the UST registration form in accordance with section 280.22:

(1) The installer has been certified by the tank and piping manufacturer or the tank liner has been certified by the tank lining manufacturer.

(2) The installer has been certified or licensed by the department.

(3) The installation has been inspected and certified by a registered professional engineer who has education and experience in UST system installation.

(4) The installation has been inspected and approved by the implementing agency.

(5) Deleted.

(6) The owner and operator have complied with another method for ensuring compliance with the provisions of subsection (d) of this section that is determined by the department to be at least as protective of human health and the environment as the protections specified in subsection (d) of this section.

R 29.2111 Upgrading existing UST systems.

Rule 11. Section 280.21 is amended to read as follows:

Section 280.21. (a) Alternatives allowed. Except as specified in subsection (d) of this section, not later than December 22, 1998, all existing UST systems shall comply with 1 of the following requirements:

(1) New UST system performance standards under section 280.20.

(2) The upgrading requirements of subsections (b) to (e) of this section. Hazardous substance UST systems shall be upgraded to the new hazardous substance UST system requirements of section 280.20.

(3) Closure requirements under subpart G of these rules, including applicable requirements for corrective action under subpart F of these rules.

(b) Tank upgrading requirements. Steel tanks shall be upgraded to meet the provisions of section 280.20(d) and 1 of the following requirements:

(1) Interior lining. A tank may be upgraded once by internal lining if all of the following provisions are complied with:

(i) The lining is installed in accordance with the requirements of section 280.33 and within 10 years after lining and, every 5 years thereafter, the lined tank is internally inspected in accordance with paragraph (ii)(A) to (I) of this subdivision and found to be structurally sound with the lining still performing in accordance with the original design specifications.

(ii) After the tank is internally inspected and determined to be eligible for upgrading, the interior lining shall be applied in compliance with the american petroleum institute (API) recommended practice 1631 or the national leak prevention association (NLPA) standard 631 and shall be certified by the same methods specified in section 280.20(e). In addition, all of the following requirements shall be met:

(A) Personnel shall be certified by a national organization acceptable to the department or certified in nondestructive testing, level I competence, in accordance with the guidelines specified by the American

society for nondestructive testing entitled "Recommended Practice No. SNT-TC-1A, Personnel Qualification and Certification in Nondestructive Testing," including being certified in administering training to, and examining and retesting, personnel for certification of tank entry, surface preparation, inspection, ultrasonic thickness gauging, manway closure, and testing.

(B) Equipment used for ultrasonic thickness gauging shall have a minimum measurement range of 0.050 inches to 2 inches and a minimum resolution of 0.002 inches.

(C) After the tank has been emptied, the internal tank surfaces shall be cleaned as required for the use of ultrasonic thickness gauging.

(D) For gauging measurement control, tank walls and heads shall be divided into sections. Measurements for tank walls shall be divided into 3-foot by 3-foot sections beginning at the fill end of the bottom of the tank and extending outward around the tank circumference and along the tank length. Any additional area of the tank wall that is less than 3 feet by 3 feet shall be measured and treated as an additional section. Measurement for tank heads shall divide the tank head into 4 equal divisions by establishing horizontal and vertical diameter lines as axes. Each division shall be divided into 3-foot by 3-foot sections beginning at the center point and extending outward on each axis line. Any additional area of the tank head that is less than 3 feet by 3 feet shall be measured and treated as an additional section.

(E) Section gauging. Thickness gauging measurements shall be taken in the center of each section of the tank wall and heads. Thickness readings of 75% or less of the original wall thickness as specified in underwriters laboratories standard 58 (UL 58) shall require further gauging as prescribed for readings or more than 75% of the original wall thickness as specified in UL 58 shall be reported as the average wall thickness for the section.

(F) Gauging section subdivisions. Sections that have a center gauge measurement of 75% or less than the original wall thickness as specified in UL 58 shall be subdivided into 9 equal subdivisions. Thickness gauging for each of the subdivisions shall be taken at the center of each subdivision. The subdivision thickness readings shall then be averaged to get the average wall thickness for the section.

(G) Thin wall target area gauging. Areas that have a thickness gauging measurements that are less than 50% of the original wall thickness as specified in UL 58 shall each receive 8 additional readings. Four of the 8 readings shall be equally spaced readings and each of the 4 readings shall be at a 1 1/2 inch radius from the initial reading. The 4 other readings shall be equally spaced readings each at a 3-inch radius from the initial reading. The average of the 8 readings shall be reported as the average reading of the thin wall target area.

(H) Perforations. Perforations shall be identified and reamed to establish a minimum of 1/8 of an inch edge wall thickness before any repairs. Eight thickness measurements shall be taken around the perforation in the same pattern as described in subparagraph (G) of this paragraph. The 8 thickness measurements shall be averaged and the average shall be reported for the subdivision closest to the perforation.

(I) Average tank wall thickness. The average tank wall thickness shall be established by averaging all of the section thicknesses reported. Thickness gauge readings shall be reported on an ultrasonic thickness gauging report form that conforms to the requirements of subparagraphs (D) to (H) of this paragraph.

(J) Thin wall. The presence of any region that has less than 1/8 of an inch of metal due to internal or external corrosion or both internal and external corrosion requires that the tank be provided with an additional layer of lining material or have a 1/8 of an inch thick steel plate which has minimum dimensions of 8 inches by 8 inches and which is rolled to the contour of the tank and welded on all seams in a continuous manner covering the thin wall area of the tank.

(K) A tank is eligible for upgrade by lining only if the average wall thickness as described in subparagraph (I) of this paragraph was found

to be more than 75% of the original wall thickness required under the UL 58 standard and if all of the following requirements are met:

(a) None of the perforations shall be larger than 1 inch in diameter, except under the gauging opening, where the perforation shall be not more than 2 1/2 inches in diameter.

(b) A tank shall not have more than 4 perforations that are 1/2 inch in diameter in any 1 square foot area of the tank internal surface.

(c) A tank shall not have more than 20 perforations that are 1/2 inch in diameter in any 500 square foot area. The total number of perforations shall not be more than 2 for every year of the age of the tank.

(L) A tank is not eligible for upgrade if it does not meet the requirements of subparagraph (K) of this paragraph before any repairs. A tank that fails to meet the eligibility requirements for upgrade is required to be replaced or permanently closed in compliance with subsection (a)(3) of this section.

(M) All internally inspected tanks that meet the upgrading requirements by internal lining shall be provided with a 1/4 inch thick steel striker plate which has minimum dimensions of 8 inches by 8 inches and which is rolled to the contour of the tank and welded on all seams in a continuous manner under the fill tube.

(N) Interior tank walls shall be abrasive blasted in accordance with the steel structures painting council (SSPC) standard SP 5 entitled "White Metal Blast Cleaning" and shall not have any perforations.

(O) A suspected release meeting the requirements of section 280.50 shall be reported if there are indications of a release or if perforations are found in the tank before the addition of tank lining.

(iii) All lining materials and procedures shall be approved by the department. Each lining manufacturer shall maintain and submit a current list of qualified applicators to the department. Lining thickness shall be 100-mil dry film thickness or greater.

(iv) The owner/operator shall notify the department of all tank linings not less than 15 days before any work is performed, unless the department is notified of and approves an emergency repair. Notification of the lining shall be on a form provided by the department. Lining shall be performed by a qualified applicator.

(v) The lining company shall provide the owner with a complete report of the tank evaluation, as well as the design, installation, and operational requirements of the lining system. The report shall be signed by the lining company responsible for the lining upgrade.

(2) Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of section 280.20(a)(2)(ii), (iii), and (iv) and all of the following provisions are complied with:

(i) The integrity of the tank is ensured using 1 of the following methods:

(A) The tank has been installed for less than 10 years and has been monitored for the past 12 months for releases using 1 of the release detection methods specified in section 280.43(d) to (h).

(B) The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting 2 tightness tests that meet the requirements of section 280.43(c). The first tightness test shall be conducted before installing the cathodic protection system. The second tightness test shall be conducted between 3 and 6 months after the first operation of the cathodic protection system.

(C) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of internal corrosion and corrosion holes before installing the cathodic protection system. All personnel involved in the internal inspection related activities shall be qualified in accordance with subdivision (1)(ii)(A) of this subsection and shall conduct the ultrasonic thickness gauging in accordance with subdivision (1)(ii)(B) to (G) of this subsection, with the average wall thickness established by averaging all the section thicknesses reported. A tank is eligible for upgrade by cathodic protection alone if the average wall thickness is not less than 75% of the original wall thickness specified in the UL 58 standard.

(D) The tank is assessed to determine its eligibility for upgrade by cathodic protection by other means determined by the department to prevent releases in a manner that is at least as protective to human health and the environment as the protections specified in paragraph (i)(A) to (C) of this subdivision.

(ii) The corrosion expert responsible for the design and the installation of the cathodic protection system shall provide the owner with a complete report of all of the results of any corrosion protection investigations, as well as the design, installation, and operational requirements of the cathodic protection system. The report shall be signed by the corrosion expert.

(iii) All internally inspected tanks that meet the upgrading requirements by cathodic protection shall be provided with a 1/4 inch thick steel striker plate which is not less than 8 inches by 8 inches and which is rolled to the contour of the tank and welded on all seams in a continuous manner under the fill tube.

(iv) The owner/operator shall notify the department of all cathodic protection upgrades not less than 15 days before any work is performed, unless the department is notified of and approves an emergency repair. Notification of cathodic protection upgrade shall be on a form provided by the department. Cathodic protection upgrade shall be performed under the direct supervision and instruction of a corrosion expert.

(v) A suspected release meeting the requirements of section 280.50 shall be reported when there are indications of a release, such as visual or olfactory presence of product in the soil, before the addition of cathodic protection.

(3) Internal lining simultaneously combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if all of the following provisions are complied with:

(i) Not more than 1 month is allowed between the lining and the installation of cathodic protection.

(ii) The lining is installed in accordance with the requirements of section 280.33 and subdivision (1)(ii) to (v) of this subsection.

(iii) Internal inspection requirements will be waived if the lining and the cathodic protection upgrade are done within 1 month of each other.

(iv) The cathodic protection system meets the requirements of subdivision (2) of this subsection.

(4) Other methods approved by the department.

(c) Piping upgrading requirements. Metal piping which routinely contains regulated substances and which is in contact with the ground shall be cathodically protected in accordance with the provisions of section 280.20(d) and shall meet the requirements of section 280.20(b)(2)(ii) to (v).

(1) Replacement of pressurized underground piping systems in contact with the ground shall include the installation of secondary containment as defined in section 280.12.

(2) The owner/operator shall notify the department, in writing, not less than 15 days before any underground piping upgrade or total replacement of an underground piping system, unless the department is notified of, and approves, an emergency replacement.

(d) Spill protection and overflow prevention equipment. Existing UST systems shall comply with spill protection equipment requirements not later than January 3, 1992. All existing UST systems shall comply with the new UST system overflow prevention equipment requirements specified in section 280.20(c).

R 29.2113 Registration submittal requirements.

Rule 13. Section 280.22 is amended to read as follows:

Section 280.22. (a) Owners shall register the UST system under part 211 of Act No. 451 of the Public Acts of 1994, as amended, being §324.21101 et seq. of the Michigan Compiled Laws, on forms provided by the department. All UST systems shall be registered and all fees paid before any UST is removed from the ground or closed in place under subpart G of these rules, unless written approval is obtained from the

department. To be considered properly registered, new owners of existing UST systems shall register the UST system with the department within 30 days of ownership on a registration for underground storage tank form. New owners of a UST system who do not intend to use the UST to contain a regulated substance and who have not placed the UST temporarily out-of-service under subpart G of these rules shall empty the UST system within 45 days from acquiring ownership of the UST system. If, however, the property has been condemned by the state or a local unit of government, then the state or local unit of government shall empty any underground storage tanks that are located on the property, within 45 days of taking possession. All tanks shall be emptied under section 280.71(b). Also, any change in tank status or any change in the information required on the form shall be reported to the department on the registration for underground storage tank form within 30 days of the change.

(b) A notice of proposed installation of underground storage tank registration form provided by the department shall be submitted by the owner to the department 45 days before installation of the UST system. The notice of UST installation form shall include all of the following information:

(1) A plot map showing the distances of all of the following within 25 feet of the UST system:

(i) The location of buildings, public roadways, and railroad main lines.

(ii) The location of property lines and easements.

(iii) The location of existing aboveground storage tanks and the location of existing and proposed underground storage tanks, piping, and dispensers.

(iv) The location of surface water and wetlands.

(2) The location of all drinking water wells within 300 feet of the UST system.

(3) The location of type IIb and III wells, as defined in Act No. 399 of the Public Acts of 1976, as amended, being §325.1001 et seq. of the Michigan Compiled Laws, within 800 feet of the UST system.

(4) The location of type I and IIa wells, as defined in Act No. 399 of the Public Acts of 1976, as amended, being §325.1001 et seq. of the Michigan Compiled Laws, and surface water intakes within 2,000 feet of the UST system.

(5) The location of any delineated wellhead protection area that is approved in compliance with the state of Michigan wellhead protection program.

(6) The construction materials of the tank and piping.

(7) The dimensions and capacity of each tank.

(8) The name of the regulated substance to be stored.

(9) A diagram of the UST system.

(10) The manufacturer and part number of all components of the UST system.

(c) Upon receipt of the proposed installation registration form, the department may issue a review report within 30 days. If the review report is not issued within 30 days, then the UST system may be brought into use according to the submitted registration form and shall be in accordance with these rules. The implementing agency shall be notified not less than 7 calendar days before installation of the UST system. The implementing agency shall inspect the installation within 2 working days of the scheduled installation date, excluding Saturdays, Sundays, and holidays, and shall certify the installation if the requirements of these rules have been met. If the inspection is not made within 2 working days of the installation date, excluding Saturdays, Sundays, and holidays, then the UST system shall be covered from sight and a notarized affidavit shall be submitted by the owner to the implementing agency attesting to the fact that the installation complied with the applicable rules under section 280.20(e). The UST system shall not be brought into use until it has been registered with the department on the registration for underground storage tank form under part 211 of Act No. 451 of the Public Acts of 1994, as amended, being § 324.21101 et seq. of

the Michigan Compiled Laws. Upon request, all UST information submitted to the department for review shall be returned within 30 working days after the UST system has been brought into use. The information may be marked "CONFIDENTIAL - DO NOT COPY" at the time it is submitted.

(d) Any owner or operator who meets the requirements of a designated clean corporate citizen in R 336.2401 to R 336.2420 shall be entitled to an expedited review report by the department to complete the review process.

(e) An owner who is required to register a UST system under subsection (a) of this section may register several tanks using 1 registration for underground storage tank form, but an owner who owns tanks located at more than 1 place of operation shall file a separate form for each separate place of operation.

(f) For underground storage tank forms required to be submitted under subsection (a) of this section, an owner shall provide all of the applicable information for each tank registered. For each tank installed or upgraded after December 22, 1988, an owner shall also provide all of the information required in the certification of compliance section of the form.

(g) All owners and operators of new UST systems shall certify, in the registration for underground storage tank form, compliance with all of the following requirements:

- (1) The installation of tanks and piping under section 280.20(e).
- (2) Cathodic protection of steel tanks and piping under section 280.20(a) and (b).
- (3) The financial responsibility rules under subpart H of these rules.
- (4) Release detection under sections 280.41 and 280.42.

(h) An owner of a new UST system shall ensure that the installer certifies, in the registration form, that the methods used to install the tanks and piping comply with the requirements in section 280.20(d).

(i) Any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of the tank of the owner's registration obligations under subsection (a) of this section.

(j) An owner of a UST system shall display proof of valid registration on the UST system or in the owner's place of business, or both, as required by the department. The proof of registration shall be provided by the department upon receipt of proper registration and the payment of fees.

SUBPART C. GENERAL OPERATING REQUIREMENTS

§ 280.30 Spill and overflow control.

(a) Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

(b) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with § 280.53.

R 29.2115 Operations and maintenance of corrosion protection.

Rule 15. Section 280.31 is amended to read as follows:

Section 280.31. All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(a) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

(b) All UST systems equipped with cathodic protection systems shall be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(1) Frequency. All cathodic protection systems shall be tested—upon completion of underground piping and tank installation and backfilling, but before placement of any permanent or hard surface over the UST system. Testing shall be done within 6 months of installation regardless of the surface over the UST system. Testing shall also be conducted every 3 years after the initial testing.

(2) Inspection criteria. The criteria that are used to determine that cathodic protection is performing adequately shall be specified by the corrosion engineer who designs the system. If the corrosion engineer does not specify criteria, then the criteria shall be as specified in NACE international recommended practice RP-02-85-94.

(c) UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly.

(d) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained (in accordance with section 280.34) to demonstrate compliance with the performance standards in this section. These records must provide the following:

(1) The results of the last 3 inspections required in paragraph (c) of this section; and

(2) The results of testing from the last 2 inspections required in paragraph (b) of this section.

(e) For galvanic anode systems equipped with an approved buried copper-copper sulfate reference electrode that can be read at a surface test station, the inspection may be made using a test measurement device designed for tank owners/operators not meeting the cathodic protection tester definition. The owner/operator shall be trained in the testing procedure and shall be familiar with the testing specifications of the galvanic anode system. Tests shall be made in accordance with the requirements of subsection (b) of this section.

(f) Cathodic protection testing is not required for the following:

(1) A composite tank which meets the requirements of section 280.20(a)(3) and which is equipped with galvanic anodes installed by the tank manufacturer. The tank shall be installed and tested in accordance with section 280.20(d)(6).

(2) A 360-degree double-wall steel tank equipped with galvanic anodes. Interstitial monitoring of the tank shall be conducted in accordance with section 280.42(b)(1), (2), and (4).

(g) Another method determined by the department to be equally protective.

§ 280.32 Compatibility.

Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

R 29.2117 Repairs.

Rule 17, Section 280.33 is amended to read as follows:

Section 280.33. (a) Alterations to UST systems for product compatibility, repairs, or upgrades shall be properly conducted in accordance with the provisions of sections 280.20(d) and 280.21(b) and (c).

(b) Repairs to fiberglass-reinforced plastic tanks shall be made in accordance with the provisions of section 280.20(d).

(c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage shall be replaced. Fiberglass pipes and fittings that have released product shall be replaced or repaired in accordance with the manufacturer's specifications. The implementing agency may require that replacements or repairs be made where damage to

pipe sections or fittings is discovered and presents a significant risk of release.

(d) Repaired or upgraded tanks and piping shall be tightness-tested in accordance with the provisions of sections 280.43(c) and 280.44(b) within 30 days after the date of the completion of the repair or upgrade. Exceptions may be made to this requirement if the repaired or upgraded portion of the tank system is monitored monthly for release detection in accordance with a method specified in section 280.43(d) to (h) or if another test method is used that is determined by the department to be at least as protective of human health and the environment as the protections specified in sections 280.43(c) and 280.44(b).

(e) Within 6 months after the repair of any cathodically protected UST system, the cathodic protection system shall be tested in accordance with section 280.31(b) and (c) to ensure that it is operating properly.

(f) UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this section.

R 29.2119 Reporting and recordkeeping.

Rule 19. Section 280.34 is amended to read as follows:

Section 280.34. (a) Reporting. Owners and operators shall submit all of the following information to the department:

(1) Deleted.

(2) Reports of all releases, including suspected releases (section 280.50), spills and overfills (section 280.53), and confirmed releases (section 280.61).

(3) The corrective action planned or taken that meets the requirements of part 213, of Act No. 451 of the Public Acts of 1994, as amended, being §324.21301 et seq. of the Michigan compiled Laws, including all of the following information:

(i) Initial abatement measures.

(ii) Initial site characterization.

(iii) Free product removal.

(iv) Investigation of soil and groundwater cleanup.

(v) Corrective action plan.

(4) A notification before permanent closure or change in service (section 280.71).

(b) Recordkeeping. Owners and operators shall maintain the following information:

(1) Deleted.

(2) Documentation of operation of corrosion protection equipment (section 280.31).

(3) Documentation of UST system repairs (section 280.33(f)).

(4) Recent compliance with release detection requirements (section 280.45).

(5) Results of the site assessment conducted at permanent closure (section 280.74).

(c) Availability and maintenance of records. Owners and operators shall keep required records under either of the following provisions:

(1) At the UST site and have the records immediately available for inspection by the implementing agency.

(2) At a readily available alternative site and provide the records for inspection to the implementing agency upon request. In the case of permanent closure or change-in-service records required under section 280.74, owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or at an alternative site as indicated in subsection (b) of this section.

SUBPART D. RELEASE DETECTION

R 29.2121 General requirements for all UST systems.

Rule 21. Section 280.40 is amended to read as follows:

Section 280.40. Upon purchase or acquisition of an existing UST system and upon request by the department, the owners and operators of the system shall provide the department with not less than 2 years of leak detection records as required by section 280.45. If the records are unavailable, then the owner/operator shall conduct tightness testing as provided in sections 280.43(c) and 280.44(b).

(a) Owners and operators of new and existing UST systems shall provide a method, or combination of methods, of release detection that is in compliance with all of the following provisions:

(1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product.

(2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.

(3) Meets the performance requirements in section 280.43 or 280.44, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, except for methods permanently installed before December 22, 1990, a release detection method shall be capable of detecting the leak rate or quantity specified for the method in section 280.43(b), (c), and (d) or section 280.44(a) and (b) with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(b) If a release detection method operated in accordance with the performance standards in sections 280.43 and 280.44 indicates a release may have occurred, then owners or operators shall notify the department in accordance with the provisions of subpart E of these rules.

(c) Owners and operators of all UST systems requiring registration under section 280.22 shall comply with this subpart by the year listed in the following table:

SCHEDULE FOR PHASE IN OF RELEASE DETECTION

Year system was installed	Year when release detection is required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 date unknown	RD	P			
1965-69		P/RD			
1970-74		P	RD		
1975-79		P		RD	
1980-88		P			RD

For new tanks after December 22, 1988, immediately upon installation.

P=Shall begin release detection for all pressurized piping in accordance with section 280.41(b)(1) or section 280.42(b)(4) as applicable for the substance stored.

RD=Shall begin release detection for tanks and suction piping in accordance with section 280.41(a), section 280.41(b)(2), or section 280.42 as applicable for the substance stored.

(d) The owners and operators of an existing UST system that has not complied with the requirements of this subpart shall complete the closure procedures in subpart G of these rules.

R 29.2122 Requirements for petroleum UST systems.

Rule 22. Section 280.41 is amended to read as follows:

Section 280.41. Owners and operators of petroleum UST systems shall provide release detection for tanks and piping as follows:

(a) Tanks. Tanks shall be monitored at least once every 30 days for releases using 1 of the methods listed in section 280.43(d) to (h), except as follows:

(1) UST systems that meet the performance standards in section 280.20 or 280.21 and the monthly inventory control requirements in section

280.43(a) or (b) shall use tank tightness testing conducted in accordance with section 280.43(c) at least once every 5 years until December 22, 1998, or until 10 years after the tank is installed or upgraded under section 280.21(b), whichever is later. The initial tank tightness test shall be conducted before the initial use of the leak detection method for the tank system, and the following tank tightness tests shall each be within 5 years from the preceding test.

(2) UST systems that do not meet the performance standards in section 280.20 or 280.21 may use monthly inventory controls conducted in accordance with section 280.43(a) or (b) and annual tank tightness testing conducted in accordance with section 280.43(c) until December 22, 1998, when the tank shall be upgraded under section 280.21 or permanently closed under section 280.71. The initial tank tightness test shall be conducted before the initial use of the leak detection method for the tank system, and the following tank tightness tests shall each be within 1 year from the preceding test.

(3) A tank which has a capacity of 550 gallons or less and which is not used for motor fueling may use weekly tank gauging conducted in accordance with section 280.43(b).

(b) Piping. Underground piping that routinely contains regulated substances shall be monitored for releases in a manner that meets 1 of the following requirements:

(1) Pressurized piping. Underground piping that conveys regulated substances under pressure shall be in compliance with both of the following requirements:

(i) Be equipped with an automatic line leak detector in accordance with section 280.44(a).

(ii) Have an annual line tightness test conducted in accordance with section 280.44(b)(1) or have monthly monitoring conducted in accordance with section 280.44(c).

(2) Suction piping. Underground piping that conveys regulated substances under suction shall have a line tightness test conducted at least once every 3 years and in accordance with section 280.44(b)(1), use a liquid sensor conducted in accordance with subdivision (3) of this subsection, or use an applicable tank method conducted in accordance with section 280.44(c). Release detection is not required for suction piping that is designed and constructed to meet all of the following standards:

(i) The belowgrade piping operates at less than atmospheric pressure.

(ii) The belowgrade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.

(iii) Only 1 check valve is included in each suction line.

(iv) The check valve is located directly below, and as close as practical to, the suction pump.

(v) A method is provided that allows compliance with paragraphs (ii) to (iv) of this subdivision to be readily determined.

(3) An underground pressurized or underground suction piping system which does not have an in-line leak detector and which is equipped with secondary containment, including the sumps, as defined in section 280.12, may use interstitial monitoring to satisfy release detection requirements for piping if conducted in accordance with all of the following provisions:

(i) Liquid sensors shall be capable of detecting both regulated substances and water.

(ii) Secondary containment, including sumps, shall be maintained liquidtight and sealed from surface water runoff and subsurface water infiltration.

(iii) The liquid sensors shall shut off the flow of product in the piping system and trigger an audible alarm unless a mechanical or electronic line leak detector installed in the primary piping would restrict the flow of product in the pipe.

(iv) The liquid sensors shall be installed in every sump, including the tank manway, and along the piping run to the furthest remote dispenser at a location where the sensors will detect product or water

flowing in the secondary pipe. The pipe shall slope sufficiently towards the sensor.

(4) Pressurized piping systems equipped with line leak detectors capable of detecting less than 0.08 gallons per hour leak rate at normal operating pressure with the probability of detection of 0.95 and a probability of false alarm of 0.05 will not be required to have a line tightness test conducted in accordance with section 280.44(b)(1).

R 29.2123 Requirements for hazardous substance UST systems.

Rule 23. Section 280.42 is amended to read as follows:

Section 280.42. Requirements for hazardous substance UST systems. Owners and operators of hazardous substance UST systems shall provide release detection that meets the following requirements:

(a) Release detection at existing UST systems shall meet the requirements for petroleum UST systems in 280.41. By December 22, 1998, all existing hazardous substance UST systems shall meet the release detection requirements for new systems in subsection (b) of this section.

(b) Release detection at new hazardous substance UST systems shall meet all of the following requirements:

(1) "Secondary containment system," as used in this section means a double-wall tank or integral secondary containment system which is compatible with the substance stored and which is designed, constructed, and installed to facilitate all of the following:

(i) Contain regulated substances released from the tank system until they are detected and removed.

(ii) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system.

(iii) Be checked for evidence of a release not less than once every 30 days.

(2) Double-wall tanks and integral secondary containment systems shall be designed, constructed, and installed to contain a release from any portion of the inner tank within the outer wall and to detect the failure of the inner and outer walls.

(3) Deleted.

(4) Underground piping shall be equipped with secondary containment that satisfies the requirements of subdivision (1) of this subsection, which is double-wall piping or an integral secondary containment system. In addition, underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector or interstitial sensor in accordance with section 280.41(b)(3) and shall be installed to contain a release from any portion of the inner pipe within the outer wall and to detect the failure of the inner and outer wall.

(5) Other methods of release detection, such as external liners and vaults, may be used if owners and operators comply with all of the following provisions:

(i) Demonstrate to the department that an alternative method can detect a release of the stored substance as effectively as any of the methods allowed in section 280.43(b) to (h) can detect a release of petroleum.

(ii) Provide information to the department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance and the characteristics of the UST site.

(iii) Obtain approval from the department to use the alternative release detection method before the installation and operation of the UST system.

R 29.2125 Methods of release detection for tanks.

Rule 25. Section 280.43 is amended to read as follows:

Section 280.43. (a) Inventory control. Product inventory control, or another test of equivalent performance, shall be conducted monthly to detect a release of not less than 1.0% of flow-through plus 130 gallons on a monthly basis in the following manner:

(1) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded and computed each operating day.

(2) The equipment and tank charts used are capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 of an inch.

(3) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(4) Deliveries are made through a drop tube that extends to within 6 inches of the tank bottom.

(5) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

(6) The measurement of any water level in the bottom of the tank is made to the nearest 1/8 of an inch not less than once a month.

(b) Manual tank gauging. Manual tank gauging shall meet all of the following requirements:

(1) Each week, tank liquid level measurements are taken at the beginning and ending of a period of not less than 36 hours during which liquid is not added to or removed from the tank.

(2) Level measurements are based on an average of 2 consecutive stick readings at both the beginning and ending of the period.

(3) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 of an inch.

(4) A leak is suspected and subject to the requirements of subpart E of these rules if the variation between the beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Tank Capacity	Weekly Standard (1 test)	Monthly Standard (average of 4 tests)
550 gallons or less	10 gallons	5 gallons
551 to 1,000 gallons	13 gallons	7 gallons
1,001 to 2,000 gallons	26 gallons	13 gallons

(5) Only a tank that has a nominal capacity of 550 gallons or less may use manual tank gauging as the sole method of release detection. A tank that has a nominal capacity of 551 to 2,000 gallons may use manual tank gauging in place of inventory control under subsection (a) of this section. A tank that has a nominal capacity of more than 2,000 gallons shall not use manual tank gauging to meet the requirements of this subpart, except in conjunction with an automatic tank gauging system in accordance with subsection (d)(2) of this section.

(6) A tank of any capacity that is used for motor vehicle fueling shall not use the manual tank gauging method to meet the requirements of this subpart.

(c) Tank tightness testing. Tank tightness testing, or another test of equivalent performance, shall be capable of detecting a 0.1 gallon-per-hour leak rate from any portion of the tank while accounting for the effects of thermal expansion or the contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table. Unless a method is evaluated by a third party and certified as capable of testing manifolded tank systems, each tank in a manifolded tank system can be tested only if it can be isolated from all other tanks in the manifolded tank system and the siphons or other liquid transfer devices to the tank being tested are shut off. Testers shall be trained and certified by the manufacturer or vendor of the testing method and the testers' names shall appear on the qualified testers list provided by the manufacturer or vendor to the department. The department has the authority to disapprove any existing or future testing device or procedure if the requirements of this subsection cannot be met. The department has the authority to prohibit a person

from performing tank tightness testing if the requirements of this subsection cannot be met.

(d) Automatic tank gauging.

(1) Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control shall meet both of the following requirements:

(i) The automatic product level monitor test can detect a 0.2 gallon-per-hour leak rate from any portion of the tank that routinely contains product.

(ii) Inventory control, or another test of equivalent performance, is conducted in accordance with the requirements of subsection (a) of this section.

(2) For waste oil UST(s) and a non-motor fueling system of any size that do not meet the criteria of hazardous wastes listed or identified under the provisions of subtitle C of the solid waste disposal act of 1965, title II of Public Law 89-272, as amended, 42 U.S.C. §§6921 to 6931 and 6933 to 6939b, automatic tank gauging equipment that tests for the loss of product by mass measurement probes and conducts inventory control is adequate as required by this section if it meets both of the following requirements:

(i) The automatic product level monitor test can detect a 0.2 gallon-per-hour leak rate from any portion of the tank that routinely contains product.

(ii) Manual tank gauging is conducted in accordance with the requirements of subsection (b)(1) and (2) of this section.

(3) Each tank in a manifolded tank system shall be provided with its own automatic tank gauging probe that meets the requirements of subdivisions (1) and (2) of this subsection and shall be isolated from all other tanks during the testing process.

(e) Vapor monitoring. Prior approval by the department is required for the utilization of vapor monitoring as the primary method of release detection for an underground storage tank or the underground piping system, or both, to verify that all of the following conditions are met:

(1) The materials used as backfill are sufficiently porous, for example, gravel, sand, or crushed rock to readily allow diffusion of vapors from releases in the excavation area.

(2) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile, for example, gasoline, to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank.

(3) The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days.

(4) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank.

(5) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system.

(6) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in subdivisions (1) to (4) of this subsection and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains project.

(7) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering. A monitoring well shall have a liquidtight cover and not less than 3-foot deep annular seal to prevent surface water runoff and subsurface water infiltration into the monitoring well.

(f) Groundwater monitoring. Prior approval by the department is required for the utilization of groundwater monitoring as the primary method of release detection for an underground storage tank or the underground piping system, or both, to verify that all of the following conditions are met:

(1) The regulated substance stored is immersible in water and has a specific gravity of less than 1.

(2) Groundwater is not more than 20 feet from the ground surface and the hydraulic conductivity of the soil or soils between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec. The soil shall consist of gravel, coarse to medium sands, coarse silts, or other permeable materials.

(3) The slotted portion of the monitoring well casing shall be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions.

(4) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering. A monitoring well shall also have a liquidtight cover to prevent surface water runoff from entering the monitoring well and an annular seal extending from the ground surface to the top of the filter pack. All well construction and abandonment shall comply with part 127 of Act No. 368 of the Public Acts of 1978, as amended, being §333.12701 et seq. of the Michigan Compiled Laws, and rules promulgated under Act No. 368 of the Public Acts of 1978.

(5) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible.

(e) The continuous monitoring devices in accordance with subsection (e) of this section or manual methods used through visual or olfactory observation can detect the presence of the regulated substance stored in the tank system, a component or components of the substance, or a tracer compound placed in the tank system.

(g) Interstitial monitoring. Interstitial monitoring for double-wall UST systems and integral secondary containment systems shall be performed with a testing method which is conducted in accordance with the manufacturer's recommendation and which can detect a release through the inner wall in any portion of the tank that routinely contains product. A test may be conducted by positive or negative pressure, by a hydrostatic test that utilizes a liquid in the interstice, or by a continuous monitoring sensor. If a sensor is used, the sensor shall be capable of detecting the product stored and water, and the interstice shall be sealed from surface water runoff and subsurface water infiltration.

(h) Other methods. The department may approve another method of monthly monitoring if a person can demonstrate, by clear and convincing evidence, that the method can detect a release as effectively as any of the methods allowed in subsections (d) to (g) of this section. In comparing methods, the department shall consider the size of the release that the method can detect and the frequency and reliability with which it can be detected. A detection capability of 0.2 gallons per hour release rate with a probability of detection of 0.95 and a probability of false alarm of 0.05 will be deemed sufficient to approve a monthly monitoring method. If the method is approved, the owner and operator shall comply with any conditions imposed by the department on the use of the method to ensure the protection of human health and the environment.

R 29.2126 Methods of release detection for piping.

Rule 26. Section 280.44 is amended to read as follows:

Section 280.44. Each method of release detection for piping used to meet the requirements of section 280.41 shall be conducted in accordance with all of the following provisions:

(a) Automatic line leak detectors. A methods that alerts the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if the method detects leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer's requirements.

(b) With respect to line tightness testing, both of the following provisions:

(1) Line tightness testing shall be capable of detecting a 0.1 gallons per hour leak rate at 1 1/2 times the operating pressure.

(2) Secondary containment piping shall be tested by a positive pressure of not less than 5 psig for a minimum of 1 hour.

(c) Applicable tank methods. Any of the methods in section 280.43(e) to (h) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

R 29.2127 Release detection recordkeeping.

Rule 27. Section 280.45 is amended to read as follows:

Section 280.45. All UST system owners and operators shall maintain records in accordance with section 280.34 demonstrating compliance with all applicable requirements of this subpart. The records shall include all of the following:

(a) All written performance claims pertaining to any release detection system used and the manner in which the claims have been justified or tested by the equipment manufacturer or installer shall be maintained for 5 years from the date of installation or for another reasonable period of time determined by the department.

(b) The results of any sampling, testing, or monitoring shall be maintained for not less than 2 years or for another reasonable period of time determined by the department. The results of tank and piping tightness testing conducted in accordance with sections 280.43(c) and 280.44(b) shall be retained for not less than 5 years.

(c) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for not less than 2 years after the servicing work is completed or for another reasonable time period determined by the department. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for 5 years from the date of installation.

SUBPART E. RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION

R 29.2129 Reporting of suspected releases.

Rule 29. Section 280.50 is amended to read as follows:

Section 280.50. Owners or operators of UST systems, or a person who is employed by the owner or operator, shall report to the department in a manner specified in section 280.61 and follow the procedures specified in section 280.52 when any of the following conditions occur:

(a) The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area, such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water.

(b) Unusual operating conditions observed by owners and operators, such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or any unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking and is immediately repaired or replaced.

(c) Monitoring results from a release detection method required under sections 280.41 and 280.42 that indicate a release may have occurred, unless either of the following conditions is satisfied:

(1) The monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced and additional monitoring does not confirm the initial result.

(2) In the case of inventory control, a second month of data does not confirm the initial result.

A person who is employed by the owner or operator may do the reporting on behalf of the owner or operator; however, the owner or operator has the final responsibility to make sure the report is made.

§ 280.51 Investigation due to offsite impacts.

When required by the implementing agency, owners and operators of UST systems must follow the procedures in § 280.52 to determine if the UST system is the source of offsite impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the implementing agency or brought to its attention by another party.

R 29.2131 Release investigation and confirmation steps.

Rule 31. Section 280.52 is amended to read as follows:

Section 280.52. Unless corrective action is initiated in accordance with subpart F of these rules and part 213 of Act No. 451 of the Public Acts of 1994, as amended, being §324.21301 et seq. of the Michigan Compiled Laws, owners and operators shall immediately investigate and confirm all suspected releases of regulated substances requiring reporting under section 280.50, within 7 days or within another reasonable time period specified by the implementing agency, using either of the following steps or another procedure approved by the department:

(a) System test. Owners and operators shall conduct tests, according to the requirements for tightness testing in sections 280.43(c) and 280.44(b), that determine whether a leak exists in the UST system. Owners and operators shall repair, replace, or upgrade the UST system and begin corrective action in accordance with the provisions of subpart F of these rules and part 213 of Act No. 451 of the Public Acts of 1994, as amended, being §324.21301 et seq. of the Michigan Compiled Laws, if the test results for the UST system indicate that a leak exists. Further investigation is not required if the test results for the UST system do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release. Owners and operators shall conduct a site check as described in subdivision (b) of this section if the test results for the UST system do not indicate that a leak exists, but environmental contamination is the basis for suspecting a release.

(b) Site check. Owners and operators shall measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting samples types, sample locations, and measurement methods, owners and operators shall consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. If the test results for the excavation zone or the UST site indicate that a release has occurred, owners or operators shall begin corrective action in accordance with subpart F of these rules and part 213 of Act No. 451 of the Public Acts of 1994, as amended, being §324.21301 et seq. of the Michigan Compiled Laws. If the test results for the excavation zone or the UST site do not indicate that a release has occurred, then further investigation is not required.

R 29.2133 Reporting and cleanup of spills and overfills.

Rule 33. Section 280.53 is amended to read as follows:

Section 280.53. (a) Owners or operators of UST systems shall contain and immediately clean up a spill or overflow, report to the department in the manner specified in section 280.61, and begin corrective action in accordance with subpart F of these rules and part 213 of Act No. 451 of the Public Acts of 1994, as amended, being §324.21301 et seq. of the Michigan Compiled Laws, in either of the following cases:

(1) A spill or overflow of petroleum that results in a release into groundwater, surface water, or subsurface soils.

(2) A spill or overflow of a hazardous substance that results in a release into groundwater, surface water, or subsurface soils.

(b) Owners and operators of UST systems shall contain and immediately clean up a spill or overflow of petroleum and a spill or overflow of a hazardous substance.

SUBPART F. RELEASE RESPONSE AND CORRECTIVE ACTION FOR UST SYSTEMS
CONTAINING PETROLEUM OR HAZARDOUS SUBSTANCES

R 29.2137 Initial response.

Rule 37. Section 280.61 is amended to read as follows:

Section 280.61. Upon confirmation of a release in accordance with section 280.52 or after a release from the UST system is identified in any other manner, owners or operators, or a person employed by the owners or operators, shall perform the following initial response actions within 24 hours of a release or within another reasonable period of time determined by the department:

(a) Report the release to the department by telephone, in person, by electronic mail, or by facsimile. To meet the requirements of this section, the report shall contain, at a minimum, all of the following information:

- (1) Name of the person reporting the release.
 - (2) Date and time the release was discovered.
 - (3) Date and time the release was reported.
 - (4) Location of the release, including the facility name, address, county, and township.
 - (5) The owner's or operator's names and mailing addresses.
 - (6) Name of the contact person and phone number.
 - (7) Release information, including the type of construction of the tank, the tank capacity, the substance released, and the site condition that led the owner or operator to believe a release had occurred.
- (b) Deleted.
- (c) Deleted.
- (d) If the site assessment report required under section 280.72 is the only indication that an owner and operator has of a release and if the site assessment report is submitted within 45 days, then the site assessment report shall be considered valid notification of the release.
- (e) A person who is employed by the owner or operator may do the reporting on behalf of the owner or operator; however, the owner or operator has the final responsibility to make sure the report is made.

R 29.2139 Notifications.

Rule 39. Section 280.62 is amended to read as follows:

Section 280.62. Upon receiving a report of a release, the department will send a confirmation of receiving the release report to the owner or operator within 14 days.

SUBPART G. CLOSURE AND CHANGE IN SERVICE OF UST SYSTEMS

R 29.2151 Temporary closure.

Rule 51. Section 280.70 is amended to read as follows:

Section 280.70. Temporary closure. (a) A UST system shall be considered temporarily closed if it is empty for more than 30 continuous days and it is intended to be brought back into use within 12 months. Owners and operators shall continue the operation and maintenance of corrosion protection in accordance with section 280.31 and any release detection in accordance with subpart D of these rules. However, release detection is not required if the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that not more than 2.5 centimeters (1 inch) of residue or 0.3% by weight of the total capacity of the UST system remains in the system. The provisions of subparts E and F of these rules shall be complied with if a release is suspected or confirmed. The owner shall provide the department with written notification, using the registration form provided by the department, indicating that the UST system will be temporarily closed for not more than 12 months and that the owner intends to bring the UST system back into service within the 12-month period.

(b) If a UST system is temporarily closed, then the owners and operators shall also comply with both of the following requirements:

(1) Leave vent lines open and functioning.

(2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(c) If a UST system is temporarily closed for more than 12 months, then the owners and operators shall permanently close the UST system if it does not meet either the performance standards specified in section 280.20 for new UST systems or the upgrading requirements specified in section 280.21, except that the spill and overflow equipment requirements do not have to be met. Owners and operators shall permanently close the standard UST systems at the end of the 12-month period in accordance with sections 280.71 to 280.74, unless the department provides an extension of the 12-month temporary closure period. The request shall be received in writing not less than 30 days before the 12-month deadline ends. The extension shall not be for more than 12 months. Owners and operators shall complete a site assessment in accordance with section 280.72 before applying for an extension.

(d) The owner of a temporarily closed UST system is subject to payment of a registration fee under part 211 of Act No. 451 of the Public Acts of 1994, as amended, being §324.21101 et seq. of the Michigan Compiled Laws.

(e) Immediately before bringing a UST systems back into use, the owners and operators shall perform tank and piping tightness tests conducted in accordance with the requirements of sections 280.43(c) and 280.44(b) on a UST system that is temporarily closed for 12 months or more and shall confirm that the UST system is tight.

R 29.2153 Permanent closure and changes in service.

Rule 53. Section 280.71 is amended to read as follows:

Section 280.71. (a) Not less than 30 days before beginning either permanent closure or a change in service under subsections (b) and (c) of this section, or within another reasonable time period determined by the department, an owner and operator, or a person employed by the owner and operator, shall notify the department of the owner's and operator's intent to permanently close or make the change in service, unless the action is in response to corrective action. The 30-day notification requirement may be waived by the department. The required assessment of the excavation zone under section 280.72 shall be performed after notifying the department, but before completion of the permanent closure or change in service. The owner and operator has the final responsibility to make sure the notification is given.

(b) A UST system shall be considered permanently closed when the UST system is empty for 30 days or more and does not meet the requirements of temporary closure specified in 280.70 or the requirements for change in service specified in 280.72. To permanently close a tank, an owner and operator shall empty and clean it by removing all liquids and accumulated sludge and purge it of all vapors. All tanks closed permanently shall be removed from the ground. If building structures exist above or near the tank, or in close proximity to the tank such that removal would jeopardize the building structure integrity, the owner or operator may close the UST system in place. To close the UST system in place, the tank shall be emptied and cleaned as defined in this subsection and filled with an inert solid material and a site assessment shall be conducted under section 280.72. Piping permanently removed from service shall be emptied of all liquids and sludge, purged, and capped or shall be removed from the ground. Unless approved by the department, the owners and operators of an improperly closed UST system shall close the UST system in accordance with this section and sections 280.72 to 280.74. A tank is considered improperly closed in place if removal would not cause structural damage to any building or major structure.

(c) The use of a UST system to store a nonregulated substance is considered a change in service. Owners and operators are required to provide a 30-day notice in accordance with subsection (a) of this section. This notice shall be on a form provided by the department. Owners and operators or their agent shall then empty and clean the tank

and piping by removing all liquid and accumulated sludge and conduct a site assessment in accordance with section 280.72.

(d) Notification of permanent closure or a change in service, as required under subsection (a) of this section, shall be on a form provided by the department, and the owner and operator shall complete the information as specified on the form. The owner and operator shall notify the department not less than 2 working days, excluding Saturdays, Sundays, and holidays, before the actual permanent closure or change in service of the UST system.

(e) Upon notification received under subsection (d) of this section, the department shall forward an approval notice to the owner or operator. The approval is valid for 6 months. If the UST system is not closed or a change in service does not occur within the 6 month period, then the owner and operator shall resubmit the notification form specified in subsection (d) of this section.

(f) Within 30 days of permanent closure or a change in service of the UST system, the owner and operator shall sign and submit an amended registration for underground storage tank form or, in place of an amended registration form required under section 280.22, an owner or operator may submit a site assessment form, signed by the owner, within 45 days of permanent closure or a change in service.

R 29.2155 Assessing site at closure or change in service.

Rule 55. Section 280.72 is amended by to read as follows:

Section 280.72. (a) Before permanent closure or a change in service is completed, owners and operators shall measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations and measurement methods, owners and operators shall consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if one of the external release detection methods allowed in section 280.43(e) and (f) is operating in accordance with the requirements in section 280.43 at the time of closure, and indicates no release has occurred.

(b) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under subsection (a) or (c) of this section or in any other manner, then the owners and operators shall report a confirmed release in accordance with section 280.61 and begin corrective action in accordance with subpart F of these rules and part 213 of Act No. 451 of the Public Acts of 1994, as amended, being §324.21301 et seq. of the Michigan Compiled Laws.

(c) Visible or olfactory evidence of a regulated substance in the UST excavation constitutes a confirmed release. Positive indication from field screening instruments constitutes a suspected release.

(d) Upon closure or a change in service of a UST, the owners and operators shall perform a site assessment in compliance with either of the following provisions:

(1) Two soil borings shall be taken as close as practical to the tank, but not more than 5 feet from the tank. One boring shall be taken at each end of the tank, but not more than 2 feet below the bottom of the tank and boring shall be taken at the bottom of each end of the tank.

(2) Upon removal of a UST, the owners and operators shall perform a site assessment in compliance with either of the following provisions:

(i) One discrete sample shall be taken from the excavation floor underneath the fill pipe area for each tank removed and 1 discrete sample shall be taken from the excavation floor underneath the opposite end of the tank.

(ii) One water sample shall be taken if the entire floor of the excavation is covered with water or a 1-for-1 water-for-soil sample shall be taken if the excavation is partially covered with water.

(e) Additional sample or samples shall be taken when deemed necessary by the department or the person who performs the site assessment.

(f) A site assessment for piping shall be performed after emptying and purging the piping run or after the removal of piping. The site

assessment shall consist of 1 discrete sample for every 30 feet of the underground piping run, starting at the dispenser location or the furthest point from the tank and moving towards the tank.

(g) Samples shall be analyzed using the following testing methods:

(1) An appropriate method listed in the United States environmental protection agency standard entitled "Test Methods For Evaluating Solid Waste; Physical/Chemical Methods," SW-846 document.

(2) Delete.

(3) Other testing methods determined by the department to be equally effective in assessing the level of contamination.

(h) Copies of site assessment results shall be submitted to the department within 45 days of the sampling date, together with the site assessment report form provided by the department. The owner and operator shall complete the information specified on the form and shall provide a site map which indicates the location of tanks and piping and which identifies the depth and location of the samples taken. The site assessment report shall also include a copy of the laboratory report that indicates the test methods used in the analyses and the chain of custody of the samples.

(1) Delete.

(2) Delete.

(3) Delete.

R 29.2157 Applicability to previously closed UST systems.

Rule 57. Section 280.73 is amended to read as follows:

Section 280.73. When directed by the department, the owner and operator of a UST system that was permanently closed before the effective date of these rules shall assess the excavation zone and close the UST system in accordance with this subpart if suspected or confirmed releases from the UST system may, in the judgment of the department, pose a current or potential threat to human health and the environment.

R 29.2159 Closure records.

Rule 59. Section 280.74 is amended to read as follows:

Section 280.74. Closure records. Owners and operators shall maintain records, in accordance with the provisions of section 280.34, that are capable of demonstrating compliance with closure requirements under this subpart. The results of the site assessment required in section 280.72 shall be maintained for not less than 3 years after completion of permanent closure or a change in service by mailing the records to the department. The records shall be mailed by either the owners and operators who took the UST system out of service or by the current owners and operators of the UST system site.

SUBPART H. FINANCIAL RESPONSIBILITY

R 29.2161 Applicability.

Rule 61. Section 280.90 is amended to read as follows:

Section 280.90(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 section 280.91.

(c) State and federal government entities whose debts and liabilities are the debts and liabilities of a state of 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 excluded or deferred under part 211 of Act No. 451 of the Public Acts of 1994, as amended, being §324.21101 et seq. of the Michigan Compiled Laws.

(e) If the owner and operator of a petroleum underground storage tank are separate persons, only 1 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 section 280.91.

(f) The amount of the financial responsibility requirements required under the provisions of this subpart shall be reduced to the amount required by the federal government upon passage by the federal government of a reduction in the financial requirements of this part.

§ 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, except that compliance with § 280.94(b) is required by: July 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; December 31, 1993.

(e) All local government entities (including Indian tribes) not included in paragraph (f) of this section; February 18, 1994.

(f) Indian tribes that own USTs on Indian lands which meet the applicable technical requirements of this part; December 31, 1998.

R 29.2163 Definition of terms.

Rule 63. Section 280.92 is amended by to read as follows:

Section 280.92. As used in this subpart:

(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) "Chief financial officer," in the case of local government owners and operators, means the individual who has the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

(d) "Controlling interest" means direct ownership of not less than 50% of the voting stock of another entity.

(e) "Director of the implementing agency" means the director of the Michigan department of environmental quality.

(f) "Financial reporting year" means the latest consecutive 12-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 securities exchange commission.

(2) An annual report of tangible net worth submitted to Dun and Bradstreet.

(3) Annual reports submitted to the energy information administration or the rural electrification administration.

(g) "Legal defense cost" means any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought by any of the following entities:

(1) 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.

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

(h) "Local government" has the meaning given this term by applicable state law and includes Indian tribes. The term is generally intended to include the following entities:

- (1) Counties.
- (2) Municipalities.
- (3) Townships.
- (4) Separately chartered and operated special districts, including local government public transit systems and redevelopment authorities.
- (5) Independent school districts authorized as governmental bodies by state charter or constitution.
- (6) Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

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

(j) "Owner or operator," when the owner and operator are separate parties, means the party that is obtaining or has obtained financial assurances.

(k) "Petroleum marketing facilities" means 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.

(l) "Petroleum marketing firms" means all firms that own petroleum marketing facilities. Firms that own other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

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

(n) "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through 1 of the mechanisms listed in sections 280.95 to 280.103, including any of the following entities:

- (1) A guarantor.
- (2) An insurer.
- (3) A risk retention group.
- (4) A surety.
- (5) An issuer of a letter of credit.
- (6) An issuer of a state-required mechanism.
- (7) A state.

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

(p) "Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to the relationship valid and enforceable. A guarantee contract is issued incident to the relationship if it arises for a clear commonality of interest in the event of a UST release, such as any of the following:

- (1) Coterminous boundaries.
- (2) Overlapping constituencies.
- (3) Common groundwater aquifer.
- (4) Another relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

(q) "Tangible net worth" means the tangible assets that remain after deducting liabilities. Tangible assets do not include intangibles such as goodwill and rights to patents or royalties. For the 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.

(r) "Termination," under sections 280.97(b)(1) and (2), means only the changes that could result in a gap in coverage such as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

§ 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 peroccurrence 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.

R 29.2163a Allowable mechanisms and combinations of mechanisms.

Rule 63a. Section 280.94 is amended to read as follows:

Section 280.94. (a) Subject to the limitations of subsections (b) and (c) of this section, both of the following provisions apply:

(1) An owner or operator, including a local government owner or operator, may use any 1 or a combination of the mechanisms listed in sections 280.95 to 280.103 to demonstrate financial responsibility under this subpart for 1 or more underground storage tanks.

(2) A local government owner or operator may use any 1 or a combination of the mechanisms listed in sections 280.104 to 280.107 to demonstrate financial responsibility under this subpart for 1 or more underground storage tanks.

(b) An owner or operator may use a guarantee under section 280.96 or surety bond under section 280.98 to establish financial responsibility only if the attorney general of the state in which the underground storage tanks are located has 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 re-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:

<i>EPA Regulations</i>	<i>Amount</i>
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

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee \$ _____
2. Amount of corrective action, closure and postclosure 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. Is line 6 at least \$10 million? Yes No
8. Is line 6 at least 10 times line 3? _____
9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? _____
10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? _____
11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? _____
12. 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

- 1. Amount of annual UST aggregate coverage being assured by a test, and/or guarantee \$_____
- 2. Amount of corrective action, closure and postclosure 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.] \$_____
- Yes No
- 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] \$_____
- Yes No
- 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 _____

Alternative I-Continued

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 yearend 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 yearend 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.

R 29.2163b Guarantee.

Rule 63b. Section 280.96 is amended to read as follows:

Section 280.96. (a) An owner or operator may satisfy the requirements of section 280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be either of the following entities:

(a) A firm that meets all of the following requirements:

- (i) Possesses a controlling interest in the owner or operator.
- (ii) Possesses a controlling interest in a firm described in paragraph (i) of this subdivision.
- (iii) Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator.

(2) A firm which is engaged in a substantial business relationship with the owner or operator and which is issuing the guarantee as an act incident to the business relationship.

(b) Within 120 days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of section 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 section 280.95(d) and shall 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, then, within 120 days of the end of the 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 the guarantor no longer meets the requirements of the financial test of section 280.95(b) or (c) and (d), then the guarantor shall notify the owner or operator within 10 days of receiving the notification from the director. In both cases, the guarantee will terminate not less than 120 days after the date that the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternate coverage as specified in section 280.114.

(c) The guarantee shall 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 obligees, on behalf of [owner or operator] of [business address].

Recitals

(1) Guarantor meets or exceeds the financial test criteria of 40 C.F.R. 280.95(b) or (c) and (d) and agrees to comply with the requirements for guarantors as specified in 40 C.F.R. 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 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. 280.22 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 C.F.R. 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 from different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tanks(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 C.F.R. 280.112, 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 C.F.R. Part 280, Subpart F, the guarantor upon written instructions from the [Director] shall fund a standby trust in accordance with the provisions of 40 C.F.R. 280.112, 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 C.F.R. 280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 40 C.F.R. 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 C.F.R. 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 C.F.R. 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, 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 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 C.F.R. 280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [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 C.F.R. 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 of notary: _____

(d) An owner or operator who uses a guarantee to satisfy the requirements of section 280.93 shall 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 section 280.112. The standby trust fund shall meet the requirements specified in section 280.103.

R 29.2163c Insurance and risk retention group coverage.

Rule 63c. Section 280.97 is amended to read as follows:

Section 280.97. (a) An owner or operator may satisfy the requirements of section 280.93 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 shall be amended by an endorsement worded as specified in paragraph (b)(1) of this section, or evidence by a certificate of insurance worded as specified in paragraph (b)(2) of this section, except that instructions in brackets shall 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:

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 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. 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 non sudden 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) to (e) of this Paragraph 2 are hereby amended to conform with subsections (a) to (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 ["Insured" 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 C.F.R. 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 nonpayment 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.

[Insert for claims made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insured" or "Group"] within 6 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 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 C.F.R. 280.97(b)(1) and that the ["Insurer" or "Group"] is ["licensed to transact the business or insurance or eligible to provide insurance as an excess or surplus lines insurer in 1 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]

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 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. 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 the 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 ["Insured" 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 C.F.R. 280.95 to 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 6 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 C.F.R. 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 1 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 shall 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 1 or more states.

(d) In the event of termination or nonrenewal of liability insurance coverage used to meet the financial responsibility requirements, the insurer shall notify the department of termination or nonrenewal not more than 20 days after the date of termination or nonrenewal. The notice shall state the name and address of the insured, the date of termination or nonrenewal, and the address of the facility previously insured.

R 29.2163d Surety bond.

Rule 63.d Section 280.98 is amended as follows:

Section 280.98. (a) An owner or operator may satisfy the requirements of section 280.93 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond shall be among the companies listed as acceptable sureties on federal bonds in the latest Circular 570 of the United States department of the treasury.

(b) The surety bond shall be worded as follows, except that instructions in brackets shall 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 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. 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 Present, 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 propose of allowing a joint action or actions against any or all of use, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as it 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 cause by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases";, if coverage is different for different tanks or location, 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 C.F.R. 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 cause 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 C.F.R. 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 worker's 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 C.F.R. 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 C.F.R. 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 C.F.R. 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 C.F.R. 280.112.

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 C.F.R. 280.112.

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 C.F.R. 280.98(b) as such regulations were constituted on the date this bond was executed.

Principal

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

Corporate Surety(ies)

[Names and address]
 [State of Incorporation]: _____
 [Liability limit]:\$ _____
 [Signature(s)]
 [Name(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 section 280.93 shall 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 section 280.112. The standby trust fund shall meet the requirements specified in section 280.103.

R 29.2163e Letter of credit.

Rule 63e. Section 280.99 is amended to read as follows:

Section 280.99. (a) An owner or operator may satisfy the requirements of section 280.93 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall 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 shall 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 1 Director of a state implementing agency is a beneficiary, "by any 1 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] 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 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. 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 worker's 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 C.F.R. 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 C.F.R. 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 by the Internal Chamber of Commerce," or "the Uniform Commercial Code"].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of section 280.93 shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid under 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 section 280.112. The standby trust fund shall meet the requirements specified in section 280.103.

(d) The letter of credit shall be irrevocable with a term the issuing institution. The letter of credit shall provide that credit be automatically renewed for the same term as the original term, unless, at 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.

R 29.2165 State fund or other state assurance.

Rule 65. Section 280.101 is deleted.
Section 280.101 Deleted.

§ 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 acknowledgment 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 lll`` 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. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by 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 provision 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 here under. 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 here under. 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] here under 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 acknowledgment 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.

R 29.2166 Local government bond rating test.

Rule 66. Section 280.104 is amended as follows:

Section 280.104. (a) A general purpose local government owner or operator, a local government, or any combination of owner, operator, or local government serving as a guarantor may satisfy the requirements of section 280.93 by having a currently outstanding issue or issues of general obligation bonds of \$1,000,000.00 or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A, or BBB. If a local government has multiple outstanding issues, or if a local government's bonds are rated by both Moody's and Standard and Poor's, then the lowest rating shall be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

(b) A local government owner or operator or local government serving as a guarantor which is not a general-purpose local government and which does not have the legal authority to issue general obligation bonds may satisfy the requirements of section 280.93 by having a currently outstanding issue or issues of revenue bonds of \$1,000,000.00 or more, excluding refunded issues, and having a Moody's rating of Aaa, A, A, or Baa or a Standard and Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. If bonds are rated by both Moody's and Standard and Poor's, then the lower rating for each bond shall be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

(c) The local government owner or operator, a guarantor, or any combination or owner, operator or guarantor shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard and Poor's.

(d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general-purpose local government owner or operator, a guarantor, or any combination of owner, operator or guarantor shall sign 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 local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test 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 bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

<u>Issue Date</u>	<u>Maturity Date</u>	<u>Outstanding Amount</u>	<u>Bond Rating</u>	<u>Bond Rating Agency</u> [Moody's or Standard and Poor's]
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The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard and Poor's are rated as at least investment grade (Moody's Baa or Standard and Poor's BBB) based on the most recent ratings published within the last 12 months. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in 40 C.F.R. Part 280.104(d) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(e) To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator, a guarantor, or any other combination of owner, operator or guarantor, other than a general purpose government shall sign 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 local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test 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). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows:
[complete table]

<u>Issue Date</u>	<u>Maturity Date</u>	<u>Outstanding Amount</u>	<u>Bond Rating</u>	<u>Bond Rating Agency</u>
				[Moody's or Standard and Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding revenue bonds issued by this government that have been rated by Moody's

or Standard and Poor's are rated as at least investment grade (Moody's Baa or Standard and Poor's BBB) based on the most recent ratings published within the last 12 months. The revenue bonds listed are not backed by third-party credit enhancement or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in 40 C.F.R. Part 280.104(e) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(f) The director of the implementing agency may require financial condition reports at any time from the local government owner or operator, local government guarantor, or any combination of owner, operator or guarantor. If the director finds, on the basis of financial condition reports or other information, that the local government owner or operator, guarantor, or any combination of owner, operator, or guarantor no longer meets the local government bond rating test requirements of section 280.104, then the local government owner or operator shall obtain alternative coverage within 30 days after notification of such a finding.

(g) If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, then the local government owner or operator shall obtain alternative coverage within 150 days of the change in status.

R 29.2166a Local government financial test.

Rule 66a. Section 280.105 is amended to read as follows:

Section 280.105. (a) A local government owner or operator may satisfy the requirements of section 280.93 by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator shall have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local government financial test, the owner or operator shall meet the criteria of subsection (b)(2) and (3) of this section based on year-end financial statements for the latest completed fiscal year.

(b) The local government owner or operator shall have all of the following information available, as shown in the year-end financial statements for the latest completed fiscal year:

(1) Total revenues: Consists of the sum of general fund operating and nonoperating revenues, including all of the following:

- (i) Net local taxes.
- (ii) Licenses and permits.
- (iii) Fines and forfeitures.
- (iv) Revenues from use of money and property.
- (v) Charges for services.
- (vi) Investment earnings.
- (vii) Sales (property, publications, and the like).
- (viii) Intergovernmental revenues (restricted and unrestricted).
- (ix) Total revenues from all other governmental funds, including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

(2) Total expenditures: Consists of the sum of general fund operating and nonoperating expenditures, including all of the following:

- (i) Public safety.
- (ii) Public utilities.
- (iii) Transportation.
- (iv) Public works.
- (v) Environmental protection.
- (vi) Cultural and recreational.
- (vii) Community development.
- (viii) Revenue sharing.
- (ix) Employee benefits and compensation.
- (x) Office management.
- (xi) Planning and zoning.
- (xii) Capital projects.
- (xiii) Interest payments of debt.
- (xiv) Payments for retirement of debt principal.

(xv) Total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

(3) Local revenues: Consists of total revenues, as defined in subsection (b)(1) of this section, minus the sum of all transfers from other governmental entities, including all moneys received from federal, state, or local government sources.

(4) Debt service: Consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest-bearing warrants. Excludes payments on any of the following:

- (i) Non-interest-bearing short-term obligations.
- (ii) Interfund obligations.
- (iii) Amounts owed in a trust or agency capacity.
- (iv) Advances and contingent loans from other governments.

(5) Total funds: Consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Includes federal securities, federal agency securities, state and local government securities, and other securities, such as bonds, notes, and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

(6) Population consists of the number of people in the area served by the local government.

(c) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

(d) The local government owner or operator shall have a letter signed by the chief financial officer worded as specified in subsection (e) of this section.

(e) To demonstrate that it meets the financial test under subsection (b) of this section, the chief financial officer of the local government owner or operator shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-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]. This letter is in support of the use of the local government financial test 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 [list for each facility: the name and address of the facility where tanks assured by this financial test are located. 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 by the tank identification number provided in the notification submitted pursuant to 40 C.F.R. Part 280.22 or the corresponding state requirements.]

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A, or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

Worksheet For Municipal Financial Test

PART I, BASIC INFORMATION

1. Total Revenues

- (a) Revenues (dollars) \$_____

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.
- (b) Subtract interfund transfer (dollars) \$_____
- (c) Total Revenues (dollars) \$_____

2. Total Expenditures

- (a) Expenditures (dollars) \$_____

Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.
- (b) Subtract interfund transfers (dollars) \$_____
- (c) Total expenditures (dollars) \$_____

3. Local Revenues
- (a) Total Revenues (from 1c) (dollars) \$_____
- (b) Subtract total intergovernmental transfers (dollars) \$_____
- (c) Local revenues (dollars) \$_____
4. Debt Service
- (a) Interest and fiscal charges (dollars) \$_____
- (b) Add debt retirement (dollars) \$_____
- (c) Total debt service (dollars) \$_____
5. Total funds (dollars) \$_____

(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds)

6. Population (persons)

PART II. APPLICATION OF TEST

7. Total Revenues to Population
- (a) Total revenues (from 1c)
- (b) Population (from 6)
- (c) Divide 7a by 7b
- (d) Subtract 417
- (e) Divide by 5,212
- (f) Multiply by 4.095
8. Total Expenses to Population
- (a) Total expenses (from 2c)
- (b) Population (from 6)
- (c) Divide 8a by 8b
- (d) Subtract 524
- (e) Divide by 5,401
- (f) Multiply by 4.095
9. Local Revenues to Total Revenues
- (a) Local Revenues (from 3c)
- (b) Total Revenues (from 1c)
- (c) Divide 9a by 9b
- (d) Subtract .695
- (e) Divide by .205

- (f) Multiply by 2.840
- 10. Debt Service to Population
 - (a) Debt Service (from 4d)
 - (b) Population (from 6)
 - (c) Divide 10a by 10b
 - (d) Subtract 51
 - (e) Divide by 1,038
 - (f) Multiply by -1.866
- 11. Debt Service to Total Revenues
 - (a) Debt Service (from 4d)
 - (b) Total Revenues (from 1c)
 - (c) Divide 11a by 11b
 - (d) Subtract .068
 - (e) Divide by .259
 - (f) Multiply by -3.533
- 12. Total Revenues to Total Expenses
 - (a) Total Revenues (from 1c)
 - (b) Total Expenses (from 2c)
 - (c) Divide 12a by 12b
 - (d) Subtract .910
 - (e) Divide by .899
 - (f) Multiply by 3.458
- 13. Funds Balance to Total Revenues
 - (a) Total Funds (from 5)
 - (b) Total Revenues (from 1c)
 - (c) Divide 13a by 13b
 - (d) Subtract .891
 - (e) Divide by 9.156
 - (f) Multiply by 3.270
- 14. Funds Balance to Total Expenses
 - (a) Total Funds (from 5)
 - (b) Total Expenses (from 2c)

- (c) Divide 14a by 14b
 - (d) Subtract .866
 - (e) Divide by 6.409
 - (f) Multiply by 3.270
15. Total Funds to Population
- (a) Total Funds (from 5)
 - (b) Population (from 6)
 - (c) Divide 15a by 15b
 - (d) Subtract 270
 - (e) Divide by 4,548
 - (f) Multiply by 1.866
16. Add $7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937$.

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

[Signature]

[Name]

[Title]

[Date]

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

(g) The director of the implementing agency may require reports of financial condition at any time from the local government owner or operator. If the director finds, on the basis of the reports or other information, that the local government owner or operator no longer meets the financial test requirements of (b) to (e), then the owner or operator shall obtain alternate coverage within 30 days after notification of the finding.

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

R 29.2167 Local government guarantee.

Rule 67. Section 280.106 is amended to read as follows:

Section 280.106. (a) A local government owner or operator may satisfy the requirements of section 280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be either the state in which the local government owner or operator is located or a local government having a substantial governmental relationship with the owner and operator and issuing the guarantee as an

act incident to the relationship. A local government acting as the guarantor shall demonstrate 1 of the following:

(1) That it meets the bond rating test requirement of section 280.104 and shall deliver a copy of the chief financial officer's letter as contained in section 280.104(c) to the local government owner or operator.

(2) That it meets the worksheet test requirements of section 280.105 and shall deliver a copy of the chief financial officer's letter as contained in section 280.105(c) to the local government owner or operator.

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

(b) If the local government guarantor is unable to demonstrate financial assurance under section 280.104, 280.105, 280.107(a), 280.107(b), or 280.107(c) at the end of the financial reporting year, then the guarantor shall send, by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. The guarantee will terminate not less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternative coverage as specified in section 280.114(c).

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

(1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the director of the implementing agency, then the guarantee shall be worded as specified in subsection (d) of this section.

(2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the director of the implementing agency for taking corrective action or compensating third parties for bodily injury and property damage, then the guarantee shall be worded as specified in subsection (e) of this section.

(d) If the guarantor is a state, then the local government guarantee with standby trust shall be worded as specified in subdivision (1) of this subsection, except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, then the local government guarantee with standby trust shall be worded as specified in subdivision (2) of this subsection, except that instructions in brackets are to be replaced with relevant information and the brackets deleted. Subdivisions (1) and (2) of this subsection read as follows:

(1) Local government guarantee with standby trust made by a state guarantee made this [date] by [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(i) Guarantor is a state.

(ii) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [list the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. Part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 C.F.R. 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.

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

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

In the event that the [director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 C.F.R. Part 280, subpart F, the guarantor upon written instructions from the [director] shall fund a standby trust fund in accordance with the provisions of 40 C.F.R. 280.112, 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 C.F.R. 280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(iv) 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.

(v) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 C.F.R. Part 280.

(vi) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 40 C.F.R. 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.

(vii) The guarantor's obligation does not apply to any of the following:

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

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

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

(D) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government

owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

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

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

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 C.F.R. 280.106(d) as such regulations were constituted on the effective date shown immediately below.

Effective Date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(2) Local government guarantee with standby trust made by a local government.

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

Recitals

(i) Guarantor meets or exceeds [select 1: the local bond rating test requirements of 40 C.F.R. 280.104, the local government financial test requirements of 40 C.F.R. 280.105, or the local government fund under 40 C.F.R. Part 280.107(a), (b), or (c)].

(ii) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [list the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. Part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 C.F.R. 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.

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

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of

cancellation of this guarantee and the [director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank coverage by this guarantee, the guarantor, upon instructions from the [director] shall fund a standby trust fund in accordance with the provisions of 40 C.F.R. 280.112, in an amount not to exceed the coverage limits specified above.

In the event that the [director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 C.F.R. 280, subpart F, the guarantor upon written instructions from the [director] shall fund a standby trust fund in accordance with the provisions of 40 C.F.R. Part 280.112, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award 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 C.F.R. 280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(iv) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (i) of this subdivision, guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(v) 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.

(vi) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 C.F.R. Part 280.

(vii) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 40 C.F.R. 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.

(viii) The guarantor's obligation does not apply to any of the following:

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

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

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

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

(E) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of

liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 C.F.R. 280.93.

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

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 C.F.R. 280.106(d) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary

(e) If the guarantor is a state, the local government guarantee without standby trust shall be worded as specified in subdivision (1) of this subsection, except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, the local government guarantee without standby trust shall be worded as specified in subdivision (2) of this subsection, except that instructions in brackets are to be replaced with relevant information and the brackets deleted. Subdivisions (1) and (2) of this subsection read as follows:

(1) Local government guarantee without standby trust made by a state.

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

Recitals

(i) Guarantor is a state.

(ii) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [list the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. Part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 C.F.R. 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.

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

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [director of the implementing agency] has determined or suspects that a release has occurred at an

underground storage tank covered by this guarantee, the guarantor, upon written instructions for the [director] shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the [director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above identified tank(s) in accordance with 40 C.F.R. Part 280, subpart F, the guarantor upon written instructions from the [director] shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [director], shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(iv) 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.

(v) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 C.F.R. Part 280.

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

(vii) The guarantor's obligation does not apply to any of the following:

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

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

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

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

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

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

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 C.F.R. 280.106(e) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(2) Local government guarantee without standby trust made by a local government.

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

Recitals

(i) Guarantor meets or exceeds [select 1: the local government bond rating test requirements of 40 C.F.R. 280.104, the local government financial test requirements of 40 C.F.R. 280.105, the local government fund under 40 C.F.R. 280.107(a), (b), or (c)].

(ii) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [list the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than 1 instrument is used to assure different tanks at any 1 facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 C.F.R. Part 280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 C.F.R. 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.

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

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

In the event that the [director] determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above identified tank(s) in accordance with 40 C.F.R. Part 280, subpart F, the guarantor upon written instructions from the [director] shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [director], shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(iv) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (i) of this subdivision, guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(v) 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.

(vi) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 C.F.R. Part 280.

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

(viii) The guarantor's obligation does not apply to any of the following:

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

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

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

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

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

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

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 C.F.R. 280.106(e) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

R 29.2168 Local government fund.

Rule 68. Section 280.107 is amended to read as follows:

Section 280.107. A local government owner or operator may satisfy the requirements of section 280.93 by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in subsection (b) of this section, a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets any of the following requirements:

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

(b) The fund is dedicated by state constitutional provision or by local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, and is funded for 5 times the full amount of coverage required under section 280.93 or is funded for part of the required amount of coverage and is used in combination with another mechanism or mechanisms that provide the remaining coverage. If the fund is funded for less than 5 times the amount of coverage required under section 280.93, then the amount of financial responsibility demonstrated by the fund may not be more than 1/5 the amount in the fund.

(c) The fund is dedicated by state constitutional provision or by local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. A payment is made to the fund once every year for 7 years until the fund is fully funded. The 7-year period is hereafter referred to as the "pay-in period." The amount of each payment shall be determined by the following formula:

$$\frac{TF - CF}{Y}$$

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

(1) The local government owner or operator has available bonding authority, approved through voter referendum if approval is necessary

before the issuance of bonds, for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. The bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks.

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

(d) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator or guarantor shall sign 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 local government owner or operator, or guarantor]. This letter is in support of the use of the local government fund mechanism 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 local government fund mechanism: [list for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: "the local government fund is funded for the full amount of coverage required under section 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." Or "the local government fund is funded for 10 times the full amount of coverage required under section 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage," or "a payment is made to the fund once every year for 7 years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "a payment is made to the fund once every year for 7 years until the fund is fully-funded and I have attached a letter signed by the state attorney general stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority"].

The details of the local government fund are as follows:

Amount in fund (market value of fund of close of last fiscal year):

[If fund balance is incrementally funded as specified in §280.107(c), insert:

Amount added to fund in the most recently completed fiscal year:

Number of years remaining in the pay-in period: _____

A copy of the state constitutional provision, or local government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in 40 C.F.R. 280.107(d) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

R 29.2168a Substitution of financial assurance mechanisms by owner or operator.

Rule 68a. Section 280.108 is amended to read as follows:

Section 280.108. (a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subpart if, at all times, the owner operator maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of section 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.

R 29.2168b Cancellation or nonrenew by provider of financial assurance.

Rule 68b. Section 280.109 is amended to read as follows:

Section 280.109. (a) 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. 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. Termination of insurance or risk retention coverage, except for nonpayment 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 nonpayment 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 section 280.114, then the owner or operator shall 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, then the owner or operator shall notify the director of the implementing agency of the failure and submit all of the following information:

- (1) The name and address of the provider of financial assurance.
- (2) The effective date of termination.
- (3) Evidence of the financial assistance mechanism subject to the termination maintained in accordance with section 280.107(b).

R 29.2168c Reporting by owner or operator.

Rule 68c. Section 280.110 is amended to read as follows:

Section 280.110. (a) An owner or operator shall submit the appropriate forms listed in section 280.111(b) documenting current evidence of financial responsibility to the director of the implementing agency as follows:

(1) Within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under section 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 sections 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 section 280.22.

(c) The director of the implementing agency may require an owner or operator to submit evidence of financial assurance as described in section 280.111(b) or other information relevant to compliance with this subpart at any time.

R 29.2168d Recordkeeping.

Rule 68d. Section 280.111 is amended to read as follows:

Section 280.111 (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 section 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 section 280.95 through section 280.100 or section 280.102 or section 280.104 through section 280.107 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) A local government owner or operator using a local government guarantee under section 280.106 (d) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(5) A local government owner or operator using the local government bond rating test under section 280.104 must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard and Poor's.

(6) A local government owner or operator using the local government guarantee under section 280.106, where the guarantor's demonstration of

financial responsibility relies on the bond rating test under section 280.104 must maintain a copy of the guarantor's bond rating published within the last twelve months by Moody's or Standard and Poor's.

(7) 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.

(8) 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 section 280.101(d).

(9) An owner or operator using a local government fund under section 280.107 must maintain the following documents.

(i) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund, and

(ii) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under section 280.107(a)(3) using incremental funding backed by bonding authority, the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.

(iii) If the fund is established under section 280.107(a)(3) using incremental funding backed by bonding authority, the owner or operator must also maintain documentation of the required bonding authority, including either the results of a voter referendum (under section 280.107(a)(3)(i)), or attestation by the state attorney general as specified under section 280.107(a)(3)(ii).

(10) A local government owner or operator using the local government guarantee supported by the local government fund must maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

(11) An owner or operator using an assurance mechanism specified in sections 280.95 through 280.107 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

[Owners or operator] hereby certifies that it is in compliance with the requirements of subpart H of 40 C.F.R. Part 280.

The financial assurance mechanism(s) used to demonstrate financial responsibility under subpart H of 40 C.F.R. 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).

R 29.2169 Drawing on financial assurance mechanisms.

Rule 69. Section 280.112 is amended to read as follows:

Section 280.112. (a) Except as specified in subsection (d) of this section, the 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 either of the following provisions applies:

(1) 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 the director determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and notifies the owner or operator of the determination or suspicion or the owner or operator has notified the director under subpart E or F of these rules of a release from an underground storage tank covered by the mechanism.

(2) The conditions of subsection (b)(1) or (2)(i) or (ii) of this section are satisfied.

(b) The director of the implementing agency may draw on a standby trust fund when in either of the following situations:

(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 C.F.R. part 280, subpart F.

(2) The director has received either of the following:

(i) Certification from the owner or operator and the third-party liability claimant or claimants and from attorneys representing the owner or operator and the third-party liability claimant or claimants that a third-party liability claim should be paid. The certification shall 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

(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 subsection (b) of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, then 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 subsection (b)(2)(i) of this section and valid court orders under subsection (b)(2)(ii) of this section.

(d) A governmental entity acting as guarantor under section 280.106(e), the local government guarantee without standby trust, shall make payments as directed by the director under the circumstances described in section 280.112(a), (b), and (c).

R 29.2170 Release from requirements.

Rule 70. Section 280.113 is amended as to read as follows:

Section 280.113. An owner or operator need not 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 C.F.R. part 280, subpart G.

R 29.2171 Bankruptcy or other incapacity of owner or operator or provider of financial assurance.

Rule 71. Section 280.114 is amended to read as follows:

Section 280.114 (a) Within 10 days after commencement of a voluntary or involuntary proceeding under title 11 (bankruptcy) of the United States Code naming an owner or operator as debtor, the owner or operator shall notify the director of the implementing agency, by certified mail, of the commencement of a proceeding and submit the appropriate forms listed in section 280.111(b) documenting current financial responsibility.

(b) Within 10 days after commencement of a voluntary or involuntary proceeding under title 11 (bankruptcy) of the United States Code naming a guarantor providing financial assurance as debtor, the guarantor shall notify the owner or operator, by certified mail, of the commencement of a proceeding as required under the terms of the guarantee specified in section 280.96.

(c) Within 10 days after commencement of a voluntary or involuntary proceeding under title 11 (bankruptcy), of the United States Code naming a local government owner or operator as debtor, the local government owner or operator shall notify the director of the implementing agency, by certified mail, of the commencement of a proceeding and submit the appropriate forms listed in section 280.111(b) documenting current financial responsibility.

(d) Within 10 days after commencement of a voluntary or involuntary proceeding under title 11 (bankruptcy), of the United States Code naming a guarantor providing a local government financial assurance as debtor, the guarantor shall notify the local government owner or operator, by certified mail, of the commencement of a proceeding as required under the terms of the guarantee specified in section 280.106.

(e) 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 the 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 shall obtain alternate financial

assurance as specified in this subpart within 30 days after receiving notice of an event specified in this subsection. If the owner or operator does not obtain alternate coverage within 30 days after notification, the owner or operator shall notify the director of the implementing agency.

(f) 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 shall obtain alternate financial assurance.

R 29.2172 Replenishment of guarantees, letters of credit, or surety bonds.

Rule 72. Section 280.115 is amended to read as follows:

Section 280.115. (a) If at any time after a standby trust is funded, on 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 if the amount in the standby trust is reduced below the full amount of coverage required, then the owner or operator shall, by the anniversary date of the financial mechanism from which the funds were drawn, do either of the following:

(1) Replenish the value of financial assurance to equal the full amount of coverage required.

(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 section 280.93 of this subpart. If a combination of mechanisms was used to provide the assurance funds that were drawn upon, then replenishment shall occur by the earliest anniversary date among the mechanisms.

R 29.2173 Suspension of enforcement.

Rule 73. Section 280.116 is deleted.

Section 280.116. Deleted.

R 29.2174 Adoption of standards by reference.

Rule 74. The following standards are adopted in these rules by reference and are available as at the address and cost specified:

- (a) Recommended practice 1631 entitled "*Interior Lining of Underground Storage Tanks*" of the American Petroleum Institute, 1220 L Street, North, Washington, DC 20005, at a cost as of the time of adoption of these rules of \$30.00.
- (b) NLPA standard 631 entitled "*Entry, Cleaning, Internal Inspection, Repair and Lining of Underground Storage Tanks*" of the National Leak Prevention Association, 7685 Fields Ertel Road, Cincinnati, OH 45241, at a cost as of the time of adoption of these rules of \$35.00.
- (c) ASNT recommended practice no. SNT-TC-1A entitled "*Personnel Qualification in Nondestructive Testing*" of the American Society for Nondestructive Testing, 1711 Arlington Lane, P.O. Box 28518, Columbus, OH 43228-0518, at a cost as of the time of adoption of these rules of \$41.60.
- (d) Standard practice SP 5 entitled "*White Metal Blast Cleaning*" of the Steel Structures Painting Council, 4400 Fifth Avenue, Pittsburgh, PA 15213-2683, at a cost as of the time of adoption of these rules of \$60.00.
- (e) NACE recommended practice RP-02-85-94 entitled "*Corrosion Control of Underground Storage Tank Systems by Cathodic Protection*" of the National Association of Corrosion Engineers (NACE)

International, P.O. Box 218340, Houston, TX, 77218, at a cost as of the time of the adoption of these rules of \$20.00.

- (f) SW-846 entitled "*Test Methods for Evaluating Solid Waste Physical/Chemical Methods*" of the United States Environmental Protection Association, 5403 W. Street, Washington, DC 20460 at a cost as of the time of adoption of these rules of \$239.00.

The standards adopted in this rule may also be purchased from Department of Environmental Quality, Town Center, 333 South Capitol Ave., Second Floor, P.O. Box 30157, Lansing, Michigan 48909-7657, at a cost as of the time of adoption of these rules \$30.00, \$35.00, \$41.60, \$60.00, \$20.00, or \$239.00, respectively.