# NORTH CAROLINA
# UNDERGROUND STORAGE TANK
# FINANCIAL RESPONSIBILITY REQUIREMENTS*

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WASTE MANAGEMENT
UNDERGROUND STORAGE TANK SECTION

November 10, 2015

* This publication is for general guidance. More specific information can be found in federal and state laws, regulations and rules.

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Note: Much of the information in the appendices can be found on the Division of Waste Management Web site located at http://www.wastenotnc.org.

## Why are there financial responsibility requirements?

Many underground storage tanks that store petroleum have released or will release petroleum into the environment through spills, overfills or failures in the tank and piping. These releases threaten human health, the environment, and as an owner/operator of USTs, your business. When you have a release, you must cleanup the contamination and you may also have to compensate people for bodily injury and property damage. The financial responsibility requirements exist to ensure that you can pay these cleanup and third-party liability costs.

## What are the FR laws, regulations and rules?

The federal FR laws are contained in Subtitle I of the Resource Conservation and Recovery Act. The federal FR regulations are found in the Code of Federal Regulations (Title 40, Chapter 1, Subchapter I, Part 280, Subpart H)(www.epa.gov/OUST/).

After the federal requirements were created in the 1980s, North Carolina issued its own FR requirements. The North Carolina requirements incorporate the federal requirements with some modifications. The state FR laws are in the North Carolina General Statutes (Chapter 143, Article 21A, Part 2A, Section 143-215.94H)(www.ncga.state.nc.us). The state FR rules are in Title 15A, Subchapter 2O of the North Carolina Administrative Code (http://www.wastenotnc.org). North Carolina's FR requirements became effective July 1, 1992.

## What are two fundamental things you must do to comply with North Carolina's FR requirements?

First, pay your mandatory annual tank operating fees into the North Carolina UST financial assurance fund (hereafter referred to as the "state fund") as required by the state fund statutes. Second, demonstrate that you can pay the state fund deductibles.

1. **Pay Annual Tank Fees for State Fund Eligibility**
   Paying annual tank operating fees entitles you, provided all other eligibility requirements are also met, to be reimbursed with state fund money in the event of a release after you meet your deductibles. If a release occurs, the state fund pays cleanup and third-party liability costs in excess of deductibles up to $1.5 million. There is a 20 percent copayment for costs greater than $1 million.

2. **Demonstrate that State Fund Deductibles Can Be Met**
   State fund deductibles for an upgraded UST (meets the 1998 standards for corrosion protection, spill control, and overfill prevention) are $20,000 for cleanup costs and $100,000 for third-party liability. To meet the FR requirements, you must demonstrate that you can pay these deductibles in the event of a release. You can use certain financial mechanisms to assure the availability of money for the deductibles.

## Who needs to meet the FR requirements?

Either the owner or operator of a UST must meet the FR requirements. The owner and operator must decide which one will meet the requirements.

Federal and state government agencies do not have to meet the requirements. It is assumed that these entities already have the financial resources to pay the cleanup and third-party liability costs. Local government agencies must meet the requirements.

## What kinds of USTs must meet the FR requirements?

Only regulated petroleum USTs must meet the FR requirements.

Here are some examples of USTs that must meet the requirements:

- USTs that store motor fuel for resale;
- Farm USTs greater than 1,100 gallons that store motor fuel;
- Most emergency generator USTs;
- Oil-water separator USTs that are not regulated under the Clean Water Act;
- USTs that store heating oil for resale or for use off the premises where stored.

## How much money must be assured to demonstrate that you can pay the state fund deductibles?

The amount varies depending on your number of tanks. Use the example below to determine the amount you will need.

Required Amount of Assurance to Demonstrate Ability to Pay State Fund Deductibles*

| | | |
|---|---|---|
| 1. | Number of owner/operator's USTs in North Carolina that require assurance** | 10 |
| 2. | State fund cleanup deductible (upgraded UST systems) | $ 20,000 |
| 3. | State fund third-party liability deductible | $ 100,000 |
| 4. | Scaling factor (multiply 0.03 x #1 x #2) | $ 6,000 |
| 5. | Required amount of assurance (sum of #2, #3 and #4) | $ 126,000 |

* Note that numbers 2 and 3 are fixed, and do not vary. Numbers 1, 4 and 5 vary according to the number of tanks.

**Tanks that are manifolded together are considered to be separate tanks for FR. A compartment tank is considered to be a single tank.

As you can see from the example, the amount of money needed to assure the state fund deductibles is the sum of the state fund cleanup deductible ($20,000), the state fund third-party liability deductible ($100,000), and a number that's called a "scaling factor." The scaling factor takes into account the number of tanks you have.

Use the worksheet in Appendix A to determine how much money you must assure to demonstrate you can pay the deductibles.

## What mechanisms can be used to demonstrate that you can pay the state fund deductibles?

Mechanisms are different ways you can demonstrate ability to pay the state fund deductibles. You can use one or a combination of seven financial mechanisms. The mechanisms are self-insurance, corporate guarantee, insurance and risk retention group, surety bond, letter of credit, trust fund and insurance pool.

Corporate guarantees, surety bonds, and letters of credit all utilize a "standby trust fund." A standby trust fund is not a mechanism in and of itself, but makes up a part of each of these mechanisms.

Standby trust funds are not yet funded, but are ready to accept money from a particular source. They serve as a holding area or an empty account. Sources of funding are a guarantor in the case of a corporate guarantee, a surety in the case of a surety bond, and a financial institution in the case of a letter of credit. If you use a mechanism that utilizes a standby trust fund, you must execute a trust agreement that uses the language we've provided in Appendix H.

Here are brief descriptions of the seven mechanisms.

- **Self-Insurance** You may use self-insurance if you have the financial strength to absorb the costs of a release. You must do two things to qualify. First, you must pass a financial test. Appendix B has an example and a blank financial test worksheet. The financial test is designed to determine who is likely to be able to meet their cleanup and third-party liability obligations.

  Second, you must do one of the following three things: (1) obtain annually a compilation report issued by an independent certified public accountant or certified public accounting firm, (2) file financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration, (3) report your firm's tangible net worth annually to Dun and Bradstreet. Dun and Bradstreet must then assign your firm a financial strength rating of 4A or 5A.

  With self-insurance, you retain the risk of loss or damage. With a liability insurance policy (another type of mechanism), the risk is assumed by another entity (such as an insurance company). If you qualify, and choose to self-insure, your chief financial officer must write a letter to the North Carolina Department of Environmental Quality that uses the same language as the chief financial officer letter in Appendix C.

- **Corporate Guarantee** While you may not qualify to self-insure, you may be affiliated with another company that can. The other company may own your company (either corporate parent or grandparent), be a sibling company or be a company with which you have a "substantial business relationship" (such as a major supplier or customer). In each case, the other company may provide you with a corporate guarantee. With a corporate guarantee, if there's a release and you fail to meet your cleanup and third-party liability obligations, the guarantor (the firm that provides you with the corporate guarantee) funds a standby trust fund that you establish beforehand. The NC DEQ accesses this fund to direct the payment of cleanup and third-party liability costs. If you use a corporate guarantee, the guarantor's chief financial officer must write a letter to the NC DEQ using the same language as in Appendix C. You must also execute a guarantee worded the same as the guarantee in Appendix D.

- **Insurance and Risk Retention Group** A liability insurance policy from an insurance company or risk retention group is an agreement between you and the insurance company or RRG. A RRG is a member-owned insurance company permitted to insure only its members. Members must be engaged in businesses that have similar or related exposure to liability. The agreement is that if there's a release, the insurance company or RRG meets your cleanup and third-party obligations. With a liability insurance policy from an insurance company or RRG, you pay a policy premium in exchange for the assurance they provide. Liability insurance from an insurance company or RRG may take the form of either a separate insurance policy or an endorsement to an existing insurance policy. If you use liability insurance from an insurance company or RRG, execute either a certificate of insurance or an endorsement using the language provided in Appendix E.

- **Surety Bond** A surety bond is an agreement between you, a surety company that provides the bond and the NC DEQ. If there's a release and you fail to meet your cleanup and third-party liability obligations, the surety either performs those obligations or funds a standby trust fund that you establish beforehand. The NC DEQ accesses this fund to direct the payment of cleanup and third-party liability costs. With a surety bond, you pay a fee in exchange for the assurance the surety company provides. You also repay the surety company any cleanup and third-party liability costs they pay on your behalf. If you use a surety bond, you must execute a bond using the same language provided in Appendix F.

- **Letter of Credit** A letter of credit is an agreement between you, a financial institution (such as a bank) that provides the letter of credit and the NC DEQ. With a letter of credit, if there's a release and you fail to meet your cleanup and third-party liability obligations, the financial institution funds a standby trust fund that you establish beforehand. The NC DEQ accesses this fund to direct the payment of cleanup and third-party liability costs. With a letter of credit, you pay the financial institution a fee in exchange for the assurance they provide. In addition, you repay the financial institution any cleanup and third-party liability costs they pay on your behalf. If you use a letter of credit, you must use the language in Appendix G.

- **Trust Fund** This is an agreement between you, a trustee that provides the trust fund and the NC DEQ. Trust funds require you to pay the fund the required amount of assurance. This amount is then held in trust by the trustee. If there's a release and you fail to meet your cleanup and third-party liability obligations, NC DEQ will access the fund to direct the payment of cleanup and third-party liability costs. Trust funds require you pay the trustee a fee in exchange for the assurance they provide. If you choose the trust fund mechanism, word the agreement using the language provided in Appendix H.

- **Insurance Pool** A liability insurance policy from an insurance pool is an agreement between you and the insurance pool. The agreement states that if there's a release, the insurance pool meets your cleanup and third-party obligations. With a liability insurance policy from an insurance pool, you pay the pool a policy premium in exchange for the assurance they provide. An insurance pool is a syndicate, or association of insurance companies, that have organized to underwrite a particular risk too large for the individual companies to underwrite themselves. If you use a liability insurance policy from an insurance pool, you must execute a certificate of insurance. At a minimum, the certificate should include your name and address; the location of the facilities insured by the pool; the number and capacity of insured USTs at each facility; the amount of insurance provided for each UST; and the name, address, and signature of the insurance pool's administrator.

Many local governments have difficulty demonstrating compliance with the seven mechanisms listed due to slight differences in their financial management and accounting practices. For that reason, local governments have four additional options.

- **Local Government Bond Rating Test** This mechanism is similar to the self-insurance mechanism. If you choose it, your chief financial officer must write a letter to the NC DEQ using the language from one of the two chief financial officer letters provided in Appendix I.

- **Local Government Financial Test** This mechanism is similar to the self-insurance mechanism. This mechanism requires your chief financial officer to write a letter to the NC DEQ using the wording provided in Appendix J.

- **Local Government Guarantee** This mechanism is similar to a corporate guarantee. There's one important difference, though. Corporate guarantees use a standby trust fund. However, local government guarantees may, but are not required to, use a standby trust fund.

When a local government guarantee uses a standby trust fund, if there's a release and you fail to meet your cleanup and third-party liability obligations, the guarantor (the government entity that provides you with the local government guarantee) funds a standby trust fund that you establish and from which the NC DEQ directs the payment of cleanup and third-party liability costs.

When a local government guarantee does not use a standby trust fund the process differs. If there's a release and you fail to meet your cleanup and third-party liability obligations, the guarantor provides funds directly to NC DEQ at DEQ's request. Funds are then disbursed by DEQ on an ongoing basis up to the limits of the guarantee for the payment of cleanup and third-party liability costs.

Another local government, with which you have a "substantial government relationship," or the state of North Carolina government may provide you with a guarantee. Several documents must be generated if you choose this mechanism. If the guarantor is a local government, the guarantor's chief financial officer must write a letter to the NC DEQ worded the same as any one of the several chief financial officer letters in Appendices I, J and L as appropriate. (This requirement does not apply to the state government acting as a guarantor.)

If you use a standby trust fund, you must execute a trust agreement using the language provided in Appendix H. Finally, you must execute a guarantee worded the same as one of the four in Appendix K.

- **Local Government Fund** The local government fund mechanism is similar to the trust fund mechanism. If you use this mechanism, your chief financial officer must write a letter to the NC DEQ using the language provided in Appendix L.

## What is the required scope and amount of FR?

In the wording of the mechanisms we've provided, you'll note terms such as "taking corrective action," "compensating third parties for bodily injury and property damage," "sudden accidental releases," "nonsudden accidental releases," "accidental releases," "per occurrence" and "annual aggregate." These terms concern the required scope and amount of FR.

The scope of financial responsibility encompasses corrective action and third-party liability. On-site and off-site corrective action is included. Third-party liability includes on-site and off-site bodily injury and property damage. Sudden and non-sudden accidental releases are included.

The "per occurrence" amount of money you must assure is the amount of money that must be available to pay the costs of one occurrence of a leaking UST. The "annual aggregate" amount of money you must assure is the amount of money that must be available to pay the costs of all occurrences of leaking USTs in one year. If you meet all the eligibility requirements of the state fund, including paying your annual tank operating fees, the per occurrence and annual aggregate amounts of money you must assure are equal to each other. They are also equal to the amount of money you must assure in order to demonstrate that you can pay the state fund deductibles as determined in Appendix A. This amount of assurance must be maintained at all times. If some or all of the assurance is used at any time, it must be replenished.

## What are the FR record-keeping and reporting requirements?

You must keep FR documents (such as insurance policies, letters of credit and surety bonds) at your UST site or place of business. See Appendix M for the certification of financial responsibility. This is another document that must be kept at your UST site or place of business. The documents must show that you have the appropriate type and amount of assurance. The records need to be maintained until the UST is permanently closed and any corrective action, if required, is completed. You must submit FR documents to the UST Section when requested, and within 30 days after discovering a release from a UST.

## Appendix A: Required Amount of Assurance Worksheet

Instructions You must demonstrate that you can pay the state fund deductibles. This is done with the use of mechanisms. The mechanisms assure the availability of money for any necessary future payment of deductibles. With the worksheet in this appendix you can determine the amount of money you must assure to demonstrate that you can pay the state fund deductibles. (See page 2 for a completed example worksheet.)

Required Amount of Assurance to Demonstrate Ability to Pay State Fund Deductibles*

| | | |
|---|---|---|
| 1. | Number of owner/operator's USTs in N.C. that require assurance** | _______ |
| 2. | State fund cleanup deductible (upgraded UST systems) | $ 20,000 |
| 3. | State fund third-party liability deductible | $ 100,000 |
| 4. | Scaling factor (multiply 0.03 x #1 x #2) | $_______ |
| 5. | Required amount of assurance (sum of #2, #3 and #4) | $_______ |

* Note that numbers 2 and 3 are fixed, and do not vary. Numbers 1, 4 and 5 vary according to the number of tanks.

**Tanks that are manifolded together are considered to be separate tanks for FR. A compartment tank is considered to be a single tank.

# Appendix B: Financial Test Worksheet

Instructions The self-insurance and corporate guarantee mechanisms require the use of the financial test. (See pages 3 and 4 for descriptions of the self-insurance and corporate guarantee mechanisms.) This appendix contains both example and blank financial test worksheets.

Financial Test Worksheet (Example*)

| | | | | |
|---|---|---|---|---|
| 1. | a. | Number of owner/operator's USTs in North Carolina being covered by self-insurance or corporate guarantee** | 10 | |
| | b. | State fund cleanup deductible | $20,000 | |
| | c. | State fund third-party liability deductible | $100,000 | |
| | d. | Proportion covered (For example, enter "1" if you are using only self-insurance or corporate guarantee to demonstrate that you can pay the state fund deductibles.) | 1.0 | |
| 2. | a. | Cleanup factor (multiply 0.05 x #1a x #1b x #1d) | $10,000 | |
| | b. | Third-party factor (multiply 0.02 x #1a x #1c x #1d) | $20,000 | |
| | c. | Sum of #2a and #2b (enter a minimum of $150,000 and a maximum of $3,000,000) | | $150,000 |
| 3. | | Guarantor factor (add $200,000 if you are a guarantor) | | $0 |
| 4. | | Hazardous waste and injection well plugging and abandonment costs x 10. (Add this figure if you are using a financial test to meet the financial responsibility requirements for a hazardous waste facility or injection wells.) | | $0 |
| 5. | | Net worth used to assure tanks outside North Carolina. (Add this figure if you are using self-insurance or a corporate guarantee to meet the financial responsibility requirements for USTs outside of North Carolina.) | | $0 |
| 6. | | Total net worth required to self-insure or be a guarantor of a corporate guarantee (sum of #2c, #3, #4 and #5) | | $150,000 |

* This example financial test worksheet assumes that you have ten tanks, you are using only self-insurance to demonstrate that you can pay the state fund deductibles, you are not a guarantor, you have no hazardous waste and injection well plugging and abandonment costs, and you are not using any net worth to assure tanks outside North Carolina.

** For FR, tanks that are manifolded together are considered to be separate tanks. A compartment tank is considered to be a single tank.

Financial Test Worksheet (Blank)

1. a. Number of owner/operator's USTs in North Carolina being covered by self-insurance or corporate guarantee* ____
   b. State fund cleanup deductible $20,000
   c. State fund third-party liability deductible $100,000
   d. Proportion covered (For example, enter "1" if you are using only self-insurance or corporate guarantee to demonstrate that you can pay the state fund deductibles.) ____
2. a. Cleanup factor (multiply 0.05 x #1a x #1b x #1d) $______
   b. Third-party factor (multiply 0.02 x #1a x #1c x #1d) $______
   c. Sum of #2a and #2b (enter a minimum of $150,000 and a maximum of $3,000,000) $______
3. Guarantor factor (add $200,000 if you are a guarantor) $______
4. Hazardous waste and injection well plugging and abandonment costs x 10. (Add this figure if you are using a financial test to meet the financial responsibility requirements for a hazardous waste facility or injection wells.) $______
5. Net worth used to assure tanks outside North Carolina. (Add this figure if you are using self-insurance or a corporate guarantee to meet the financial responsibility requirements for USTs outside of North Carolina.) $______
6. Total net worth required to self-insure or be a guarantor of a corporate guarantee (sum of #2c, #3, #4 and #5) $______

* For FR, tanks that are manifolded together are considered to be separate tanks. A compartment tank is considered to be a single tank.

# Appendix C: Chief Financial Officer Letter

Instructions The self-insurance and corporate guarantee mechanisms require the use of the chief financial officer letter. (See pages 3 and 4 for descriptions of the self-insurance and corporate guarantee mechanisms.) This appendix contains the chief financial officer letter. The chief financial officer letter that you write must be worded the same as this letter. The instructions in brackets are to be replaced by the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER

I, [insert name of chief financial officer], the chief financial officer of [insert name and address of the owner or operator, or guarantor] have prepared this letter in support of the use of [insert "the financial test of self-insurance" or "guarantee"] to demonstrate financial responsibility for [insert "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert "owner or operator," or "guarantor"]:

[List or attach the following information for each facility: the name and address of the facility where tanks assured by this financial test are located, facility number(s) assigned by the Department, and date(s) of last payment of annual operating fee(s). If separate mechanisms or combinations of mechanisms, other than the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund are being used to assure any of the tanks at this facility, list each tank assured by this financial test.]

[When appropriate, include the following for Hazardous Waste Management Facilities, Hazardous Waste Storage Facilities and Injection Wells:

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

| EPA Regulations | Amount |
|---|---|
| Closure (including §264.143 and §265.143) | $__________________ |
| Post-Closure Care (including §264.145 and §265.145) | $__________________ |
| Liability Coverage (including §264.147 and §265.147) | $__________________ |
| Corrective Action (including §264.101(b)) | $__________________ |
| Plugging and Abandonment (including §144.63) | $__________________ |
| Total | $__________________ ] |

This [insert "owner or operator," or "guarantor"] has not received an adverse report or a "going concern" qualification from an independent accountant on his financial statements for the last completed fiscal year.

| | | | | |
|---|---|---|---|---|
| 1. | a. | Number of owner/operator's USTs in N.C. being covered by self-insurance or corporate guarantee* | ____ | |
| | b. | State fund cleanup deductible | $20,000 | |
| | c. | State fund third-party liability deductible | $100,000 | |
| | d. | Proportion covered (for example, enter "1" if you are using only self-insurance or corporate guarantee to demonstrate that you can pay the state fund deductibles) | ____ | |
| | e. | Constant | 0.05 | |
| | f. | Cleanup total (multiply #1a x #1b x #1d x #1e) | | $________ |
| | g. | Third-party total (multiply 0.02 x #1a x #1c x #1d) | | $________ |
| | h. | If guarantor, list $200,000 | | $________ |
| 2. | | Tangible assets applied to USTs not in North Carolina | | $________ |
| 3. | | Ten times the costs for hazardous waste facilities and injection wells | | $________ |
| 4. | | Sum of #1f, #1g, #1h, #2 and #3 | | $________ |
| 5. | | Total tangible assets | | $________ |
| 6. | | Total liabilities (if any of the amount reported on #4 is included in total liabilities, you may deduct that amount from this line and add that amount to #7) | | $________ |
| 7. | | Tangible net worth (subtract #6 from #5) | | $________ |

| | | Yes | No |
|---|---|---|---|
| 8. | Is #7 at least (for an owner or operator $150,000; for a guarantor $350,000)? | ____ | ____ |
| 9. | Is #7 equal to or greater than #4? | ____ | ____ |
| 10. | Has a compilation report been issued by a certified public accountant or certified public accounting firm? | ____ | ____ |
| 11. | Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? | ____ | ____ |
| 12. | Have financial statements for the latest fiscal year been filed with the Energy Information Administration? | ____ | ____ |
| 13. | Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? | ____ | ____ |
| 14. | Has financial information been provided to Dun and Bradstreet? Has Dun and Bradstreet provided a financial strength rating of 4A or 5A? (Answer "Yes" only if both criteria have been met.) | ____ | ____ |

I hereby certify that the wording of this letter is identical to the wording specified in 15A NCAC 2O .0302, as such regulations were constituted on the date shown immediately below, and that the information contained herein is complete and accurate.

[Signature of chief financial officer]
[Name]
[Title]
[Date]

* For FR, tanks that are manifolded together are considered to be separate tanks. A compartment tank is considered to be a single tank.

## Appendix D: Corporate Guarantee

<u>Instructions</u> The corporate guarantee is one of the seven mechanisms you may use to demonstrate that you can pay the state fund deductibles. (See page 4 for a description of the corporate guarantee mechanism.) This appendix contains the corporate guarantee. The guarantee that you execute must be worded the same as this guarantee, except that the instructions in brackets are to be replaced by 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 CFR 280.95 (b) or (c) and (d) and agrees to comply with the requirements for guarantors as specified in 40 CFR 280.96(b).

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR Part 280, Subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to [implementing agency] and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the [Director], shall fund a standby trust fund in accordance with the provisions of 40 CFR 280.108, in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR part 280, Subpart F, the guarantor upon written instructions from the [Director] shall fund a standby trust in accordance with the provisions of 40 CFR 280.108, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidential releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall fund a standby trust in accordance with the provisions of 40 CFR 280.108 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 40 CFR 280.95 (b) or (c) and (d), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

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

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

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

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

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

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

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

(d) Property damage to any property owned, rented, 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 CFR 280.93.

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

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 280.96(c) as such regulations were constituted on the effective date shown immediately below.

Effective Date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

## Appendix E: Insurance and Risk Retention Group

<u>Instructions</u> Insurance and risk retention groups are one of the seven mechanisms you may use to demonstrate that you can pay the state fund deductibles. (See page 4 for a description of the insurance and risk retention group mechanism.) This appendix contains both the certificate of insurance and endorsement. The certificate of insurance or endorsement that you execute must be worded the same as in this appendix. The instructions in brackets are to be replaced by the relevant information and the brackets deleted.

The wording of the endorsement and certificate of insurance in this appendix is the same as the wording in 40 CFR 280.97 except that "licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states" is replaced with "licensed, registered, or otherwise authorized to provide insurance in North Carolina" as required by Title 15A, Subchapter 2O of the North Carolina Administrative Code.

(1) ENDORSEMENT
Name: [name of each covered location]
______________________________________________
______________________________________________
Address: [address of each covered location]
______________________________________________
______________________________________________
Policy Number: ______________________________
Period of Coverage: [current policy period]
______________________________________________
______________________________________________
Name of [Insurer or Risk Retention Group]:
______________________________________________
______________________________________________
Address of [Insurer or Risk Retention Group]:
______________________________________________
______________________________________________
Name of Insured: _____________________________
Address of Insured: ___________________________
______________________________________________
______________________________________________

ENDORSEMENT

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

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

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

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

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

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

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

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

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

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

[Signature of authorized representative of Insurer or Risk Retention Group]
[Name of person signing]
[Title of person signing],
Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of Representative]

(2) CERTIFICATE OF INSURANCE
Name: [name of each covered location]
______________________________________________________
______________________________________________________
Address: [address of each covered location]
______________________________________________________
______________________________________________________
Policy Number: ________________________________________
Endorsement (if applicable):_____________________________
Period of Coverage: [current policy period]
______________________________________________________
______________________________________________________
Name of [Insurer or Risk Retention Group]:
______________________________________________________
______________________________________________________
Address of [Insurer or Risk Retention Group]:
______________________________________________________
______________________________________________________
Name of Insured: ______________________________________
Address of Insured: ____________________________________
______________________________________________________
______________________________________________________

CERTIFICATION

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

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

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

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

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

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

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

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

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

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

[Signature of authorized representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of Representative]

## Appendix F: Surety Bond

Instructions The surety bond is one of the seven mechanisms you may use to demonstrate that you can pay the state fund deductibles. (See page 4 for a description of the surety bond mechanism.) This appendix contains the surety bond. The bond that you execute must be worded the same as this bond, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

PERFORMANCE BOND

Date bond executed: ___________________________________
Period of coverage: ___________________________________
Principal: [legal name and business address of owner or operator]
_____________________________________________________
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"] _______________________________________
State of incorporation (if applicable): ____________________
Surety(ies): [name(s) and business address(es)]
_____________________________________________________

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:
Per occurrence $_______ Annual aggregate $_______ Surety's bond number: _______

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

Whereas said Principal is required under Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

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

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

Such obligation does not apply to any of the following:

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

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

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

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

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

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

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

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

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

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

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

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

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

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

CORPORATE SURETY(IES)
[Name and address]
State of Incorporation: _____
Liability limit: $_____
[Signature(s)]

[Names(s) and title(s)]
[Corporate seal]

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

Bond premium: $_____

# Appendix G: Letter of Credit

Instructions The letter of credit is one of the seven mechanisms you may use to demonstrate that you can pay the state fund deductibles. (See pages 4 and 5 for a description of the letter of credit mechanism.) This appendix contains the letter of credit. The letter that you execute must be worded the same as this letter. The instructions in brackets are to be replaced by the relevant information and the brackets deleted.

IRREVOCABLE STANDBY LETTER OF CREDIT

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

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

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

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

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] $[insert dollar amount] per occurrence and [in words] $[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22, or the corresponding state requirement, and the name and address of the facility.]

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

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

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

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

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

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

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

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

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

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

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

## Appendix H: Trust Fund and Standby Trust Fund

Instructions The trust fund is one of the seven mechanisms you may use to demonstrate that you can pay the state fund deductibles. (See page 5 for a description of the trust fund mechanism.) This appendix contains the trust agreement. The trust agreement that you execute must be worded the same as this agreement. Replace the instructions in brackets with the relevant information and delete the brackets.

You must also execute the trust agreement in this appendix when establishing a standby trust fund. The corporate guarantee, surety bond, and letter of credit mechanisms all utilize a standby trust fund. A standby trust fund is not a mechanism in and of itself, but is instead only a part of each of these three mechanisms. A standby trust fund is a trust fund that is not yet funded but is ready to accept money from a particular source, such as from a guarantor in the case of a corporate guarantee, a surety in the case of a surety bond, and a financial institution in the case of a letter of credit. If you use a mechanism that utilizes a standby trust fund, you must execute a trust agreement worded the same as the agreement in this appendix, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

TRUST AGREEMENT

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

[Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. 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 provisions thereof, to be commingled with the assets of other trusts participating therein; and

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

Section 8. Express Powers of Trustee
Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

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

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

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

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

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

Section 9. Taxes and Expenses
All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other

expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel

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

Section 11. Trustee Compensation

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

Section 12. Successor Trustee

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

Section 13. Instructions to the Trustee

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

Section 14. Amendment of Agreement

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

Section 15. Irrevocability and Termination
Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and [the Director of the implementing agency], if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification
The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or [the Director of the implementing agency] issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law
This Agreement shall be administered, construed, and enforced according to the laws of the state of [insert name of state], or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation
As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

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

[Signature of Grantor]
[Name of the Grantor]
[Title]

Attest:
[Signature of Trustee]
[Name of the Trustee]
[Title]
[Seal]
[Signature of Witness]

[Name of the Witness]
[Title]
[Seal]

The standby trust agreement must be accompanied by a formal certification of acknowledgement similar to the following. State requirements may differ on the proper content of this acknowledgment.
State of______________________________
County of____________________________

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

[Signature of Notary Public]
[Name of Notary Public]

# Appendix I: Local Government Bond Rating Test

<u>Instructions</u> The local government bond rating test is one of the four additional mechanisms you may use if you are a local government. Its purpose is to demonstrate that you can pay the state fund deductibles. (See page 5 for a description of the local government bond rating test mechanism.) This appendix contains the mechanism's two chief financial officer letters. If you are a general purpose local government, you must write a chief financial officer letter worded the same as the first chief financial officer letter in this appendix. Replace the instructions in brackets with the relevant information and delete the brackets. If you are a non-general purpose local government, you must write a chief financial officer letter worded the same as the second chief financial officer letter in this appendix. Again, replace the instructions in brackets with the relevant information and delete the brackets.

LETTER FROM CHIEF FINANCIAL OFFICER (General Purpose Local Government)

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]

| Issue Date | Maturity Date | Outstanding Amount | Bond Rating | Rating Agency |
|---|---|---|---|---|
| | | | | [Moody's or Standard & Poor's] |

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 & Poor's are rated as at least investment grade (Moody's Baa or Standard & 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 CFR Part 280.104(d) as such regulations were constituted on the date shown immediately below.

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

LETTER FROM CHIEF FINANCIAL OFFICER (Non-General Purpose Local Government)

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]

| Issue Date | Maturity Date | Outstanding Amount | Bond Rating | Rating Agency |
|---|---|---|---|---|
| | | | | [Moody’s or Standard & 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 & Poor's are rated as at least investment grade (Moody's Baa or Standard & 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 CFR part 280.104(e) as such regulations were constituted on the date shown immediately below.

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

# Appendix J: Local Government Financial Test

Instructions The local government financial test is one of the four additional mechanisms you may use if you are a local government to demonstrate that you can pay the state fund deductibles. (See page 5 for a description of the local government financial test mechanism.) This appendix contains the mechanism's chief financial officer letter. The chief financial officer letter that you write must be worded the same as this letter. 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 CFR 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 transfers (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 CFR part 280.105(c) as such regulations were constituted on the date shown immediately below.

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

# Appendix K: Local Government Guarantee

Instructions The local government guarantee is one of the four additional mechanisms you may use if you are a local government. Its purpose is to demonstrate that you can pay the state fund deductibles. (See pages 5 and 6 for a description of the local government guarantee mechanism.) This appendix contains the mechanism's four local government guarantees. The four guarantees, in order, are the local government guarantee with standby trust made by a state, local government guarantee with standby trust made by a local government, local government guarantee without standby trust made by a state, and local government guarantee without standby trust made by a local government. The guarantee you choose to execute must be worded the same as the guarantee below, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

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

(1) Guarantor is a state.

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

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

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

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

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall fund a standby trust in accordance with the provisions of 40 CFR part 280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

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

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

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

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

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

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

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

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

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

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

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR part 280.106(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:

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

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

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

name and address of the facility.] This guarantee satisfies 40 CFR part 280, subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

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

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

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

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall fund a standby trust in accordance with the provisions of 40 CFR part 280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

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

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

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

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

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

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

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

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

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

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

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

Effective date: _____
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]

Signature of witness or notary: _____

LOCAL GOVERNMENT GUARANTEE WITHOUT STANDBY TRUST MADE BY A STATE

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

Recitals

(1) Guarantor is a state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Effective date: _____
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

LOCAL GOVERNMENT GUARANTEE WITHOUT STANDBY TRUST MADE BY A LOCAL GOVERNMENT

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

Recitals

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

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

underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) 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 CFR part 280, subpart F, the guarantor upon written instructions from the [Director] shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

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

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

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

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

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility

requirements of 40 CFR part 280, subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. 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.

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

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

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

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

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

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

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

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR part 280.106(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:

# Appendix L: Local Government Fund

<u>Instructions</u> The local government fund is one of the four additional mechanisms local governments may use to demonstrate that they can pay the state fund deductibles. (See page 6 for a description of the local government fund mechanism.) This appendix contains the mechanism's chief financial officer letter. The chief financial officer letter that you write must be worded the same as this letter. Replace the instructions in brackets with the relevant information and delete the brackets.

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 §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 ten times the full amount of coverage required under §280.93, or funded for part of the required amount of coverage and used in combination with other mechanisms(s) that provide the remaining coverage," or "A payment is made to the fund once every year for seven 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 seven 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 at 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 CFR 280.107(d) as such regulations were constituted on the date shown immediately below.

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

# Appendix M: Certification of Financial Responsibility

<u>Instructions</u> You must keep a certification of financial responsibility at your UST site or place of business. (See page 7 for a description of the record-keeping and reporting requirements.) This appendix contains the certification of financial responsibility. The certification of financial responsibility that you execute must be worded the same as this certification of financial responsibility. Replace the instructions in brackets with the relevant information and delete the brackets.

CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Owner or operator] hereby certifies that it is in compliance with the requirements of Subpart H of 40 CFR Part 280.

The financial assurance mechanism(s) used to demonstrate financial responsibility under Subpart H of 40 CFR Part 280 is[are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases.”]

[Signature of owner or operator]
[Name of owner or operator]
[Title]
[Date]

[Signature of witness or notary]
[Name of witness or notary]
[Date]

# Appendix N: Further Reading

<u>Instructions</u> There is much information on UST financial responsibility other than what appears in this manual. This appendix lists several other sources of UST financial responsibility information that you may find useful.

*Financial Responsibility for Underground Storage Tanks: A Reference Manual*.
(EPA 510-B-00-003) January 2000.
This detailed, comprehensive, 316-page EPA publication provides information on the federal FR requirements. Although the manual is based on the federal FR requirements, it is very useful in understanding the North Carolina FR requirements.

*Dollars And Sense: Financial Responsibility Requirements For Underground Storage Tanks*.
(EPA 510-K-95-004) July 1995.
This EPA publication summarizes the federal FR requirements.

*Federal FR Laws*
The federal FR laws are contained in Subtitle I of the Resource Conservation and Recovery Act.

*Federal FR Regulations*
The federal FR regulations are contained in the Code of Federal Regulations (Title 40, Chapter I, Subchapter I, Part 280, Subpart H).

*North Carolina FR Laws*
The North Carolina FR laws are contained in the North Carolina General Statutes (Chapter 143, Article 21A, Part 2A, Section 143-215.94H).

*North Carolina FR Rules*
The North Carolina FR rules are contained in Title 15A, Subchapter 2O of the North Carolina Administrative Code.