

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Dennis Spaniol at
Chairperson

3:30 ~~xxx~~/p.m. on March 20, 1989 in room 526-S of the Capitol.

All members were present except:

Representative Holmes (excused)
Representative McClure (excused)
Representative Webb (excused)

Committee staff present:

Raney Gilliland, Legislative Research
Lynne Holt, Legislative Research
Mary Torrence, Revisor of Statutes' Office
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

Dennis Murphey, Bureau Manager, Bureau of Waste Management
Department of Health and Environment

The meeting was called to order by Chairman Dennis Spaniol.

Substitute for Sb 94 - Kansas storage tank act.

Dennis Murphey presented testimony for the Department of Health and Environment (KDHE). This included background information and federal regulations developed by the EPA in a program known as UST. It was explained that although UST is a federally mandated program, it was intended for state and local implementation. Mr. Murphey advised that EPA has indicated that operation of an authorized program may be a precondition for any state to continue receiving financial support from the federal \$500 million Leaking Underground Storage Tank (LUST) Trust Fund. It was noted that the Substitute for Senate Bill 94 would provide sufficient statutory authority for delegation of the federal UST program to Kansas as well as providing additional authority to address areas not included in the federal tank program. Provisions of the Substitute for Senate Bill 94 and the 25 sections of the bill were discussed in detail. Additional staff requirements and financial resources, along with the purposes of this bill were included on page 7 of Mr. Murphey's written testimony. Attachment 1.

Mr. Murphey also submitted copies of a booklet, Dollars and Sense, published by U.S. Environmental Protection Agency, Office of Underground Storage Banks in December, 1988 which describes related financial responsibility. He called attention to the chart on page 5. Attachment 2.

Lengthy committee discussion followed relative to effective dates, gallonage tax, amounts of assessment for various operators and insurance requirements.

Mr. Murphey responded to the question of what would happen if this bill is not passed, saying that the responsibility for operating the federal underground storage tank program will exist with EPA rather than the State of Kansas. Also, there will be something of a duplication of effort because we do have regulatory requirements for petroleum tanks at the present time in the State of Kansas and that unless they are repealed, we would have responsibility as a state agency to continue to operate a regulatory program on a limited basis. We would lose approximately \$100,000 per year of federal funds to operate the regulatory program for underground tanks and we would lose between three-quarters of a million dollars and a million dollars of money coming to the state that helps to clean up tank sites. Many businesses and publicly owned facilities that have tanks would find it impossible

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,

room 526-S Statehouse, at 3:30 ~~xxx~~ p.m. on March 20, 1989

to meet the federal financial responsibility requirements and would be forced to either go out of business or to cease using tanks.

It was emphasized that the purpose of the bill was not to eliminate underground tanks or to force those tanks to come above ground because there are serious public safety issues associated with putting petroleum tanks above ground. The intent is to insure that those underground tanks which have been historically in bare steel tanks installed underground with no corrosion protection and no leak protection systems are done in a way that reduces the likelihood that those tanks will release their contents into the soil and groundwater. It was concern regarding fire hazards that drove many of the tanks that are now underground from above ground to below ground.

Mr. Murphey explained that the federal government requirements for insurance coverage are in effect right now, but there is a phase-in period. Those are federal requirements that will be in effect in this state whether this bill is passed or not. Under federal requirements, an owner or operator of a tank has to have liability coverage for third party personal injury or property damage, plus liability coverage for corrective action. The Trust Fund under this bill would cover corrective action, but not third party liability. One reason for this bill would be to reduce the cost of insurance required for owners and operators to comply with federal law.

Representative Lucas requested that Mr. Murphey provide the committee with the number of the 19,000 registered underground tanks which are located on farms. Mr. Murphey said that farm tanks so far had not been required to be identified separately from other tanks, but he would try to get that information.

Responding to another question, Mr. Murphey said that federal regulations do not require licensed contractors; this was a state initiative above federal requirements.

In response to a question regarding "substantial compliance", Mr. Murphey referred to Section 19, all of subsection (c). He noted that the Secretary of KDHE makes the determination of "substantial compliance".

Chairman Spaniol requested that Mr. Murphey provide the committee before tomorrow's meeting with a Department response as to why we would not make existing insurance coverage primary or have the right of subrogation. The state appears to be assuming all liability and not taking advantage of situations where current insurance is in force; many newer tanks come with a warranty which provides some protection. Mr. Murphey had no opposition to language regarding subrogation existing in insurance coverage; he felt it would apply in very few cases. Based on what the Department has been told by the regulating community, it appears that not many tank owners and operators currently have insurance.

Mr. Murphey was requested to return for the next meeting on March 21.

Attention of the committee was called to the minutes of March 14 which had been distributed. There have been no objections to the minutes of February 27, 28, March 2, 3 and they stand approved.

The meeting was adjourned at 5:00 p.m.

The next meeting of the House Energy and Natural Resources Committee will be held at 3:30 p.m. on March 21, 1989 in room 526-S.

Date: March 20, 1909

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Robert Anderson	Mixed Cont Oil & Gas	Atchison	274-0589
Terry Leatherman	Ks. Chamber of Commerce Ind.	Topeka	357-6321
Dolgit Singh Jansen	KS. Water Office	Topeka	296-3185
Cindy Kelly	KASB	Topeka	273-3600
Joe Lieber	Ks Co-op Council	Topeka	233-4085 273-7300
Wilbur Leonard	Comm. Ks Farm Org	Topeka	357-4912
Whitney Dameron	Coastal Petroleum	Topeka	233-4512
Charles Hickey	KOMA	Topeka	233-9655
Bob Anderson	KOMA	TOPEKA	232-0753
Ron Hammerschmitt	Dept. Health & Env.	Topeka	296-1062
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Chuck Stokes	KBA	Topeka	732-3444
Jim Magg	"	"	"
Jan Foster	Close-Up Ks.	Decatur	
Jill Wosten	"	Decatur	
Kathy Duncan	League of Women Voters Ks. Close-Up Sponsor	Topeka	272-1341
Charlene Stinson	Ks Natural Resource Council	Topeka	233-6707
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Testimony Presented to the
House Energy and Natural Resources Committee
by
The Kansas Department of Health and Environment

Substitute for Senate Bill No. 94

Introduction

Over the past several years legislative interest and public concern in Kansas and nationwide has increasingly focussed upon the protection of groundwater. The attention has arisen from a growing recognition that groundwater is one of our state's most valuable resources and that we are highly dependent upon a sufficient quantity of high quality groundwater for use by our agricultural industry, our business community, and most importantly as a source of drinking water. At the state level significant legislation has been enacted by the Kansas Legislature to address the threats to groundwater posed by hazardous waste management, solid waste management, use of agricultural chemicals, and production of oil and gas.

In 1984 in response to their concerns regarding the nationwide storage of petroleum and hazardous materials in an estimated 2 million underground tanks, Congress added Subtitle I to the Resource Conservation and Recovery Act (otherwise known as RCRA). This section provided EPA with the responsibility to develop a regulatory program for underground storage tanks (UST). On September 23, 1988 EPA issued comprehensive regulations affecting the design, installation, and operation of existing and new tank facilities. On October 26, 1988 EPA issued the federal financial responsibility requirements for tank owners and operators.

Statewide we have approximately 19,000 underground tanks registered in 7,200 locations which are owned or operated by 4,200 individuals. The majority of these are petroleum marketing facilities, although a large number belong to cities, townships,

H Energy and NR
3-20-89
Attachment 1

counties, state agencies, school districts, trucking companies, utilities, and hospitals. We estimate that 40% of the underground tanks are owned by non-marketers. The sheer number of facilities and the fact that many of the owners and operators are not accustomed to complying with environmental regulations make the operation of an effective regulatory program for underground tanks a monumental challenge. However, the size of the potential regulated community and the knowledge that tanks historically were installed underground in proximity to private and public drinking water supplies without any protective measures against corrosion make it a most important task. Although we believe estimates from some sources that as many as a third of the existing underground tanks are presently leaking is somewhat high, it is likely that 10 to 15% of the old tanks have already begun to leak and many others are going to leak in the future unless measures are taken to prevent it. No doubt in the travels around your districts some of you on this committee have seen a few of the many unprotected steel tanks being removed from the ground in rather deteriorated condition as a result of corrosion.

Underground tanks are present throughout the state near population areas large and small. Based upon the total number of underground tanks in existence and their location, this represents a staggering potential for widespread groundwater contamination. At the present time we are aware of 250 leaking underground storage tank sites in Kansas and they are becoming an increasingly large percentage of the workload for the Department's Bureau of Environmental Remediation.

The Federal UST Program

The federal requirements for underground tanks encompass four primary areas:

- 1) New tank installation standards. New tanks and associated piping systems must be designed and constructed in accordance with stringent technical requirements, including corrosion protection, leak detection and spill/overflow protection.
- 2) Standards for existing installations. Existing tanks are required to be upgraded to new tank standards during a ten-year phase in period, with the oldest tanks having the shortest compliance period.
- 3) Operational standards. All tank owner/operators must implement strict management procedures to ensure system integrity and to provide for cleanup of product releases which may occur.

- 4) Financial assurance requirements. On January 24, 1989 federal requirements went into effect which will require tank owner/operators to provide assurance of funds to pay for corrective action and third party liability for releases from tanks. The assurance may be provided by insurance, letters of credit, state-sponsored trust funds, or other means. EPA has designated a phased schedule for compliance based upon the number of tanks an owner/operator has.

Although UST is a federally mandated program, it was intended for state and local implementation. The federal law states that in order to be authorized, state programs must include all the regulatory elements of the federal program and provide for adequate enforcement. The October 1988 National Conference of State Legislatures' report on underground storage tanks indicated that 27 states have enacted underground tank legislation since passage of the 1984 RCRA amendments. Although Kansas was an early leader in the management of underground petroleum storage tanks, the statutory authority for the current program does not provide a sufficient basis for authorization of Kansas to administer the federal program.

As an incentive to encourage states to pursue delegation of the federal program, EPA has indicated that operation of an authorized program may be a precondition for any state to continue receiving financial support from the federal \$500 million Leaking Underground Storage Tank (LUST) Trust Fund. At present the state of Kansas receives approximately \$750,000/year from the LUST Trust Fund to provide corrective action at leaking orphan underground tank sites. It has become a significant portion of our state effort of environmental remediation at contaminated sites, and the loss of such funds would seriously undermine our efforts.

The Substitute for Senate Bill 94 will provide sufficient statutory authority for delegation of the federal UST program to Kansas and provides additional authority to address areas not included in the federal tank program. We believe that the people of Kansas will be best served by state administration of this program. EPA is simply not organized to adequately serve a regulated community of this size. In most instances KDHE responds to UST problems and inquiries from tank owners on the same working day that they occur. We have employed a technical assistance approach in our program operation that we will continue to implement.

Provisions of the Substitute for Senate Bill 94

In addition to the minimum requirements for federal program authorization, the bill contains provisions for above ground tanks. There is a trend toward more widespread use of above ground tanks

in response to the more stringent requirements for underground tanks. The purpose of the bill is not to drive tanks above ground -- it is intended to assure that underground tanks are designed, installed, and operated in a manner that will minimize their threat of environmental damage. There are significant public safety and accidental release concerns related to the use of above ground tanks for storage of petroleum and hazardous materials. Since 1981 the department has regulated above ground petroleum tanks and we still believe that regulatory requirements are needed for such facilities, but to a much lesser degree than underground tanks. By the adoption of requirements for structural integrity testing, product compatibility, and spill prevention measures applicable to such tanks we can reduce the undue incentive to bring storage tanks above ground and minimize the potential for a disastrous release such as the million gallon spill by Ashland Chemical Company into the Monongahela River.

The bill also provides for a licensure program for tank installers and contractors. This would provide a level of assurance to the tank owners and operators that those companies who are installing and repairing underground tanks are aware of the regulatory requirements and have demonstrated, through their performance on a written proficiency exam, their knowledge of recommended industry practices. In addition, because it would take a prohibitive number of inspectors to be onsite at each new tank installation or tank upgrade, the licensing of installers will enable the department to keep the number of staff required to operate the program to a minimum by focussing our oversight efforts on a relatively small number of licensed tank contractors.

An area of particular concern to the regulated community and the department is the requirement for financial responsibility. Under current federal regulations (and the state regulations that would be adopted pursuant to the bill) petroleum marketers will be responsible for providing assurance of at least \$1 million per occurrence and \$2 million aggregate to cover the cost of a leak or spill, and underground tank owners/operators who are not marketers must provide assurance of at least \$500,000 per occurrence and \$1-2 million aggregate (dependent upon the number of tanks they own). Apparently in response to the high probability of substantial claims and the uncertainty over the extent of liability, the private insurance industry has not responded to the needs of the tank owners for insurance to satisfy the federal financial responsibility requirements. A private pooled-risk venture is available to petroleum marketers at a substantial cost and many of the larger corporations will be able to self insure to satisfy the requirements, but many small and intermediate size companies and public tank owners will find it difficult to provide the required financial assurance.

In recognition of this problem many states have enacted state-sponsored trust funds to provide a mechanism to assist the tank owners and operators within their jurisdiction in complying with the federal financial requirements. We are particularly concerned that if such an option is not provided in Kansas, many gas stations will be forced out of business and many small towns will be left with no facilities for the local purchase of fuel. Such a situation would most likely occur in the rural areas of the state, and could present a substantial hardship on those people who might find it necessary to travel considerable distances to buy gasoline and other petroleum products. In addition, as noted above, several thousand of the tank owners and operators in Kansas are non-marketers. Most of these individuals will find it very difficult to comply with the federal financial responsibility requirements and may be forced to close out their tanks. The fund is also a critical resource for the state to utilize for cleanup of contamination from tanks where there is no identifiable, willing, and capable responsible party to perform the necessary corrective action.

As drafted, the trust fund portion of the bill would provide the corrective action portion of the tank owner/operator's financial responsibility, subject to a deductible payment. It would not provide the third party liability coverage required under federal law, nor would it cover the cost of removal, replacement, or retrofitting of the leaking tank. These would remain the responsibility of the tank owner or operator.

The bill contains several sections:

Section 1 - Title.

Section 2 - Definition of terms.

Section 3 - Exemptions.

Section 4 - Notification requirements.

Section 5 - Authority of the Secretary to adopt rules and regulations related to performance standards, reporting of releases and taking corrective action, evidence of financial responsibility, closure procedures, retrofitting schedules, fees, licensure of contractors, and registration of exempt tanks. Authority for local units of government to establish more stringent requirements is not preempted.

Section 6 - Permit requirements and denial, suspension, or revocation of permits.

- Section 7 - Financial assurance requirements.
- Section 8 - Inspections, monitoring, and testing.
- Section 9 - Unlawful acts.
- Section 10 - Licensure requirements.
- Section 11 - Denial, suspension, or revocation of license.
- Section 12 - Designation of local agencies to administer act.
- Section 13 - Civil penalties.
- Section 14 - Establishment of Petroleum Storage Tank Trust Fund.
- Section 15 - Liability for corrective action and evidence of financial responsibility.
- Section 16 - Advisory Board.
- Section 17 - Environmental Assurance Fee.
- Section 18 - Response to releases from petroleum tanks.
- Section 19 - Criteria of eligibility for reimbursement from the trust fund.
- Section 20 - Retroactive funding of corrective action plans.
- Section 21 - Limitation of state's liability.
- Section 22 - Report to the Governor and the Legislature.
- Section 23 - Appeals.
- Section 24 - Sunset of the trust fund and the board.
- Section 25 - Effective date.

The department has worked closely with tank owners and operators for a number of years under our current regulatory program. We have attempted to provide information and technical assistance to aid the regulated community in understanding the program requirements and how to comply with them. If the Substitute for Senate Bill 94 is enacted we will expand this effort with the use of informational conferences coordinated through the University of Kansas Division of Continuing Education, by the distribution of informational materials, and through onsite visits by departmental staff. The expanded regulatory responsibility would require

additional staff (one environmental engineer and two environmental technicians) and financial resources (\$91,719) for program administration, but these costs would be provided through increased tank fees. At present Kansas has the lowest annual tank fee (\$3) of any state operating a tank program, and the additional program costs could be provided by a modest increase in that fee. Currently EPA also provides partial support of the tank program development through an annual UST grant, which should continue for several more years. The administration of the trust fund portion of the bill will also require additional technical/professional staff (three technical positions, one clerical position, one accountant, and one attorney) and financial resources (\$238,048) within the department. The bill provides for such necessary costs of program operation to be paid from the trust fund, and this provision is critical to allow the fund to be managed effectively.

The department and a variety of other interested parties worked very closely with the Senate in the preparation of the Substitute for Senate Bill 94. Several changes were made, relative to the original version of Senate Bills 94 and 122, which significantly improved the bill as you see it today. The bill has several purposes:

- a) to provide the state with authority to operate in lieu of the federal underground tank program in Kansas,
- b) to establish performance standards for storage tanks of petroleum and hazardous substances which will prevent environmental damage to the soils, surface waters, and groundwater of the state,
- c) to provide a mechanism to assist tank owners and operators in complying with the federal requirements for financial responsibility, and
- d) to ensure corrective action if releases occur from tanks.

We believe the Substitute for Senate Bill 94 is an important piece of legislation for the State of Kansas and we request your favorable action.

Testimony presented by: Stanley C. Grant, Secretary
Department of Health and Environment
March 20, 1989

DOLLARS AND SENSE

A Summary of the Financial Responsibility Regulations for Underground Storage Tank Systems

**U.S. Environmental Protection Agency
Office of Underground Storage Tanks**

December 1988

*H Energy and NR
3-20-89
Attachment 2*

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WHAT ARE THESE REGULATIONS ALL ABOUT?

The U.S. Environmental Protection Agency (EPA) has published final regulations concerning financial responsibilities if you own or operate underground storage tank systems containing petroleum. (EPA plans to develop similar regulations for tanks containing hazardous substances in the future.) Although the full regulations appear in the Federal Register (October 26, 1988), this brochure provides a brief summary and answers some important questions about your financial responsibilities.

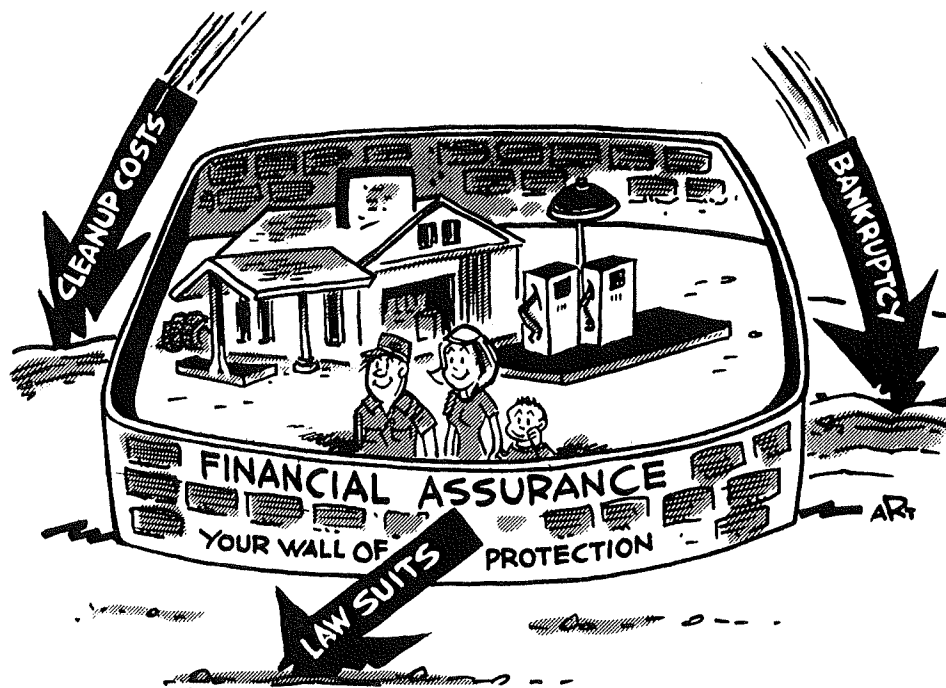
Why Has EPA Written These New Regulations?

Several million underground storage tank systems (USTs) in the United States contain petroleum. Tens of thousands of these USTs, including their piping, are currently leaking. Many more are expected to leak in the future. Leaking USTs can cause fires or explosions that threaten human safety. In addition, leaking USTs can contaminate nearby ground water. Because many of us depend on ground water for the water we drink, Federal legislation seeks to safeguard our nation's ground-water resources.

Congress responded in 1984 to the problem of leaking USTs by adding Subtitle I to the Resource Conservation and Recovery Act. Subtitle I requires EPA to develop regulations to protect human health and the environment from leaking USTs and specifically mandates requirements for financial responsibility.

What Is "Financial Responsibility" And Why Is It Necessary For You?

Financial responsibility means that if you own or operate an UST, you must ensure, either through insurance or other means explained below, that there will be money to help pay for the costs of third-party liability and corrective action caused by a leak from your tank. These costs could include cleaning up leaked petroleum, correcting environmental damage, supplying drinking water, and compensating people for personal injury or property damage. Financial responsibility also protects you. If your UST leaks, you may be faced with high cleanup costs or with lawsuits brought by third parties. Having financial responsibility means that money will be available to meet these costs.



What Kinds Of Tanks Are Covered By The Rule?

Financial responsibility must be shown for all USTs containing petroleum products. USTs are defined by law to be tank systems with at least 10 percent of their volume below the surface of the ground. The term "tank systems" also includes the piping connected to the tank.

What Kinds Of Tanks Are Not Covered?

Some tank systems have been exempted or deferred from the financial responsibility rule:

- ◆ USTs containing hazardous wastes already regulated under RCRA.
- ◆ UST systems containing electrical equipment and hydraulic lifts.
- ◆ Wastewater treatment USTs that are regulated by the Clean Water Act.
- ◆ USTs with a capacity of less than 110 gallons, and tanks holding a minimal concentration of regulated substances.
- ◆ USTs that serve as emergency back up, hold regulated substances for only a short time, and are expeditiously emptied after use.
- ◆ Field-constructed tanks.
- ◆ USTs containing radioactive materials and USTs used as backup diesel tanks at nuclear facilities.
- ◆ Airport hydrant fueling systems.
- ◆ Farm or residential tanks with capacity of 1,100 gallons or less storing motor fuel which is not for resale.
- ◆ Tanks for storing heating oil which is used on-site.
- ◆ Septic tanks.
- ◆ Certain pipeline systems, such as those regulated under the Natural Gas Pipeline Safety Act of 1968.
- ◆ Surface impoundments, pits, ponds, or lagoons.
- ◆ Storm or waste water collection systems.
- ◆ Flow-through process tanks.
- ◆ Liquid trap and other lines used in oil or gas production.
- ◆ Storage tanks on or above the floor of an underground area, such as a basement or tunnel.

WHO IS AFFECTED BY THESE REGULATIONS?

Do You Have To Show Financial Responsibility?

Either the owner or the operator of the tank must show financial responsibility, but not both if the owner and operator are different individuals or firms. It is the responsibility of the owner and operator to decide which of them will show financial responsibility.

Federal and State governments and their agencies that own USTs are not required to document financial responsibility. Local governments, however, must comply with the new rule.

If you owned or operated a tank that was properly closed before the date for compliance that applies to you, then the financial responsibility requirements will not apply to your closed tank.

What Do You Have To Do?

The new financial responsibility regulations require you to show that you have one of the following:

- ◆ at least \$1 million to cover the costs of a leak or spill from your underground storage tank if you are a **PETROLEUM MARKETER** (page 43334 of the Federal Register of October 26, 1988); or
- ◆ at least \$500,000 if you are **NOT A MARKETER** (page 43330 of the Federal Register of October 26, 1988).

You may show that you have this coverage by using insurance or any of the other methods of coverage explained in this brochure. The amount of financial responsibility that you must show does not limit your total liability for damages caused by a leak from your tank system.

When Must You Comply With The Financial Responsibility Requirements?

The rule takes effect 90 days after its publication in the Federal Register (i.e., January 24, 1989). The date when you will have to show financial responsibility, however, depends on the compliance category that you fall into, as shown below:

- ◆ If you fall into one of the following groups, you must show financial responsibility on the same day that the rule becomes effective on January 24, 1989: 1) petroleum marketing firms that own 1,000 or more USTs; and 2) any other UST owners that report a tangible net worth of \$20 million or more to the SEC, Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration.
- ◆ If you are a petroleum marketing firm that owns 100 to 999 USTs, you must show financial responsibility by October 26, 1989.
- ◆ If you are a petroleum marketing firm that owns 13 to 99 USTs at more than one site, you must show financial responsibility by April 26, 1990.
- ◆ If you fall into one of the following groups, you must show financial responsibility by October 26, 1990: 1) petroleum marketing firms owning 1 to 12 USTs or those having fewer than 100 USTs at one site; 2) all other UST owners with a tangible net worth of less than \$20 million; and 3) local governments.

What Happens If You Install A New UST Before Your Scheduled Compliance Date?

The regulations require that you show financial responsibility for a new UST when you notify EPA that you have installed the tank. If you install a new UST before the date when you must first show financial responsibility as described above, then you must only show financial responsibility for the new tank by that compliance date. You may ignore the line on the new tank notification form concerning financial responsibility.

What Amount Of Money Are You Responsible For?

The amount of money for which you must show financial responsibility depends on the type of business you operate, the amount of throughput of your tank, and the number of tanks you have:

- ◆ If your tank is used in petroleum production, refining or marketing (for example, service stations and truck stops), then you must be able to show that you have \$1 million of "per occurrence" coverage. "Per occurrence" means the amount of money that must be available to pay the costs of one occurrence.
- ◆ You must also have coverage for an annual aggregate amount. The annual aggregate amount is the total amount of financial responsibility that you must have to cover all leaks that might occur in one year. The amount of aggregate coverage that you must have depends on the number of tanks that you own or operate. The annual aggregate limits are:
 - 1 to 100 tanks, \$1 million annual aggregate; or
 - 101 or more tanks, \$2 million annual aggregate.

For example, if you own or operate three service stations with a total of 18 tanks, then you must have financial responsibility in the amount of \$1 million per occurrence and \$1 million annual aggregate. If you own or operate 50 service stations with a total of 200 tanks, you must have financial responsibility in the amount of \$1 million per occurrence and \$2 million annual aggregate.

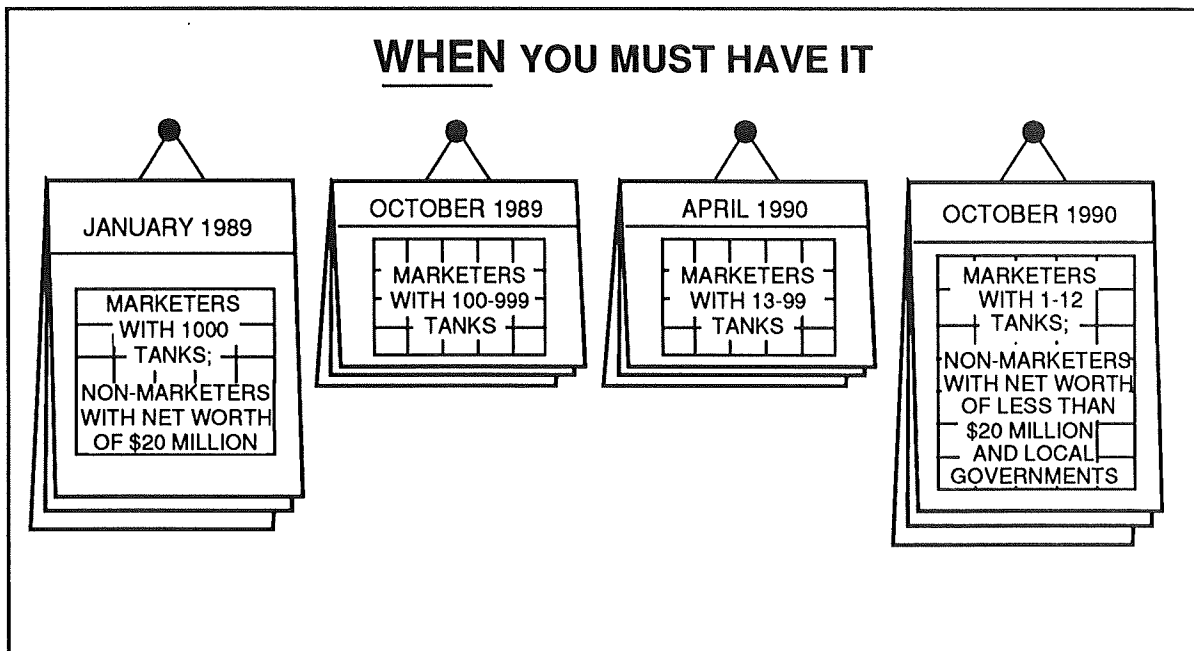
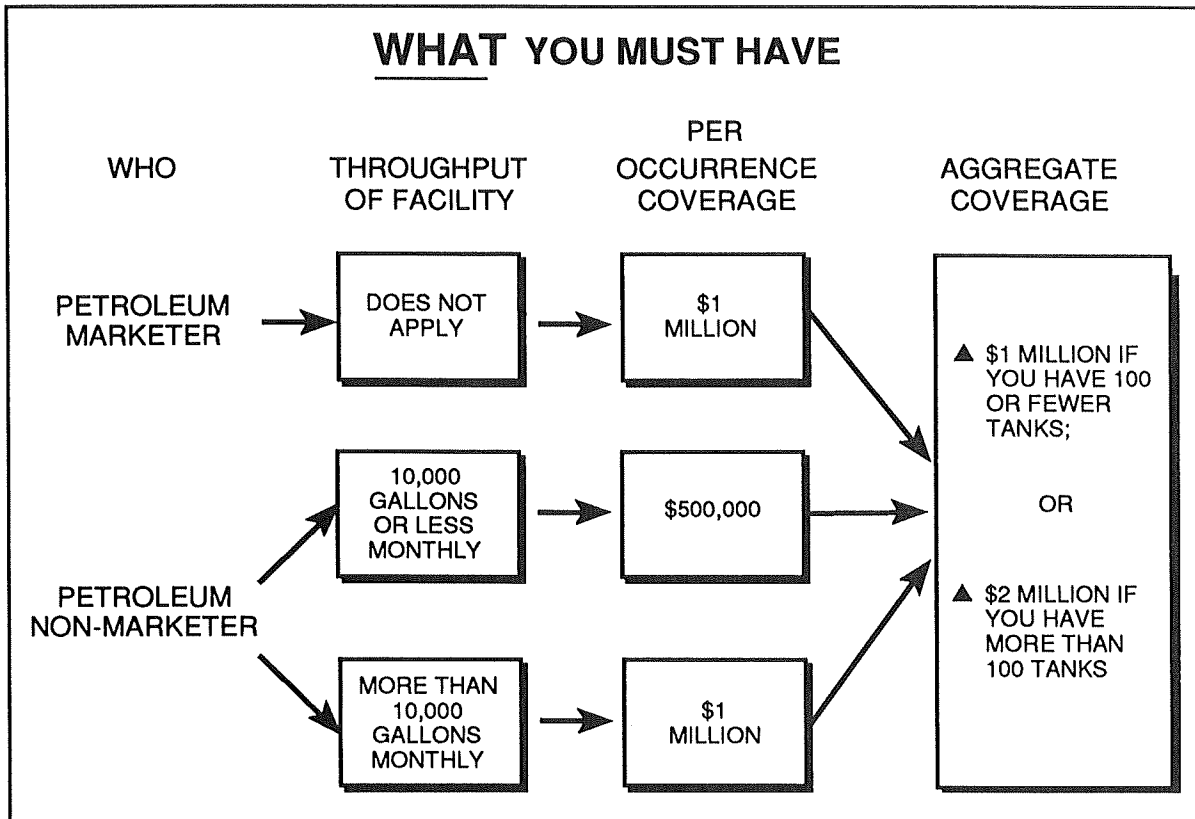
- ◆ If your tanks are located at a facility not engaged in petroleum production, refining or marketing, and your facility has a monthly throughput of more than 10,000 gallons, then you must show that you have \$1 million of "per occurrence" coverage. If the facility has a monthly throughput of 10,000 gallons or less, then you must show that you \$500,000 of "per occurrence" coverage and \$1 million or \$2 million of annual aggregate coverage depending on the number of tanks you own or operate, as discussed above.

For example, if you are an automobile dealer with four small tanks with a total monthly throughput of 10,000 gallons, then you would only need to have financial responsibility in the amount of \$500,000 per occurrence and \$1 million annual aggregate. If you have 30 dealerships with a total of 110 tanks, you would need to have financial responsibility in the amount of \$500,000 per occurrence, but you would need \$2 million annual aggregate.

The chart on page 5 displays these financial responsibility requirements.



IMPORTANT REQUIREMENTS AND MINIMUM DEADLINES FOR YOUR FINANCIAL RESPONSIBILITY



HOW DO YOU COMPLY WITH THE FINANCIAL RESPONSIBILITY REQUIREMENTS?

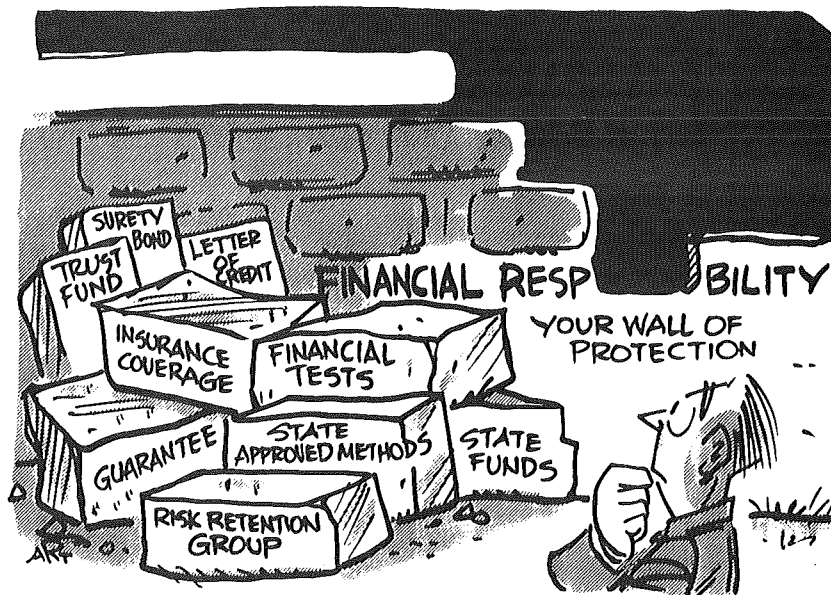
How Can You Show Financial Responsibility For Your USTs?

You can demonstrate financial responsibility for your USTs in several ways:

- ◆ Show that your firm can meet the costs of potential releases. If your firm has a tangible net worth of at least \$10 million, you can prove your financial responsibility by passing one of these two financial tests described on page 15.
- ◆ Show that someone else is responsible for cleanup and damage costs. You may arrange to have someone else be responsible for paying the costs of leaks from your USTs. This may be done in a number of ways (all are described in detail in the rule):
 1. Obtain **insurance coverage** from an insurer or a **risk retention group** (page 8); or
 2. Obtain a **guarantee** for the amount you are responsible for from a corporate parent, grandparent, sibling, or from another firm with whom you have a substantial business relationship. The provider of the guarantee has to pass

one of the financial tests described on page 15; or

3. Obtain a **surety bond** for the amount you are responsible for; or
 4. Obtain a **letter of credit** for the amount you are responsible for.
- ◆ Use **State funds**. If your State has established a State fund that will pay for the cleanup costs of a leak from your tank systems, then you may not need additional coverage to show you can pay for the same costs (page 7). You need to check to see if the State fund covers your tanks. You may also still need to show financial responsibility for the costs of compensating those injured by leaks, unless the State fund would also pay for those costs.
 - ◆ Use **State approved methods**. You may also use any method of coverage approved by your State.
 - ◆ Set up a **trust fund**. You may set up a fully-funded trust fund to cover your financial responsibility requirement.



Can You Use A Combination Of Methods To Show Financial Responsibility?

You may also use a combination of methods to show financial responsibility. The methods you choose must cover all the costs that you are responsible for (both third-party liability and corrective action) and add up to the amount of coverage you are required to show. If the methods you choose cover different costs (for example, the insurance policy covers damages to other people and property and the guarantee covers cleanup costs), then each method must provide the total amount of responsibility that you must demonstrate.

What About State Funds?

Some States have established programs to pay for cleanup costs from petroleum leaks. These State funds often may be used by owners and operators of USTs to demonstrate financial responsibility. In most States, however, funds will pay only part of cleanup costs. In addition, few States will pay for third-party damages caused by petroleum leaks.

You should contact your State environmental agency to determine if the State has a fund that you may use to show financial responsibility. Find out what the State will pay for and what amount of financial responsibility you must obtain. In several States, for example, you must demonstrate financial responsibility for the first \$100,000 of cleanup costs before the State will demonstrate financial responsibility for the remaining costs. Most State funds will not pay more than \$1 million per occurrence.

If you don't know how to reach your State Coordinator, call EPA's Hotline for the phone number of your State Coordinator (1-800-424-9346)

What Happens If Your Coverage Is Cancelled?

If your method of financial responsibility is cancelled, you must find another mechanism to replace it within 60 days after you receive the notice of cancellation. If you cannot get another mechanism in that time, then you must notify the implementing Agency or the State.

Your coverage or insurance contract must specify that the provider of coverage or insurance may only cancel your coverage by sending you a notice by certified mail. For guarantees, surety bonds, or letters of credit, cancellation can only occur 120 days after you receive the notice. Insurance policy coverage can be cancelled 60 days after you receive the notice.

Can You Get Private Insurance Coverage For Your USTs?

Private insurance coverage for USTs is still limited, but there are several major insurers who offer policies. Insurers are often selective in the tanks they will cover. If you want to purchase insurance, you may be required to meet certain conditions for coverage. For example, your insurer may ask you to test your tank for tightness, or he may require certain improvements in your tank system, such as liners, cathodic corrosion protection, and leak detection. Some insurers simply will not provide coverage for certain types of tanks, like tanks that are more than 20 years old.

You may also be able to get insurance coverage through a risk retention group. A risk retention group is an insurance company formed by businesses or individuals with similar risks to provide insurance coverage for those risks. To join a risk retention group, you will probably be asked to make a one-time payment -- called a capital contribution -- and thereafter pay annual premiums as with any other insurance policy.

If you are interested in purchasing insurance through either a private insurer or a risk retention group to show financial responsibility for your USTs, you should contact your insurance agent. You may want to take with you the sample Endorsement or Certificate of Insurance that appear on pages 11 and 12. These documents are examples of policies that meet EPA financial responsibility requirements. If you belong to a trade association, it may also be able to provide you with information about insurers and risk retention groups that cover USTs.



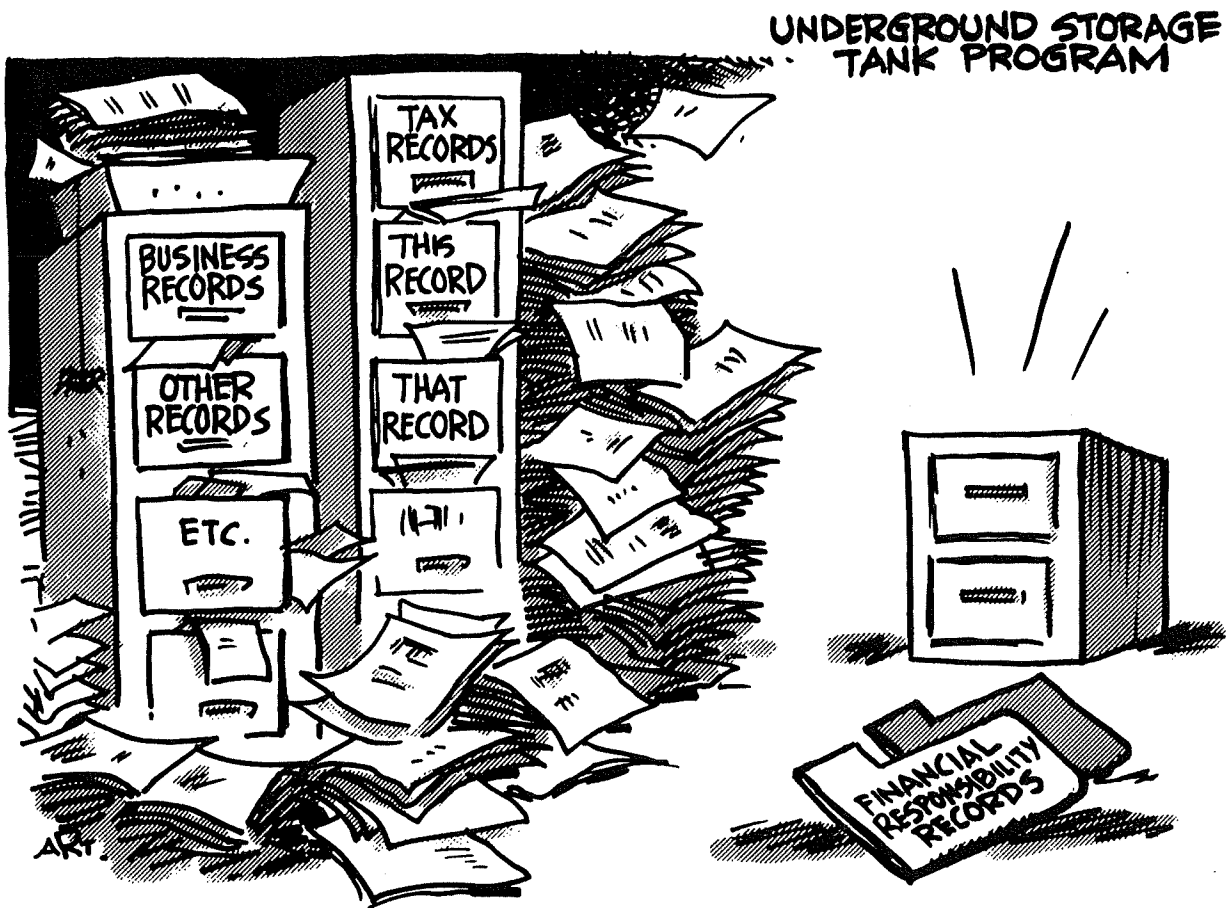
WHAT RECORDS MUST YOU KEEP OR FILE WITH THE IMPLEMENTING AGENCY?

You must keep records of the type of coverage you have at your tank site or your place of business. In addition, you must maintain a certification of financial responsibility (see page 10). You must keep both of these records until your tanks are properly closed.

You only need to report and/or file copies of these records with EPA in the following cases:

- ◆ You install a new tank system.
- ◆ You have confirmed that a tank system is leaking.

- ◆ You receive notice that a method of coverage you have will be cancelled or will not provide sufficient coverage, and you are unable to get other coverage.
- ◆ EPA or a State agency requests your records.



SAMPLES OF FINANCIAL RESPONSIBILITY FORMS

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 "non-sudden accidental releases" or "accidental releases."]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

The owner or operator must update this certification whenever the financial insurance mechanism(s) used to demonstrate financial responsibility change(s).

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 "non-sudden 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 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. 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"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or termination 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

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 tanks(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"]; 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. 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"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or other termination 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]

VIDEOS, BROCHURES, AND HANDBOOKS ON USTs

Videos

“A Question of When: Tank Installation for Inspectors”

“In Your Own Backyard” -- An Overview of Installation for Tank Owners.

Available for purchase only, \$22.85 each, prepaid, from:

National Fire Protection Association
Attn: Jim Smalley
Batterymarch Park
Quincy, MA 02269

“Doing It Right” -- Proper Tank and Piping Installation Methods for Installers, Owners, and Operators. Available for purchase only, \$16.00, prepaid, from:

American Petroleum Institute
1220 L Street, N.W.
Washington, D.C. 20005

Petroleum Equipment Institute
Box 2380
Tulsa, OK 74101

“Tank Closure Without Tears: An Inspector's Safety Guide” -- Covers Important Safety Aspects of Tank Removal, Especially Dealing with Flammable and Explosive Vapors.

Video and companion booklet available for purchase, \$25.00, prepaid. Booklet only, \$5.00, prepaid, from:

New England Interstate Water
Pollution Control Commission
Attn: VIDEOS
85 Merrimac Street
Boston, MA 02114

Video and companion booklet available for loan, \$5.00, prepaid, from:

New England Regional Wastewater Institute
Two Fort Road
South Portland, ME 04106

Slide Show

"Tank Talk: The New National Rules" -- 30 Minute Overview of the New Federal Regulations. Slide show and narration available for loan, from:

EPA/Atlis
301-770-3000 ext. 503
Attention: Barbara McCoy

Brochures

"Musts for USTs" -- A Summary of the New Regulations for Underground Storage Tank Systems

"Oh No!" -- Corrective Action Brochure (Available February 1989)

"Leak Lookout" -- Using External Leak Detectors to Prevent Petroleum Contamination from Underground Storage Tanks

These brochures may be ordered from:

U.S. Environmental Protection Agency
Office of Underground Storage Tanks
P.O. Box 6044
Rockville, MD 20850

Handbooks

"Financial Assurance Programs: A Handbook for States"

"Funding Options for State and Local Governments"

"Underground Storage Tanks: Building State UST Compliance Programs"

These handbooks may be ordered from:

U.S. Environmental Protection Agency
Office of Underground Storage Tanks
P.O. Box 6044
Rockville, MD 20850

"Cleanup of Releases from Petroleum USTs: Selected Technologies" -- Available for purchase, Stock No. 055-000-00272-0, \$7.50 pre-paid, from:

Superintendent of Documents
Government Printing Office
Washington, D.C. 20402

FINANCIAL TEST OPTIONS

Test I

- a. Your firm must have a tangible net worth of at least \$10 million; and
- b. Your firm must have a tangible net worth of at least 10 times the amount of aggregate coverage that you are required to demonstrate plus any other liability coverage for which your firm is using the test to demonstrate financial responsibility to EPA; and
- c. Your firm must file the firm's annual financial statements with the Securities and Exchange Commission (SEC), or annually report the firm's tangible net worth to Dun and Bradstreet and receive a rating of 4A or 5A. Utilities may file financial statements with the Energy Information Administration, or the Rural Electrification Administration instead of the SEC; and
- d. Your firm must have audited financial statements that do not include an adverse auditor's opinion or disclaimer of opinion.

Test II

- a. Your firm must have a tangible net worth of at least \$10 million; and
- b. Your firm must have a tangible net worth of at least 6 times the amount of aggregate coverage that you are required to demonstrate; and
- c. Have U.S. assets that are at least 90 percent of total assets or at least 6 times the required aggregate amount; and
- d. Have net working capital at least 6 times the required aggregate amount; and
- e. Have a bond rating of AAA, AA, A, or BBB from Standard and Poor's, or Aaa, Aa, A, or Baa from Moody's; and
- f. Your firm must have audited financial statements that do not include an adverse auditor's opinion or disclaimer of opinion.