



Title 10--DEPARTMENT OF  
NATURAL RESOURCES  
Division 26--Petroleum and Hazardous Substance Storage Tanks  
Chapter 3--Underground Storage  
Tanks--Financial Responsibility

10 CSR [20-11.090] **26-3.090** Applicability

PURPOSE: This rule identifies those persons required to obtain financial responsibility for releases of products from petroleum underground storage tanks.

(1) Rules 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115** apply to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this rule.

(2) Owners and operators of petroleum UST systems are subject to these requirements [if they are in operation on or after the date for compliance established in 10 CSR 20-11.091] **immediately upon bringing a new underground storage tank system into operation. All tank systems that are in use are subject to these requirements.**

(3) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115**.

(4) The requirements of 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115** do not apply to owners and operators of any deferred or excluded UST system described in 10 CSR [20-10.010(2) or (3)] **26-2.010 (2) or (3)**.

(5) If the owner and operator of a petroleum UST are separate persons, only one (1) person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in 10 CSR [20-11.091] **26-3.091**.

AUTHORITY: sections 319.114, RSMo Supp. 1989 and 644.026, RSMo Supp. 1993.\* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994.

\*Original authority: 319.114, RSMo 1989 and 644.026, RSMo 1972, amended 1973, 1987, 1993.

~~[10 CSR 20-11.091 Compliance Dates~~

~~PURPOSE: This rule establishes the deadlines for obtaining financial responsibility.~~

~~(1) Owners of petroleum underground storage tanks (USTs) shall comply with the requirements of 10 CSR 20-11.090-10 CSR 20-11.115 by the following dates:~~

~~-(A) August 30, 1991 for all petroleum marketing firms owning one hundred (100) or more USTs and all other UST owners that report a tangible net worth of twenty (20) million dollars or more to the United States Securities and Exchange Commission (SEC), Dunn and Bradstreet, the Energy Information Administration or the Rural Electrification Administration;~~

~~-(B) December 31, 1993 for all petroleum UST owners not described in subsection (1)(A) of this rule, excluding all local government entities; and~~

~~-(C) February 18, 1994 for all local government entities.]~~

AUTHORITY: sections 319.114, RSMo Supp. 1989 and 644.026, RSMo Supp. 1993.\* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994.

\*Original authority: 319.114, RSMo 1989 and 644.026, RSMo 1972, amended 1973, 1987, 1993.

10 CSR [20-11.092] **26-3.092** Definitions of Financial Responsibility Terms

PURPOSE: This rule defines specific terms used in this chapter.

PUBLISHER'S NOTE: The publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly

cumbersome or expensive. Therefore, the full text of that material will be made available to any interested person at both the Office of the Secretary of State and the office of the adopting agency, pursuant to section 536.031.4, RSMo. Such material will be provided at the cost established by state law.

(1) The definitions set forth in 40 CFR 280.92, July 1, 1998, are incorporated by reference, subject to the following additions, modifications, substitutions or deletions.

(A) The definitions set forth in this rule apply to terms when used in 10 CSR [20-11.090] **26-3.090** through 10 CSR [20-11.115] **26-3.115**. In addition, the definitions in 10 CSR [20-10.012] **26-2.012** apply to the terms used in this chapter unless defined otherwise in this rule or in the rule in which the term is used. Modifications and additions to specific definitions are--

1. The definition for "Director of the Implementing Agency" in 40 CFR 280.92, is not incorporated in this rule;

2. At the end of the definition of "Financial Reporting Year" in 40 CFR 280.92, as incorporated in this rule, add the following sentence: Financial reporting year may comprise a fiscal or calendar year period;

3. In the definition of "provider of financial assurance" in 40 CFR 280.92, as incorporated into this rule, substitute "10 CSR [20-11.095] **26-3.095** through 10 CSR [20-11.103] **26-3.103**" for "section 280.95-280.103," delete "issuer of a state-required mechanism" and substitute "the Petroleum Storage Tank Insurance Fund" for "a state"; and

4. In the definition of "termination" in 40 CFR 280.92 as incorporated into this rule, substitute "in 10 CSR [20-11.097(2)] **26-3.097(2)**" for "under section 260.97(b) (1)."

(2) Missouri Specific Definitions. This section sets forth definitions which add to those in 40 CFR 280.92, as incorporated in this rule.

(A) "Director" shall mean the director of the Department of Natural Resources. For purposes of compliance, financial responsibility instruments submitted to the department may also name the directors of other state UST programs as well as regional administrators of the Environmental Protection Agency (EPA).

(B) "EPA" means the United States Environmental Protection Agency.

(C) "Implementing agency" means the Department of Natural Resources.

AUTHORITY: sections 319.114, RSMo 1994 and 319.129 and 644.026, RSMo Supp.

1998.\* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Amended: Filed Jan. 14, 1997, effective Sept. 30, 1997. Amended: Filed April 1, 1999, effective March 30, 2000.

\*Original authority: 319.114, RSMo 1989; 319.129, RSMo 1989, amended 1991, 1996, 1998; and 644.026, RSMo 1972, amended 1973, 1987, 1993, 1995.

[10 CSR 20-11.093] **10 CSR 26-3.093** Amount and Scope of Required Financial Responsibility

PURPOSE: This rule establishes the amount of the required financial responsibility.

(1) Owners or operators of petroleum underground storage tanks (USTs) shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in at least the following per occurrence amounts:

(A) One (1) million dollars for owners or operators of petroleum USTs that are located at petroleum marketing facilities or that handle an average of more than ten thousand (10,000) gallons of petroleum per month based on annual throughput for the previous calendar year; or

(B) Five hundred thousand dollars (\$500,000) for all other owners or operators of petroleum USTs.

(2) Owners or operators of petroleum USTs must demonstrate financial responsibility for taking corrective action and for compensating third parties

for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in at least the following annual aggregate amounts:

(A) One (1) million dollars for owners or operators of one to one hundred (1--100) petroleum USTs; and

(B) Two (2) million dollars for owners or operators of one hundred one (101) or more petroleum USTs.

(3) For the purposes of sections (2) and (6) of this rule, a petroleum UST means a single containment unit and does not mean combinations of single containment units.

(4) Except as provided in section (5) of this rule, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in sections (1) and (2) of this rule if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for--

(A) Taking corrective action;

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

(C) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases.

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

(6) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum USTs are acquired or installed and shall revise their financial responsibility to comply with the following:

(A) If the number of petroleum USTs for which assurance must be provided exceeds one hundred (100), the owner or operator shall demonstrate financial responsibility in the amount of at least two (2) million dollars of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective; and

(B) If assurance is being demonstrated by a combination of mechanisms to meet the requirements of section (6), the owner or operator shall demonstrate financial responsibility in the amount of at least two (2) million dollars of annual aggregate assurance by the first occurring effective date anniversary of any one (1) of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(7) The amounts of assurance required under this rule exclude legal defense costs.

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

AUTHORITY: sections 319.114, RSMo Supp. 1989 and 644.026, RSMo Supp. 1993.\* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991.

\*Original authority: 319.114, RSMo 1989 and 644.026, RSMo 1972, amended 1973, 1987, 1993.

10 CSR [20-11.094] **26-3.094** Allowable Mechanisms and Combinations of Mechanisms

PURPOSE: This rule outlines the methods allowed for demonstrating financial responsibility for releases from petroleum underground storage tanks.

(1) Subject to the limitations of sections (2) and (3) of this rule--

(A) An owner or operator, including a local government owner or operator, may use any one (1) or combination of the mechanisms listed in [10 CSR [20-11.095] **26-3.095** through 10 CSR [20-11.103] **26-3.103** to demonstrate financial responsibility under 10 CSR [20-11.090] **26-3.090** through 10 CSR [20-11.115] **26-3.115** for one (1) or more underground storage tanks (USTs); provided, that the

total scope and amounts assured meet the requirements of 10 CSR [20-11.093] **26-3.093**; and

(B) A local government owner or operator may use any one (1) or combination of the mechanisms listed in 10 CSR [20-11.112] **26-3.112** through 10 CSR [20-11.115] **26-3.115** to demonstrate financial responsibility under 10 CSR [20-11.090] **26-3.090** through 10 CSR [20-11.115] **26-3.115** for one (1) or more USTs; provided, that the total scope and amounts assured meet the requirements of 10 CSR [20-11.093] **26-3.093**.

(2) An owner or operator may use self-insurance to meet any deductible or co-pay portions of either insurance or risk retention group coverage under 10 CSR [20-11.097] **26-3.097** or Petroleum Storage Tank Insurance Fund under 10 CSR [20-11.101] **26-3.101**; provided, that--

(A) The deductible and co-pay amounts do not exceed fifty thousand dollars (\$50,000);

(B) The owner or operator shall have a letter signed by the chief financial officer worded as specified in 10 CSR [20-11.095(4)] **26-3.095(4)**; and

(C) The answer(s) to 10 CSR [20-11] **26-3** Appendix Form 1 (see 10 CSR [20-11.115] **26-3.115**), Alternative I, line 8, or Alternative II, lines 9 and 15 is (are): yes--except that a current rating of the most recent bond issue by Standard and Poor's of AAA, AA, A or BBB or Moody's of Aaa, Aa, A or Ba may be substituted for the line 15 response.

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

AUTHORITY: sections 319.114, RSMo 1994 and 319.129 and 644.026, RSMo Supp. 1996.\* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Amended: Filed Jan. 14, 1997, effective Sept. 30, 1997.

\*Original authority: 319.114, RSMo 1989; 319.129, RSMo 1989, amended 1991, 1996; and 644.026, RSMo 1972, amended 1973, 1987, 1993.

#### 10 CSR [20-11.095] **26-3.095** Financial Test of Self-Insurance

PURPOSE: This rule describes the requirements a person must meet for self-insurance.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) An owner or operator, or guarantor may satisfy the requirements of 10 CSR [20-11.093] **26-3.093** by passing a financial test as specified in this rule. To pass the financial test of self-insurance, the owner or operator, or guarantor shall meet the criteria of section (2) or (3) of this rule based on year-end financial statements for the latest completed fiscal year.

(2) The owner or operator, or guarantor shall have a tangible net worth that meets the following requirements:

(A) The owner or operator, or guarantor shall have a tangible net worth of at least ten (10) times--

1. The total of the applicable aggregate amount required by [10 CSR 20-11.093] **10 CSR 26-3.093** based on the number of underground storage tanks (USTs) for which a financial test is used to demonstrate financial responsibility to the department;

2. The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to Environmental

Protection Agency (EPA) in 40 CFR parts 264.101, 264.143, 264.145, 264.147, 265.143, 265.145 and 265.147 or under any state program authorized by EPA under 40 CFR part 271; or

3. The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR part 144.63 or under any program authorized by EPA under 40 CFR part 145;

(B) The owner or operator, or guarantor shall have a tangible net worth of at least ten (10) million dollars;

(C) The owner or operator, or guarantor shall have a letter signed by the chief financial officer worded as specified in section (4) of this rule;

(D) The owner or operator, or guarantor either must--

1. File financial statements annually with the United States Securities and Exchange Commission (SEC), the Energy Information Administration (EIA) or the Rural Electrification Administration (REA); or

2. Report annually the firm's tangible net worth to Dunn and Bradstreet and Dunn and Bradstreet shall have assigned the firm a financial strength rating of 4A or 5A; and

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

(3) The owner or operator, or guarantor shall meet the financial test requirements of 40 CFR 264.147(f) (1), modified as follows:

(A) The owner or operator, or guarantor must meet the financial test requirements of 40 CFR 264.147(f) (1), substituting the appropriate amounts specified in [10 CSR 20-11.093] **10 CSR 26-3.093** (2) (A) and (B) for the amount of liability coverage each time specified in that section;

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

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

(D) The owner or operator, or guarantor shall have a letter signed by the chief financial officer worded as specified in section (4); and

(E) If the financial statements of the owner or operator, or guarantor are not submitted annually to the United States SEC, the EIA or the REA, the owner or operator, or guarantor shall obtain a special report by an independent certified public accountant stating that--

1. S/he has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, or guarantor with the amounts in those financial statements; and

2. In connection with that comparison, no matters came to his/her attention which caused him/her to believe that the specified data should be adjusted.

(4) To demonstrate that it meets the financial test under section (2) or (3), the chief financial officer of the owner or operator, or guarantor shall sign within one hundred twenty (120) days of the close of each financial reporting year, as defined by the twelve (12)-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as listed in [10 CSR 20-11] **10 CSR 26-3** Appendix, Form 1 (see [10 CSR 20-11.115] **10 CSR 26-3.115**).

(5) If an owner or operator using the test to provide financial assurance finds that s/he no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator shall obtain alternative coverage within one hundred fifty (150) days of the end of the year for which financial statements have been prepared.

(6) The director may require reports of financial condition at any time from the owner or operator, or guarantor. If the director finds, on the basis of these

reports or other information, that the owner or operator, or guarantor no longer meets the financial test requirements of [10 CSR 20-11.095] **10 CSR 26-3.095** (2) or (3) and (4), the owner or operator shall obtain alternate coverage within thirty (30) days after notification of that finding.

(7) If the owner or operator fails to obtain alternate assurance within one hundred fifty (150) days of finding that s/he no longer meets the requirements of the financial test based on the year-end financial statements, or within thirty (30) days of notification by the director that s/he no longer meets the requirements of the financial test, the owner or operator shall notify the director of that failure within ten (10) days.

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993). \* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991.

\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

10 CSR [20-11.096] **26-3.096** Guarantee

PURPOSE: This rule describes the requirements for a guarantee of financial responsibility.

(1) An owner or operator may satisfy the requirements of 10 CSR [20-11.093] **26-3.093** by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be--

(A) A firm that--

1. Possesses a controlling interest in the owner or operator;
2. Possesses a controlling interest in a firm described under

paragraph(1)(A)1. of this rule; or

3. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

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

(2) Within one hundred twenty (120) days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of 10 CSR [20-11.095] **26-3.095** based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in 10 CSR [20-11.095] **26-3.095**(4) and shall deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within one hundred twenty (120) days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the director notifies the guarantor that s/he no longer meets the requirements of the financial test of 10 CSR [20-11.095] **26-3.095**(2) or (3) and (4), the guarantor must notify the owner or operator within ten (10) days of receiving that notification from the director. In both cases, the guarantee will terminate no less than one hundred twenty (120) days after the date the owner or operator receives the notification as evidenced by the return receipt. The owner or operator shall obtain alternate coverage as specified in 10 CSR [20-11.110] **26-3.110**(5).

(3) The guarantee shall be worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 2 (see 10 CSR [20-11.115] **26-3.115**).

(4) An owner or operator who uses a guarantee to satisfy the requirements of 10 CSR [20-11.093] **26-3.093** shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the director under 10 CSR [20-11.108] **26-3.108**. This standby trust fund shall meet the requirements specified in 10 CSR [20-11.103] **26-3.103**.

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993).\* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994.  
\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

10 CSR [20-11.097] **26-3.097** Insurance and Risk Retention Group Coverage

PURPOSE: This rule describes the requirements for use of insurance or risk retention group coverage for financial responsibility.

(1) An owner or operator may satisfy financial responsibility requirements in 10 CSR [20-11.093] **26-3.093** by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. This insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(2) Each insurance policy shall be amended by an endorsement worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 3 (see 10 CSR [20-11.115] **26-3.115**) or evidenced by a certificate of insurance worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 4 (see 10 CSR [20-11.115] **26-3.115**).

(3) Each insurance policy shall be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in this state.

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993).\* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991.  
\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

10 CSR [20-11.098] **26-3.098** Surety Bond

PURPOSE: This rule describes the requirements for use of a surety bond as evidence of financial responsibility.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) An owner or operator may satisfy the financial responsibility requirements of 10 CSR [20-11.093] **26-3.093** by obtaining a surety bond that conforms to the requirements of this rule. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the United States Department of the Treasury.

(2) The surety bond shall be worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 5 (see 10 CSR [20-11.115] **26-3.115**).

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

(4) The owner or operator who uses a surety bond to satisfy the requirements of 10 CSR [20-11.093] **26-3.093** shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the director under 10 CSR [20-11.108] **26-3.108**. This standby trust fund shall meet the requirements specified in 10 CSR [20-11.103] **26-3.103**.

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993).\* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991.

\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

10 CSR [20-11.099] **26-3.099** Letter of Credit

PURPOSE: This rule describes the requirements for use of a letter of credit as evidence of financial responsibility.

(1) An owner or operator may satisfy the financial responsibility requirements of 10 CSR [20-11.093] **26-3.093** by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in each state where used and whose letter of credit operations are regulated and examined by a federal or state agency.

(2) The letter of credit must be worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 6 (see 10 CSR [20-11.115] **26-3.115**).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of 10 CSR [20-11.093] **26-3.093** shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director under 10 CSR [20-11.108] **26-3.108**. This standby trust fund must meet the requirements specified in 10 CSR [20-11.103] **26-3.103**.

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

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993). \* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991.

\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

10 CSR [20-11.101] **26-3.101** Petroleum Storage Tank Insurance Fund

PURPOSE: This rule describes the requirements for use of the Petroleum Storage Tank Insurance Fund for demonstrating financial responsibility.

(1) An owner or operator may satisfy part of the financial responsibility requirements of 10 CSR [20-11.093] **26-3.093** for underground storage tanks (USTs) located in this state from the Petroleum Storage Tank Insurance Fund. In addition, any other combination of mechanisms may be used to supplement coverage provided by the Petroleum Storage Tank Insurance Fund so that the sum of the mechanisms provides the required amount of assurance.

AUTHORITY: sections 319.114, RSMo (1994) and 319.129 and 644.026, RSMo (Cum. Supp. 1996). \* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991.

Amended: Filed Aug. 3, 1993, effective April 9, 1994. Amended: Filed Jan. 14, 1997, effective Sept. 30, 1997.

\*Original authority: 319.114, RSMo (1989); and 319.129, RSMo (1989), amended 1991, 1996; and 644.026, RSMo (1972), amended 1973, 1987, 1993.

10 CSR [20-11.102] **26-3.102** Trust Fund

PURPOSE: This rule describes the requirements for use of a trust fund for demonstrating financial responsibility.

(1) An owner or operator may satisfy the financial responsibility requirements of 10 CSR [20-11.093] **26-3.093** by establishing a trust fund that conforms to the requirements of this rule. The trustee shall be an entity that has the authority

to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(A) The wording of the trust agreement shall be identical to the wording for a standby trust fund in 10 CSR [20-11.103] **26-3.103**(2) and shall be accompanied by a formal certification of acknowledgment for a standby trust fund in 10 CSR [20-11.103] **26-3.103**(3).

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

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

(D) If other financial assurance as specified in 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115** is substituted for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the excess.

(E) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subsection (1)(C) or (D) of this rule, the director will instruct the trustee to release to the owner or operator those funds the director specifies in writing.

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993). \* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991.

Amended: Filed Aug. 3, 1993, effective April 9, 1994.

\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

#### 10 CSR [20-11.103] **26-3.103** Standby Trust Fund

PURPOSE: This rule describes the requirements for a standby trust fund.

(1) An owner or operator using any one (1) of the mechanisms authorized by 10 CSR [20-11.096] **26-3.096**, 10 CSR [20-11.098] **26-3.098** or 10 CSR [20-11.099] **26-3.099** shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of this state.

(2) The standby trust agreement must be worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 7 (see 10 CSR [20-11.115] **26-3.115**).

(3) The standby trust agreement must be accompanied by a formal certification of acknowledgment as specified in 10 CSR [20-11] **26-3** Appendix, Form 8 (see 10 CSR [20-11.115] **26-3.115**).

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

(5) An owner or operator may establish one (1) trust fund as the depository mechanism for all funds assured in compliance with this rule.

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993). \* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991.

\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

#### 10 CSR [20-11.104] **26-3.104** Substitution of Financial Assurance Mechanisms by Owner or Operator

PURPOSE: This rule describes the requirements for the substitution of financial assurance mechanisms for demonstration of financial responsibility.

(1) An owner or operator may substitute any alternate financial assurance mechanisms as specified in 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115**, provided that at all times s/he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of 10 CSR [20-11.093] **26-3.093**.

(2) After obtaining alternate financial assurance as specified in 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115**, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993). \* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991.

Amended: Filed Aug. 3, 1993, effective April 9, 1994.

\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

10 CSR [20-11.105] **26-3.105** Cancellation or Nonrenewal by a Provider of Financial Assurance

PURPOSE: This rule requires providers of financial responsibility to notify the department of impending cancellation or nonrenewal of any financial assurance mechanism.

(1) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator. Notice of termination shall comply with the following requirements:

(A) Termination of a guarantee, a surety bond or a letter of credit shall not occur until one hundred twenty (120) days after the date on which the owner or operator receives the notice of termination as evidenced by the return receipt; and

(B) Termination of insurance or risk retention group coverage, except for nonpayment or misrepresentation by the insured or state-funded assurance, shall not occur until sixty (60) days after the date on which the owner or operator receives the notice of termination as evidenced by the return receipt.

Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of ten (10) days after the date on which the owner or operator receives the notice of termination as evidenced by the return receipt.

(2) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in 10 CSR [20-11.110] **26-3.110**, the owner or operator shall obtain alternate coverage as specified in this section within sixty (60) days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within sixty (60) days after receipt of the notice of termination, the owner or operator shall notify the director of the failure and submit--

(A) The name and address of the provider of financial assurance;

(B) The effective date of termination; and

(C) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with 10 CSR [20-11.107] **26-3.107**(2).

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993). \* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991.

Amended: Filed Aug. 3, 1993, effective April 9, 1994.

\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

10 CSR [20-11.106] **26-3.106** Reporting by Owner or Operator

PURPOSE: This rule requires owners and operators to show evidence of financial responsibility to the department.

(1) An owner or operator shall submit the appropriate forms listed in 10 CSR [20-11.107] **26-3.107**(2) documenting current evidence of financial responsibility to the director--

(A) Within thirty (30) days after the owner or operator identifies a release from an underground storage tank (UST) required to be reported under 10 CSR [20-10.053] **26-2.053** or 10 CSR [20-10.061] **26-2.071**;

(B) If the owner or operator fails to obtain alternate coverage as required by 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115** within thirty (30) days after the owner or operator receives notice of--

1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming a provider of financial assurance as a debtor;

2. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;

3. Failure of a guarantor to meet the requirements of the financial test;

4. Other incapacity of a provider of financial assurance; or

(C) As required by 10 CSR [20-11.095] **26-3.095**(7) and 10 CSR [20-11.105] **26-3.105**(2).

~~[(2) An owner or operator shall certify compliance with the financial responsibility requirements of 10 CSR 20 11.090 10 CSR 20 11.115 as specified in the new tank notification form (see 10 CSR 20 10.022) when notifying the department of the installation of a new UST under 10 CSR 20 10.022.]~~

~~[(3)]~~(2) The director may require an owner or operator to submit evidence of financial assurance as described in 10 CSR [20-11.107] **26-3.107**(2) or other information relevant to compliance with 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115** at any time.

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993). \* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991.

Amended: Filed Aug. 3, 1993, effective April 9, 1994.

\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

10 CSR [20-11.107] **26-3.107** Recordkeeping

PURPOSE: This rule describes the records that owners and operators must maintain for their financial responsibility instruments.

(1) Owners or operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under 10 CSR [20-11.090] **26-3.090** through 10 CSR [20-11.115] **26-3.115** for an underground storage tank (UST) until released from the requirements of 10 CSR [20-11.090] **26-3.090** through 10 CSR [20-11.115] **26-3.115** under 10 CSR [20-11.109] **26-3.109**. An owner or operator shall maintain this evidence at the UST site or the owner's or operator's place of business. Records maintained off-site shall be made available upon request of the department.

(2) An owner or operator shall maintain the following types of evidence of financial responsibility:

(A) An owner or operator using an assurance mechanism specified in 10 CSR [20-11.095] **26-3.095** through 10 CSR [20-11.100] **26-3.100** or 10 CSR [20-11.102] **26-3.102** or 10 CSR [20-11.112] **26-3.112** through 10 CSR [20-11.115] **26-3.115** shall maintain a copy of the instrument worded as specified;

(B) An owner or operator using a financial test or guarantee shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. This evidence shall be on file no later than one hundred twenty (120) days after the close of the financial reporting year;

(C) An owner or operator using a guarantee, surety bond or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement;

(D) A local government owner or operator using a local government guarantee under 10 CSR [20-11.114] **26-3.114**(4) shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement;

(E) A local government owner or operator using the local government bond rating test under 10 CSR [20-11.112] **26-3.112** shall maintain a copy of its bond rating published within the last twelve (12) months by Moody's or Standard & Poor's;

(F) A local government owner or operator using the local government guarantee under 10 CSR [20-11.114] **26-3.114**, where the guarantor's demonstration of financial responsibility relies on the bond rating test under 10 CSR [20-11.112] **26-3.112**, shall maintain a copy of the guarantor's bond rating published within the last twelve (12) months by Moody's or Standard & Poor's;

(G) An owner or operator using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy with the endorsement or certificate of insurance and any amendments to the agreements;

(H) An owner or operator covered by the Petroleum Storage Tank Insurance Fund must maintain on file a copy of any evidence of coverage supplied by or required by the department under 10 CSR [20-11.101(1)] **20-11.101(1)**;

(I) An owner or operator using a local government fund under 10 CSR [20-11.115] **26-3.115** shall maintain the following documents:

1. A copy of the state constitutional provision or local government's statute, charter, ordinance or order dedicating the fund;
2. Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under 10 CSR [20-11.115] **26-3.115**(1)(C) using incremental funding backed by bonding authority, the financial statements must show the previous year's balance, the amount of funding during the year and the closing balance in the fund; and
3. If the fund is established under 10 CSR [20-11.115] **26-3.115**(1)(C) using incremental funding backed by bonding authority, the owner or operator shall also maintain documentation of the required bonding authority, including either the results of a voter referendum (under 10 CSR [20-11.115] **26-3.115** (1)(C)1.) or attestation by the state attorney general as specified under 10 CSR [20-11.115] **26-3.115**(1)(C)2.;

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

(K) An owner or operator using an assurance mechanism specified in 10 CSR [20-11.095] **26-3.095** through 10 CSR [20-11.102] **26-3.102** or 10 CSR [20-11.112] **26-3.112** through 10 CSR [20-11.115] **26-3.115** shall maintain an updated copy of a certification of financial responsibility worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 9 (see 10 CSR [20-11.115] **26-3.115**). The owner or operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

AUTHORITY: sections 319.114, RSMo (1994) and 319.129 and 644.026, RSMo (Cum. Supp. 1996). \* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991.

Amended: Filed Aug. 3, 1993, effective April 9, 1994. Amended: Filed Jan. 14, 1997, effective Sept. 30, 1997.

\*Original authority: 319.114, RSMo (1989), 319.129, RSMo (1989), amended 1991, 1996; and 644.026, RSMo (1972), amended 1973, 1987, 1993.

10 CSR [20-11.108] **26-3.108** Drawing on Financial Assurance Mechanisms

PURPOSE: This rule describes the procedures for draw down of financial responsibility mechanisms.

(1) Except as specified in section (4) of this rule, the director shall require the guarantor, surety or institution issuing a letter of credit to place the amount of funds stipulated by the director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if--

(A) The following conditions exist:

1. The owner or operator fails to establish alternate financial assurance within sixty (60) days after receiving notice of cancellation of the guarantee, surety bond, letter of credit or, as applicable, other financial assurance mechanism; and

2. The director determines or suspects that a release from an underground storage tank (UST) covered by the mechanism has occurred and so notifies the owner or operator, or the owner or operator has notified the director pursuant to 10 CSR [20-10.050] **26-2.050**--10 CSR [20-10.067] **26-2.083** of a release from a UST covered by the mechanism; or

(B) The conditions of subsection (2) (A) or paragraph (2) (B)1. or 2. of this rule are satisfied.

(2) The director may draw on a standby trust fund when--

(A) The director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required in 10 CSR [20-10.060] **26-2.070**--10 CSR [20-10.067] **26-2.083**; or

(B) The director has received either--

1. Certification from the owner or operator and the third-party liability claimant(s), and from attorneys representing the owner or operator and the third-party liability claimant(s), that a third-party liability claim should be paid. The certification shall be worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 10 (see 10 CSR [20-11.115] **26-3.115**); or

2. A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from a UST covered by financial assurance under 10 CSR [20-11.095] **26-3.095**--10 CSR [20-11.115] **26-3.115** and the director determines that the owner or operator has not satisfied the judgment.

(3) If the director determines that the amount of corrective action costs and third-party liability claims eligible for payment under section (2) of this rule may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The director shall pay third-party liability claims in the order in which the director receives certifications under paragraph (2) (B)1. of this rule and valid court orders under paragraph (2) (B)2. of this rule.

(4) A governmental entity acting as guarantor under 10 CSR [20-11.114] **26-3.114**(7), the local government guarantee without standby trust, shall make payments as directed by the director under the circumstances described in 10 CSR [20-11.108] **26-3.108**(1)--(3).

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp.1993). \* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994.

\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

10 CSR [20-11.109] **26-3.109** Release From the Requirements

PURPOSE: This rule describes when an owner or operator is released from financial responsibility requirements.

(1) An owner or operator is no longer required to maintain financial responsibility under 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115** for an underground storage tank (UST) after the tank has been properly closed,

or if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by 10 CSR [20-10.070] **26-2.060**--10 CSR [20-10.074] **26-2.064**.

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993). \* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991.

Amended: Filed Aug. 3, 1993, effective April 9, 1994.

\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

10 CSR [20-11.110] **26-3.110** Bankruptcy or Other Incapacity of Owner or Operator, or Provider of Financial Assurance

PURPOSE: The owner or operator, or financial assurance provider shall notify the department of bankruptcy proceedings affecting the availability of financial responsibility.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming an owner or operator as debtor, the owner or operator shall notify the director by certified mail of the commencement and submit the appropriate forms listed in 10 CSR [20-11.107] **26-3.107**(2) documenting current financial responsibility.

(2) Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming a guarantor providing financial assurance as debtor, this guarantor shall notify the owner or operator by certified mail of the commencement as required under the terms of the guarantee specified in 10 CSR [20-11.096] **26-3.096** .

(3) Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming a local government owner or operator as debtor, the local government owner or operator shall notify the director by certified mail of the commencement and submit the appropriate forms listed in 10 CSR [20-11.107] **26-3.107**(2) documenting current financial responsibility.

(4) Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming a guarantor providing a local government financial assurance as debtor, this guarantor shall notify the local government owner or operator by certified mail of the commencement as required under the terms of the guarantee specified in 10 CSR [20-11.106] **26-3.106**.

(5) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond or letter of credit. The owner or operator shall obtain alternate financial assurance as specified in 10 CSR [20-11.090] **26-3.090** through 10 CSR [20-11.115] **26-3.115** within thirty (30) days after receiving notice of the event. If the owner or operator does not obtain alternate coverage within thirty (30) days after notification, s/he shall notify the director.

(6) Within thirty (30) days after receipt of notification that the Petroleum Storage Tank Insurance Fund has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator shall obtain alternate financial assurance.

AUTHORITY: sections 319.114, RSMo (1994) and 319.129 and 644.026, RSMo (Cum. Supp. 1996).\* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991. Amended: Filed Aug. 3, 1993, effective April 9, 1994. Amended: Filed Jan. 14, 1997, effective Sept. 30, 1997.

\*Original authority: 319.114, RSMo (1989), 319.129, RSMo (1989), amended 1991, 1996; and 644.026, RSMo (1972), amended 1973, 1987, 1993.

10 CSR [20-11.111] **26-3.111** Replenishment of Guarantees, Letters of Credit or Surety Bonds

PURPOSE: This rule describes requirements that the owner or operator maintain financial responsibility mechanism at a fully funded level.

(1) If at any time after a standby trust is funded upon the instruction of the director with funds drawn from a guarantee, letter of credit or surety bond and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator, by the anniversary date of the financial mechanism from which the funds were drawn shall--

(A) Replenish the value of financial assurance to equal the full amount of coverage required; or

(B) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(2) For purposes of this rule, the full amount of coverage required is the amount of coverage to be provided by 10 CSR [20-11.093] **26-3.093**. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993).\* Original rule filed Feb. 7, 1991, effective Aug. 30, 1991.

\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

10 CSR [20-11.112] **26-3.112** Local Government Bond Rating Test

PURPOSE: This rule describes the requirements for use of a local government bond rating test for demonstrating financial responsibility.

(1) A general purpose local government owner or operator, local government, or both, serving as a guarantor may satisfy the requirements of 10 CSR [20-11.093] **26-3.093** by having a currently outstanding issue(s) of general obligation bonds of one (1) million dollars or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A or Baa, or a Standard & Poor's rating of AAA, AA, A or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating shall be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

(2) A local government owner or operator or local government serving as a guarantor that 1) is not a general purpose local government and 2) does not have the legal authority to issue general obligation bonds may satisfy the requirements of 10 CSR [20-11.093] **26-3.093** by--

(A) Having a currently outstanding issue(s) of revenue bonds of one (1) million dollars or more, excluding refunded issues; and

(B) Having a Moody's rating of Aaa, Aa, A or Baa, or a Standard & Poor's rating of AAA, AA, A or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard and Poor's, the lower rating for each bond shall be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

(3) The local government owner or operator, guarantor, or both, shall maintain a copy of its bond rating published within the last twelve (12) months by Moody's or Standard & Poor's.

(4) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator, guarantor, or both, shall sign a letter worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 11 (see 10 CSR [20-11.115] **26-3.115**).

(5) To demonstrate that it meets the local government bond rating test, the chief financial officer of local government owner or operator, guarantor, or both, other than a general purpose government shall sign a letter worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 12 (see 10 CSR [20-11.115] **26-3.115**).

(6) The director may require reports of financial condition at any time from the local government owner or operator, local government guarantor, or both. If the director finds, on the basis of the reports or other information, that the local government owner or operator, guarantor, or both, no longer meets the local government bond rating test requirements of 10 CSR [20-11.112] **26-3.112**, the local government owner or operator shall obtain alternative coverage within thirty (30) days after notification of the finding.

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

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993). \* Original rule filed Aug. 3, 1993, effective April 9, 1994.

\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

#### 10 CSR [20-11.113] **26-3.113** Local Government Financial Test

PURPOSE: This rule describes the requirements for use of a local government financial test for demonstrating financial responsibility.

(1) A local government owner or operator may satisfy the requirements of 10 CSR [20-11.093] **26-3.093** by passing the financial test specified in this rule. To be eligible to use the financial test, the local government owner or operator shall have the ability and authority to assess and levy taxes or to freely establish fees and charges.

(2) To pass the local government financial test, the owner or operator must meet the criteria of subsections (2) (B) and (C) of this rule based on year-end financial statements for the latest completed fiscal year:

(A) The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year--

1. Total revenues. Consists of the sum of general fund operating and nonoperating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, and the like), intergovernmental revenues (restricted and unrestricted) and total revenues from all other governmental funds including enterprise, debt service, capital projects and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments and issuance of debt.

2. Total expenditures. Consists of the sum of general fund operating and nonoperating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and

compensation, office management, planning and zoning, capital projects, 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. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

3. Local revenues. Consists of total revenues (as defined in paragraph (2)(A)1. of this rule) minus the sum of all transfers from other governmental entities, including all monies received from federal, state or local government sources.

4. Debt service. Consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments and interest-bearing warrants. Excludes payments on noninterest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

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

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

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

(C) The local government owner or operator shall have a letter signed by the chief financial officer worded as specified in section (3) of this rule.

(3) To demonstrate that it meets the financial test under section (2) of this rule, the chief financial officer of the local government owner or operator, shall sign, within one hundred twenty (120) days of the close of each financial reporting year, as defined by the twelve (12)-month period for which financial statements used to support the financial test are prepared, a letter worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 13 (see 10 CSR [20-11.115] **26-3.115**).

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

(5) The director may require reports of financial condition at any time from the local government owner or operator. If the director finds, on the basis of the reports or other information, that the local government owner or operator no longer meets the financial test requirements of 10 CSR [20-11.113] **26-3.113**(2) and (3), the owner or operator shall obtain alternate coverage within thirty (30) days after notification of the finding.

(6) If the local government owner or operator fails to obtain alternate assurance within one hundred fifty (150) days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within thirty (30) days of notification by the director that it no

longer meets the requirements of the financial test, the owner or operator shall notify the director of the failure within ten (10) days.

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993).\* Original rule filed Aug. 3, 1993, effective April 9, 1994.

\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

10 CSR [20-11.114] **26-3.114** Local Government Guarantee

PURPOSE: This rule describes the requirements for a local government guarantee of financial responsibility.

(1) A local government owner or operator may satisfy the requirements of 10 CSR [20-11.093] **26-3.093** by obtaining a guarantee that conforms to the requirements of this rule. The guarantor must be either the state in which the local government owner or operator is located or a local government having a substantial governmental relationship with the owner and operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor shall demonstrate that it meets the--

(A) Bond rating test requirement of 10 CSR [20-11.112] **26-3.112** and deliver a copy of the chief financial officer's letter as contained in 10 CSR [20-11.112] **26-3.112**(4) or (5) to the local government owner or operator;

(B) Worksheet test requirements of 10 CSR [20-11.113] **26-3.113** and deliver a copy of the chief financial officer's letter as contained in 10 CSR [20-11.113] **26-3.113**(3) to the local government owner or operator; or

(C) Local government fund requirements of 10 CSR [20-11.115] **26-3.115**(1)(A), (B) or (C) and deliver a copy of the chief financial officer's letter as contained in 10 CSR [20-11.115] **26-3.115** to the local government owner or operator.

(2) If the local government guarantor is unable to demonstrate financial assurance under any of 10 CSR [20-11.112] **26-3.112**, 10 CSR [20-11.113] **26-3.113**, 10 CSR [20-11.115] **26-3.115**(1)(A), (B) or (C), at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than one hundred twenty (120) days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternative coverage as specified in 10 CSR [20-11.110] **26-3.110**(5).

(3) The guarantee agreement shall be worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 14 or 15 (see 10 CSR [20-11.115] **26-3.115**), depending on which of the following alternative guarantee arrangements is selected, if in the default or incapacity of the owner or operator, the guarantor guarantees to--

(A) Fund a standby trust as directed by the director, the guarantee shall be worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 14 (see 10 CSR [20-11.115] **26-3.115**);

(B) Make payments as directed by the director for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 15 (see 10 CSR [20-11.115] **26-3.115**).

(4) If the guarantor is the state, the local government guarantee with standby trust shall be worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 14 (see 10 CSR [20-11.115] **26-3.115**).

(5) If the guarantor is a local government, the local government guarantee with standby trust shall be worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 15 (see 10 CSR [20-11.115] **26-3.115**).

(6) If the guarantor is the state, the local government guarantee without standby trust shall be worded as specified in 10 CSR [20-11] **26-3** Appendix, Form 16 (see 10 CSR [20-11.115] **26-3.115**).

(7) If the guarantor is a local government, the local government guarantee without standby trust shall be worded as specified in 10 CSR [20-11] **26-3 Appendix, Form 17** (see 10 CSR [20-11.115] **26-3.115**).

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993). \* Original rule filed Aug. 3, 1993, effective April 9, 1994.

\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

10 CSR [20-11.115] **26-3.115** Local Government Fund

PURPOSE: This rule describes the requirements for use of a local government fund for demonstrating financial responsibility.

(1) A local government owner or operator may satisfy the requirements of 10 CSR [20-11.093] **26-3.093** by establishing a dedicated fund account that conforms to the requirements of this rule. Except as specified in subsection (1)(B) of this rule, a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one (1) of the following requirements:

(A) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs) and is funded for the full amount of coverage required under 10 CSR [20-11.093] **26-3.093**, or funded for part of the required amount of coverage and used in combination with other mechanisms that provides the remaining coverage; or

(B) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, and is funded for five (5) times the full amount of coverage required under 10 CSR [20-11.093] **26-3.093**, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining coverage. If the fund is funded for less than five (5) times the amount of coverage required under 10 CSR [20-11.093] **26-3.093**, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth (1/5) the amount in the fund; or

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

TF - CF

.....

Y

where:

TF  $\square$  the total required financial assurance for the owner or operator;

CF  $\square$  the current amount in the fund; and

Y  $\square$  the number of years remaining in the pay-in-period.

1. The local government owner or operator has available bonding authority, approved through voter referendum (if this approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; or

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

(2) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator, guarantor, or both, shall sign a letter worded exactly as specified in 10 CSR [20-11] **26-3** Appendix, Form 18 (see 10 CSR [20-11.115] **26-3.115**).

AUTHORITY: sections 319.114, RSMo (Cum. Supp. 1989) and 644.026, RSMo (Cum. Supp. 1993). \* Original rule filed Aug. 3, 1993, effective April 9, 1994.

\*Original authority: 319.114, RSMo (1989) and 644.026, RSMo (1972), amended 1973, 1987, 1993.

## APPENDIX

### Wording of Financial Assurance Instruments

#### Form 1--Letter from Chief Financial Officer

The following text should be used to comply with the requirements of 10 CSR [20-11.095] **26-3.095**(4) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

##### Letter from Chief Financial Officer

I am the chief financial officer of [insert name and address of the owner or operator or guarantor]. This letter is in support of the use of [insert 'the financial test of self insurance' and/or 'guarantee'] to demonstrate financial responsibility for [insert 'taking corrective action' and/or 'compensating third parties for bodily injury and property damage'] caused by [insert 'sudden accidental releases' and/or 'non-sudden 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' and/or 'guarantor']:  
[List for each facility: the name and address of the facility where tanks assured by this financial test are located and whether tanks are assured by this financial test by the tank identification number provided in the notification submitted pursuant to 10 CSR [20-10.022] **26-2.022**].

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

##### Federal Rules

Closure (264.143 and 265.143)	\$
Post-Closure Care (264.145 and 265.145)	\$
Liability Coverage (264.147 and 265.147)	\$
Corrective Action (264.101(b))	\$
Plugging and Abandonment (144.63)	\$
Closure	\$
Post-Closure Care	\$
Liability Coverage	\$
Corrective Action	\$
Plugging and Abandonment	\$
Total	\$

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

[Fill in the information for Alternative I if the criteria of 10 CSR [20-11.095] **26-3.095**(2) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of 10 CSR [20-11.095] **26-3.095**(3) are being used to demonstrate compliance with the financial test requirements.]

Alternative I

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

Alternative II

1. Amount of annual UST aggregate coverage being assured by a test or guarantee \$
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test or guarantee \$
3. Sum of lines one and two \$
4. Total tangible assets \$
5. Total liabilities (if any of the amount reported on line three is included in total liabilities, you may deduct that amount from this line and add that amount to line six) \$
6. Tangible net worth (subtract line five from line four) \$
7. Total assets in the United States (required only if less than ninety percent (90%) of assets are located in the United States) \$  
Yes No
8. Is line six at least ten (10) million dollars?
9. Is line six at least six (6) times line three?
10. Are at least ninety percent (90%) of assets located in the United States? (If "'No'" complete line eleven)
11. Is line seven at least six (6) times line three?

(Fill in either lines twelve through fifteen or lines sixteen through eighteen)

- 12. Current assets \$
- 13. Current liabilities \$
- 14. Net working capital (subtract line thirteen from line twelve) \$  
Yes No
- 15. Is line fourteen at least six (6) times line three?
- 16. Current bond rating of most recent bond issue
- 17. Name of rating service
- 18. Date of maturity of bond
- 19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration or the Rural Electrification Administration?

(If 'No,' please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines four through eighteen above and the financial statements for the latest fiscal year.)

(For both Alternative I and Alternative II complete the certification with this statement.)

'I hereby certify that the wording of this letter is identical to the wording specified in 10 CSR [20-11.095] 26-3.095(4) as such rules were constituted on the date shown immediately below.'

[Signature]

[Name]

[Title]

[Date]

#### APPENDIX

#### Form 2--Guarantee

The following text should be used to comply with the requirements of 10 CSR [20-11.096] 26-3.096 (3) as follows, 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 [ ], herein referred to as guarantor, to the Department of Natural Resources and to any and all third parties and obligees on behalf of [owner or operator] of [business address].

#### Recitals

(A) Guarantor meets or exceeds the financial test criteria of 10 CSR [20-11.095] 26-3.095(2) or 10 CSR [10.095] 26-3.095 (3) and 10 CSR [10.095] 26-3.095 (4) and agrees to comply with the requirements for guarantors as specified in 10 CSR [20-11.096] 26-3.096 (2).

(B) [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 (1) instrument is used to assure different tanks at any one (1) facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 10 CSR [20-10.022] 26-2.022, and the name and address of the facility.] This guarantee satisfies 10 CSR [20-11.090] 26-3.090--10 CSR [20-11.115] 26-3.115 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 '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 above-identified underground storage tank(s) in the

amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(C) [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 department and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within sixty (60) days after receipt of a notice of cancellation of this guarantee and the director 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 10 CSR [20-11.112] **26-3.112**, in an amount not to exceed the coverage limits specified above.

In the event that the director determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 10 CSR [20-10.060] **26-2.070** --10 CSR [20-10.067] **26-2.083**, the guarantor upon written instructions from the director, shall fund a standby trust in accordance with the provisions of 10 CSR [20-11.108] **26-3.108** 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 "non-sudden"] 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 10 CSR [20-11.112] **26-3.112** to satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage specified above.

(D) 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 10 CSR [20-11.095] **26-3.095**(2) or 10 CSR [20-11.095] **26-3.095** (3) and 10 CSR [20-11.095] **26-3.095**(4), guarantor shall send within one hundred twenty (120) days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate one hundred twenty (120) days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

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

(F) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 10 CSR [20-10.010]--10 CSR [20-11.115] **2 and 3**.

(G) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115** 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 one hundred twenty (120) days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

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

1. Any obligation of [insert owner or operator] under Workers' Compensation, disability benefits or unemployment compensation law or other similar law;
2. Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

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

4. 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;

5. 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 10 CSR [20-11.093] **26-3.093**.

(I) Guarantor expressly waives notice of acceptance of this guarantee by the department, 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 10 CSR [20-11.096] **26-3.096** (3) as such rules 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

#### Form 3--Endorsement

The following text should be used to comply with the requirements of 10 CSR [20-11.097] **26-3.097** (2) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

##### (A) 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 (1) instrument is used to assure different tanks at any one (1) facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted for 10 CSR [20-10.022] **26-2.022** 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 release;'' 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 subparagraphs A through E of this paragraph are hereby amended to conform with subparagraphs 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 10 CSR [20-11.095] **26-3.095** through 10 CSR [20-11.102] **26-3.102**.

C. Whenever requested by the director, 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 sixty (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 ten (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 (6) months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in 10 CSR [20-11.097] **26-3.097**(2)(A) 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 this state'].

[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]

#### APPENDIX

##### Form 4--Certificate of Insurance

The following text should be used to comply with the requirements of 10 CSR [20-11.097] **26-3.097**(2) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

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 (1) instrument is used to assure different tanks at any one (1) facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 10 CSR [20-10.022] **26-2.022** and the name and address of the facility.]

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

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

2. The [''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 10 CSR [20-11.095] **26-3.095** through 10 CSR [20-11.102] **26-3.102**.

C. Whenever requested by the director, the [''Insurer'' or ''Group''] agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

D. Cancellation or any other termination of the insurance by the [''Insurer'' or ''Group''], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten (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 (6) months of the effective date of cancellation or nonrenewal 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 an 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 10 CSR [20-11.097] **26-3.097**(2) (B) 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 this state'].

[Signature of authorized representative of Insurer]

[Type name]

[Title]

Authorized Representative of [Name of Insurer or Risk Retention Group]

[Address of Representative]

#### APPENDIX

#### Form 5--Performance Bond

The following text should be used to comply with the requirements of 10 CSR [20-11.098] **26-3.098**(2) as follows, 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 (1) instrument is used to assure different tanks at any one (1) facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 10 CSR [20-10.022] **26-2.022** 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 'non-sudden accidental releases' or 'accidental releases' 'arising from operating the underground storage tank'].

Penal sums of bond æ:

Per occurrence \$

Annual aggregate æ\$

Surety's bond number :

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the department, 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(s) 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 10 CSR [20-10.060] **26-2.070**--10 CSR [20-10.067] **26-2.083** and the director's instructions for,'' and/or ''compensate injured third parties for bodily injury and property damage caused by'' either ''sudden'' or ''non-sudden'' or ''sudden and non-sudden''] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 10 CSR [20-10.090] **26-3.090**--10 CSR [20-11.115] **26-3.115** , within one hundred twenty (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 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 10 CSR [20-11.093] **26-3.093**.

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] that the Principal has failed to [''take corrective action, in accordance with 10 CSR [20-10.060] **26-2.070**--10 CSR [20-10.067] **26-2.083** 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 10 CSR [20-10.060] **26-2.070** --10 CSR [20-10.067] **26-2.067** 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 director under 10 CSR [20-11.108] **26-3.108**.

Upon notification by [the director] that the Principal has failed to provide alternate financial assurance within sixty (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 10 CSR [20-11.108] **26-3.108**.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes 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(s) 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 one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by the Principal as evidenced by the return receipt.

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

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 10 CSR [20-11.098] **26-3.098**(2) as such rules were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

State of Incorporation:

Liability limit: \$

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

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

Bond premium: \$

APPENDIX

Form 6--Irrevocable Standby Letter of Credit

The following text should be used to comply with the requirements of 10 CSR [20-11.099] **26-3.099**(2) as follows, except that 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]

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] United States dollars (\$[insert dollar amount]), available upon presentation [insert, if more than one (1) state is a beneficiary, 'by any one (1) of you'] of:

(A) Your sight draft, bearing reference to this letter of credit, No. , and

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

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

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one (1) instrument is used to assure different tanks at any one (1) facility, for each tank covered by this instrument, list the tank identification number provided by in the notification submitted pursuant to 10 CSR [20-10.022] **26-2.022** and the name and address of the facility.]

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

1. Any obligation of [insert owner or operator] under a Workers' Compensation, disability benefits or unemployment compensation law or other similar law;
2. Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
3. Bodily injury or property damage arising from the ownership, maintenance, use or entrustment to others of any aircraft, motor vehicle or watercraft;
4. 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;
5. 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 10 CSR [20-11.093] **26-3.093**.

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 one hundred twenty (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 one hundred twenty (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 10 CSR [20-11.099] **26-3.099**(2) as such rules were constituted on the date shown immediately below.

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

[Date]

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

#### APPENDIX

#### Form 7--Trust Agreement

The following text should be used to comply with the requirements of 10 CSR [20-11.102] **26-3.102**(6) as follows, 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 Department of Natural Resources, "the department," an agency of the state of Missouri, 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 non-sudden accidental releases arising from the operation of the underground storage tank];

[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:

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 the Agreement and any successor Trustee.

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)].

3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund" for the benefit of department. 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's instructions 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 department.

4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"]. The Trustee shall make payments from the Fund as [the director] 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 "non-sudden 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 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 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.

#### 5. Payments Comprising the Fund.

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

#### 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/her duties with respect to the trust fund solely in the interest of the beneficiaries and with 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:

A. 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, 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;

B. 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

C. 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.

#### 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, 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.

#### 8. Express Powers of Trustee.

Without in any way limiting the powers and discretion 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.

#### 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.

#### 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 legal counsel.

#### 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.

#### 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 ten (10) days before such change becomes effective. Any expense incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in paragraph 9 of this agreement.

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 to the Trustee shall be in writing, signed by the director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or the director, except as provided for herein.

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] if the Grantor ceases to exist.

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, 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.

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 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.

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.

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 paragraph 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 10 CSR [20-11.103] **26-3.103**(2)(A) as such rules 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]

APPENDIX  
Form 8--Certification of Acknowledgments

The following text should be used to comply with the requirements of 10 CSR [20-11.102] **26-3.102**(3) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Certification of Acknowledgments  
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 s/he resides at [address], that s/he is [title] of [corporation], the corporation described in and which executed the above instrument; that s/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 s/he signed her/his name thereto by like order.

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

APPENDIX  
Form 9--Certification of Financial  
Responsibility

The following text should be used to comply with the requirements of 10 CSR [20-11.107] **26-3.107**(2)(K) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Certification of Financial Responsibility

[Owner or operator] hereby certifies that it is in compliance with the requirements of 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115**. The financial assurance mechanism(s) used to demonstrate financial responsibility under 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115** 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]

APPENDIX  
Form 10--Certification of Valid Claim

The certification of valid claim must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury (and/or) property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[ ].

[Signatures]

[Owner or Operator]

[Attorney for Owner or Operator]

[Notary]

[Date]

[Signatures]

[Claimant(s)]

[Attorney(s) for claimants(s)]

[Notary]

[Date]

APPENDIX

Wording of Financial Assurance Instruments

Form 11--General Purpose Local Government Bond Rating Test

The following text should be used to comply with the requirements of 10 CSR [20-11.112] **26-3.112**(4) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: ''taking corrective action'' and/or ''compensating third parties for bodily injury and property damage''] caused by [insert: ''sudden accidental releases'' and/or ''nonsudden accidental releases''] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

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

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

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 one (1) million dollars. 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 twelve (12) months. Neither rating service has provided notification within the last twelve (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 10 CSR [20-11.112] **26-3.112**(4) as the regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

#### APPENDIX

##### Form 12--Local Government Bond Rating Test

The following text should be used to comply with the requirements of 10 CSR [20-11.112] **26-3.112**(5) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: ''taking corrective action'' and/or ''compensating third parties for bodily injury and property damage''] caused by [insert: ''sudden accidental releases'' and/or ''nonsudden accidental releases''] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

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

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

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 one (1) million dollars. 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 twelve (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 twelve (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 10 CSR [20-11.112] **26-3.112**(5) as the regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

#### APPENDIX

##### Form 13--Local Government Financial Test

The following text should be used to comply with the requirements of 10 CSR [20-11.113] **26-3.113**(3) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: ''taking corrective action'' and/or ''compensating third parties for bodily injury and property damage''] caused by [insert: ''sudden accidental releases'' and/or ''nonsudden accidental releases''] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 10 CSR [20-10.022] **26-2.022**].

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 nonoperating 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 nonoperating 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 5401
  - 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 Services to Population
  - a. Debt Service (from 4d)
  - b. Population (from 6)
  - c. Divide 10a by 10b
  - d. Subtract 51
  - e. Divide by 1038
  - 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 4548
- 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 [10 CSR 20-11.113] **10 CSR 26-3.113**(3) as the regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

APPENDIX

Form 14--Local Government Guarantee With Standby Trust Made by a State

The following text should be used to comply with the requirements of 10 CSR [20-11.114] **26-3.114**(4) as follows, 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 obligees, on behalf of [local government owner or operator].

Recitals

1. Guarantor is the 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 10 CSR [20-10 and 11] **26- 2 and 3** , and the name and address of the facility]. This guarantee satisfies 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115** 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 sixty (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

10 CSR [20-11.108] **26-3.108**, 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 10 CSR [20-10.060] **26-2.070** --10 CSR [20-10.067] **26-2.083**, the guarantor upon written instructions from the [director] shall fund a standby trust fund in accordance with the provisions of 10 CSR [20-11.108] **26-3.108**, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ['sudden' and/or 'nonsudden'] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from the injury or damage, the guarantor, upon written instructions from the [director], shall fund a standby trust in accordance with the provisions of 10 CSR [20-11.108] **26-3.108** to satisfy the 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), United States Code naming guarantor as debtor, within ten (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 10 CSR [20-10 and 11] **26- 2 and 3**.

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 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115** for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], the cancellation to become effective no earlier than one hundred twenty (120) days after receipt of the 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 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 10 CSR [20-11.093] **26-3.093**.

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 10 CSR [20-11.114] **26-3.114**(4) as the rules 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

Form 15--Local Government Guarantee With Standby Trust Made by a Local Government

The following text should be used to comply with the requirements of 10 CSR [20-11.114] **26-3.114**(5) as follows, 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 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 obligees, on behalf of [local government owner or operator].

#### Recitals

1. Guarantor meets or exceeds [select one: the local government bond rating test requirements of 10 CSR [20-11.112] **26-3.112**, the local government financial test requirements of 10 CSR [20-11.113] **26-3.113**, or the local government fund under 10 CSR [20-11.115] **26-3.115**(1) (A), (B), or (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 10 CSR [20-10 and 11] **26-2 and 3**, and the name and address of the facility]. This guarantee satisfies 10 CSR [20-11.090] **26-3.090** --10 CSR [20-11.115] **26-3.115** 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 ''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 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 sixty (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 10 CSR [20-11.108] **26-3.108**, 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 10 CSR [20-

10.060] **26-2.070** --10 CSR [20-10.067] **26-2.083**, the guarantor upon written instructions from [the director] shall fund a standby trust fund in accordance with the provisions of 10 CSR [20-11.108] **26-3.108**, 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 'non-sudden'] 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 the injury or damage, the guarantor, upon written instructions from [the director], shall fund a standby trust in accordance with the provisions of 10 CSR [20-11.108] **26-3.108** to satisfy the 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 (4)(B)1., guarantor shall send within one hundred twenty (120) days of the 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), United States Code naming guarantor as debtor, within ten (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 10 CSR [20-10 and 11] **26-2 and 3**.

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 10 CSR [20-11.090] **26-3.090** --10 CSR [20-11.115] **26-3.115** for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], the cancellation to become effective no earlier than one hundred twenty (120) days after receipt of the 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 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 10 CSR [20-11.093] **26-3.093**.

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 10 CSR [20-11.114] **26-3.114**(5) as the rules 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

#### Form 16--Local Government Guarantee Without Standby Trust Made by a State

The following text should be used to comply with the requirements of 10 CSR [20-11.114] **26-3.114**(6) as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

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 obligees, on behalf of [local government owner or operator].

Recitals

1. Guarantor is the 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 10 CSR [20-10 and 11] **26-2 and 3**, and the name and address of the facility.]. This guarantee satisfies 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115** 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 '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 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 obligees that:

In the event that [local government owner or operator] fails to provide alternative coverage within sixty (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 10 CSR [20-10.060] **26-2.070**--10 CSR [20-10.067] **26-2.083**, 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 'non-sudden' 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 the 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), United States Code naming guarantor as debtor, within ten (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 10 CSR [20-10 and 11] **26-2 and 3**.

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 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115** for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], the cancellation to become effective no earlier than one hundred twenty (120) days after receipt of the 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 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 10 CSR [20-11.093] **26-3.093**.

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 10 CSR [20-11.114] **26-3.114**(6) as the 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:

Form 17--Local Government Guarantee Without Standby Trust Made by a Local Government

The following text should be used to comply with the requirements of 10 CSR [20-11.114] **26-3.114**(7) as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

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 obligees, on behalf of [local government owner or operator].

Recitals

1. Guarantor meets or exceeds [select one: the local government bond rating test requirements of 10 CSR [20-11.112] **26-3.112**, the local government financial test requirements of 10 CSR [20-11.113] **26-3.113**, the local government fund under 10 CSR [20-11.115] **26-3.115**(1) (A), (B) or (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 10 CSR [20-10 and 11] **26-2 and 3**, and the name and address of the facility.] This guarantee satisfies 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115** 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 ''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 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 obligees that:

In the event that [local government owner or operator] fails to provide alternative coverage within sixty (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 10 CSR [20-10.060] **26-2.070**--10 CSR [20-10.067] **26-2.083**, 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 ''non-sudden''] 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 the 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 (5)(B)1., guarantor shall send within one hundred twenty (120) days of the 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), United States Code naming guarantor as debtor, within ten (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 10 CSR [20-10 and 11] **26-2 and 3**.

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 10 CSR [20-11.090] **26-3.090**--10 CSR [20-11.115] **26-3.115** for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], the cancellation to become effective no earlier than one hundred twenty (120) days after receipt of the 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 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 10 CSR [20-11.093] **26-3.093**.

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 10 CSR [20-11.114] **26-3.114**(7) as the 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

Form 18--Local Government Fund

The following text should be used to comply with the requirements of 10 CSR [20-11.115] **26-3.115**(1)(D) as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: ''taking corrective action'' and/or ''compensating third parties for bodily injury and property damage''] caused by [insert: ''sudden accidental releases'' and/or ''non-sudden 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 10 CSR [20-11.093] **26-3.093**, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining coverage,'' or ''The local government fund is funded for ten (10) times the full amount of coverage required under 10 CSR [20-11.093] **26-3.093**, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining coverage,'' or ''A payment is made to the fund once every year for seven (7) years until the fund is fully-funded] and [name of local government owner or operator] has [available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund'' or ''A payment is made to the fund once every year for seven (7) years until the fund is fully-funded and I have attached a letter signed by the state attorney general stating that 1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and 2) that prior voter approval is not necessary before use of the bonding authority''].

The details of the local government fund are as follows: Amount in Fund (market value of fund of close of last fiscal year):

[If fund balance is incrementally funded as specified in 10 CSR [20-11.107] **26-3.107**(1)(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 10 CSR [20-11.115] **26-3.115**(1)(D) as the regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]