



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF FIRE SERVICES
JULIE SECONTINE
STATE FIRE MARSHAL

SHELLY EDGERTON
DIRECTOR

IM-6

TO: All Interested Parties

FROM: Kevin Wieber, Manager, Storage Tank Division

DATE: December 15, 2016

SUBJECT: Enforcement of Financial Responsibility

This informational memorandum provides the Storage Tank Division (STD) policy regarding enforcement of financial responsibility (FR) under the Underground Storage Tank (UST) program.

Pursuant to Rule 61, Section 280.90 of the Michigan Underground Storage Tank Rules (MUSTR), 1999 AACRS R 29.2161 et seq., owners and operators (O/Os) of petroleum UST systems must have proof of FR for taking corrective action and for compensating third parties for bodily injury and property damage caused by releases arising from the operation of the petroleum USTs.

All O/Os are required to obtain a financial assurance mechanism as provided for in the MUSTR Sections 280.95 through 280.103 and Sections 280.104 through 280.107 for local units of government. A phased approach to enforcement of FR was implemented by the RD based upon the fact that insurance would be available for facilities with new (installed after December 22, 1988) tank systems. Phase 1 was implemented on October 1, 1995, and covered facilities with all tanks installed after July 1, 1995. Phase 2 was implemented with an effective date of November 15, 1995, to cover facilities where all tanks had been installed after December 22, 1988. Phase 3 included tanks that were upgraded or installed prior to December 22, 1988, and was implemented January 2, 1999. Proof of FR is only required to cover future releases, that is, releases discovered after the effective date of the FR mechanism.

Beginning October 1, 2000, O/Os have received a requirement notice of FR along with the annual registration invoice. This notice requires the submittal of FR information along with the remittance of UST fees. If the FR mechanism is by an insurance or risk retention group, see the attached example for the required language and formatting to

be submitted to verify proper insurance. Please do not submit an entire insurance policy.

Upon identification of a FR violation by the STD during an inspection of a new facility or random inspection of an existing facility, the O/Os will be given 30 days to obtain proof of FR. If the O/O fails to provide proof upon reinspection, the facility may have a red tag placed on the USTs that will prohibit delivery of product to the tank system. In addition, the STD may seek a misdemeanor warrant. If the O/O who is in noncompliance after 30 days owns multiple facilities, then the other facilities may also be inspected for FR. The STD also has the option to seek civil penalties of up to \$5,000 per day.

Should you require further information, please contact the Storage Tank Division, at 517-241-8847.

Financial Responsibility: Certificate of Insurance

Owners/Operators may verify from the STD that their Insurance Certificate is appropriate by submitting a certificate that has the following required language and formatting. **THIS IS A SAMPLE ONLY: USE THE CERTIFICATE ISSUED BY THE INSURANCE COMPANY. THE OWNER/OPERATOR CANNOT SIGN THIS SAMPLE CERTIFICATE.** If there are any questions, please contact Kevin Wieber, at 517-335-7260, or e-mail, at Wieberk@michigan.gov

NAME: [NAME OF COVERED LOCATION]

ADDRESS: [ADDRESS OF COVERED LOCATION]

POLICY NUMBER:

ENDORSEMENT: [IF APPLICABLE]

PERIOD OF COVERAGE:

NAME OF INSURER:

ADDRESS OF INSURER:

NAME OF INSURED:

ADDRESS OF INSURED:

CERTIFICATION:

- [NAME OF INSURER], THE "INSURER", AS IDENTIFIED ABOVE, HEREBY CERTIFIES THAT IT HAS ISSUED LIABILITY INSURANCE COVERING THE FOLLOWING UNDERGROUND STORAGE TANK (S):
(PER ATTACHED LIST OR LIST HERE)
FOR TAKING CORRECTIVE ACTION AND 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 ARISING FROM OPERATING THE UNDERGROUND STORAGE TANK (S) IDENTIFIED ABOVE.
THE LIMITS OF LIABILITY ARE \$ _____ EACH OCCURRENCE AND \$ _____ ANNUAL AGGREGATE 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 _____.
- THE INSURER 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 OF ITS OBLIGATIONS UNDER THE POLICY TO WHICH THIS CERTIFICATE APPLIES.
 - b. THE INSURER IS LIABLE FOR THE PAYMENT OF AMOUNTS WITHIN ANY DEDUCTIBLE APPLICABLE TO THE POLICY TO THE PROVIDER OF CORRECTIVE ACTION OF A DAMAGED THIRD-PARTY, WITH A RIGHT

OF REIMBURSEMENT BY THE INSURED FOR ANY SUCH PAYMENT MADE BY THE INSURER. THIS PROVISION DOES NOT APPLY WITH RESPECT TO THAT AMOUNT OF ANY DEDUCTIBLE FOR WHICH COVERAGE IS DEMONSTRATED UNDER ANOTHER MECHANISM OF COMBINATION OF MECHANISM AS SPECIFIED IN 40 CFR 180.95-280.102.

- c. WHENEVER REQUESTED BY THE DIRECTOR OF AN IMPLEMENTING AGENCY, THE INSURER AGREES TO FURNISH TO THE DIRECTOR A SIGNED DUPLICATE ORIGINAL OF THE POLICY AND ALL ENDORSEMENTS.
- d. CANCELLATION OF ANY OTHER TERMINATION OF THE INSURANCE BY THE INSURER, 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.
- e. THE INSURANCE COVERS CLAIMS OTHERWISE COVERED BY THE POLICY THAT ARE REPORTED TO THE INSURER WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF CANCELLATION OF NON-RENEWAL OF THE POLICY EXCEPT WHERE THE NEW OR RENEWED POLICY HAS THE SAME RETROACTIVE DATE OR A RETROACTIVE DATE EARLIER THAN THAT OF THE PRIOR POLICY, AND WHICH ARISE OUT OF ANY COVERED OCCURRENCE THAT COMMENCED AFTER THE POLICY RETROACTIVE DATE, IF APPLICABLE, AND PRIOR TO SUCH POLICY RENEWAL OR TERMINATION DATE. CLAIMS REPORTED DURING SUCH EXTENDED REPORTING PERIOD ARE SUBJECT TO THE TERMS, CONDITIONS, LIMITS, INCLUDING LIMITS OF LIABILITY, AND EXCLUSIONS OF THE POLICY.

I HEREBY CERTIFY THAT THE WORDING OF THIS INSTRUMENT IS IDENTICAL TO THE WORDING IN 40 CFR 280.97 (B) (2) AND THAT THE INSURER IS LICENSED TO TRANSACT THE BUSINESS OF INSURANCE, OR ELIGIBLE TO PROVIDE INSURANCE AS AN EXCESS OR SURPLUS INSURER, IN ONE OR MORE STATES.

[Signature of authorized representative of **Insurer**]

[Name of Insurance Representative]

[Title]

[Address of Insurance Representative]