

INDEPENDENT OIL MARKETERS ASSOCIATION OF NEW ENGLAND

April 27, 2012

Kenneth L. Kimmell, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street, 10th Floor
Boston, MA 02108

RE: MassDEP DRAFT
Underground Storage Tank Systems Regulations 310 CMR 80.00

Dear Commissioner Kimmell:

The Independent Oil Marketers Association of New England (IOMA) is pleased to provide the following, attached top twenty (20) concerns and attached red-line/strike-out comments concerning the Massachusetts Department of Environmental Protection's (MassDEP's) DRAFT Underground Storage Tank (UST) System regulations (310 CMR 80.00), hereinafter referred to as the Regulations. In summary:

1. After reviewing MassDEP's first complete set of UST regulations, IOMA is disappointed that after three (3) years of providing constructive comments to MassDEP's senior management and program staff concerning the importance of having a balanced UST program, MassDEP appears to have dismissed many of our substantive and technical concerns and comments. Based upon our review we believe that a shared vision for this program remains elusive and does not yet exist. We believe that the Department's current approach for the UST program suffers from an undeserved confidence about the workings of UST systems and the retail gasoline marketplace, incorrect assumptions about the people who own and operate, install, repair and remove USTs, which is further compounded by a lack of a clear and consistently applied vision and touchstones for the program to guide its most significant public policy decisions. Until this can occur IOMA requests that MassDEP promulgate the existing language of 527 CMR 9.00 into the proposed 310 CMR 8.00. IOMA then requests that MassDEP implement the program for a period of two years before proposing any changes.
2. As proposed, MassDEP's DRAFT Regulations are more stringent than those proposed (emphasis added) than the United States Environmental Protection Agency (US EPA). IOMA estimates that the DRAFT Regulations will cost the approximately 3,200 motor vehicle fuel dispensing system operators in excess of \$80 million annually to comply. This translates to a 3 cents per gallon tax increase placed upon, and without legislative or the governor's concurrence, the Massachusetts consumer. A recent analysis from Deutsche Bank finds that every penny increase in average gas prices at the pump in the United States equals \$1.4 billion siphoned out of the US economy. In addition to siphoning valuable resources from an already fragile Massachusetts economy, these regulations, remarkably, will generate 1,440,000 gallons per annum of contaminated water.

3. We estimate the implementation of these DRAFT regulations will likely result in the closing of between 300 – 600 independent motor fuel retailers which will be unable to bear these costs for compliance;
4. MassDEP has taken thirty-eight (38) pages of practical and time tested UST Regulations previously implemented by the Massachusetts Department of Fire Services (MassDFS) and turned these into a one hundred forty-five (145) page prescriptive and unworkable DRAFT UST Regulation. It is hard to imagine that this was the intent of the Governor's Article 87 which was to, "restructure(s) certain state agencies to make them more cost effective and responsive by consolidating programs and program staff within agencies whose mission and expertise will ensure the most coordinated, efficient operation of the programs."; and, that the DRAFT Regulation has received a passing grade under a cost-benefit analysis required by Executive Order 384 for which a copy is hereby requested; IOMA also does not believe this effort is consistent with the Agency's recent and highly touted regulatory reform initiative.
5. IOMA recommends that MassDEP implement UST system technical regulations identical to the time tested regulations formerly over-seen by the MassDFS. This will ensure compliance continuity for the regulated community and also ensure a smooth transition into regulations for which MassDEP staff do not have prior experience;
6. MassDEP should propose performance based regulations instead of prescriptive regulations which are difficult to understand and possibly infeasible to implement. Referencing the US EPA performance based technical standard is preferable to a detailed, prescriptive technical regulation, especially when equipment improvements are constantly being developed and implemented by UST system manufacturers;
7. MassDEP should not adopt UST system regulations more stringent than those proposed (emphasis added) by the US EPA which have serious technical drawbacks which have been questioned by the regulated industry as well as by State regulators. Once the US EPA adopts revisions to its technical standards for UST systems, only then should the MassDEP begin to revise its UST system regulations as its staff gains experience with UST systems and the regulations. Stakeholder input will facilitate the revision process to ensure the revisions reflect industry practice and the technical capabilities of the UST system equipment;
8. The proposed Third Party Inspector (TPI) program mirrors the Licensed Site Professional (LSP) program and does not reflect current nation-wide industry UST system installation, maintenance and inspection practices. Licensed Site Professionals and Registered Professional Engineers (PEs) do not have the practical experience or manufacturer's certifications required for the UST system inspections proposed. The standard of care for these UST system inspections is practiced by what are referred to as pump and tank mechanics who are involved daily with the on-site installation, maintenance and inspection of UST systems. These pump and tank mechanics are certified by the manufacturers' of the equipment and have the hands-on experience and

knowledge to cost-effectively inspect and identify UST system compliance or compliance deficiencies. Requiring an LSP or PE to inspect UST systems for compliance is expected to triple the cost of current TPI inspections. IOMA is not aware of any other State in the United States which requires PEs to conduct UST system inspections; nor, was such a requirement proposed by the US EPA in its proposed UST system regulatory revisions.

9. In July of 2009 IOMA requested orally and in writing for the Department to prioritize the implementation of the federally mandated Operator Training Program. MassDEP chose not to. MassDEP had three years to promulgate regulations with enough lead time for parties to comply with the August 8, 2012 deadline whereby all public and private motor fuel dispensing stations must have three types of Certified Operators assigned to every facility. One Class A Operator who is expert in regulations and management, one Class B operator who is expert in UST system mechanics, and one or more Class C operators who are typically the store clerks. Any station that does not have one of each assigned to their facility cannot lawfully dispense fuel, in other words – they must shut down until they do. Within the last month MassDEP began offering the certification exam for Class A and B Operators. Despite our protests that the exam is too difficult to pass because of how rigidly it is scored, MassDEP believed nothing is wrong with the exam. Now, only after our insistence MassDEP is looking at the exam, in light of the looming federal deadline, the significant number of estimated Operators that are needed (thousands), and comparing it to the lack of people who have successfully passed the exam as of this writing is sixty (60).
10. The agency for whatever reason has eliminated the long standing option of demonstrating financial responsibility through a self certification process by the Owner or Operator. This approach allows an Owner/Operator to demonstrate or certify they have the necessary assets and means to self-insure for the cleanup of environmental contamination should the tank leak. This approach is only used by the larger more sophisticated retail marketers. MassDEP despite IOMA's concerns eliminated this option. IOMA wants it restored. MassDEP also in this section of the UST regulations attempts to overturn a statutory provision in MGL c. 21(J) whereby it would allow municipalities to become eligible for reimbursement of cleanup costs under this dedicated Fund for retail marketers. MassDEP also proposed to overturn longstanding Insurance industry practices and laws, by requiring insurers to provide coverage even if the insured fails to pay premiums, or becomes insolvent or bankrupt. MassDEP's rules also appear to preclude or extend from 10 days to 120 days an Insurers option of canceling coverage for non-payment of premiums.

You will note from the voluminous comments provided on the red-line/strike-out copy of the DRAFT Regulation attached that IOMA industry experts had difficulty understanding the practical implementation of the DRAFT Regulation. We submit that if the IOMA industry experts, who have been involved with the process since March 2009, cannot understand the implementation aspects of the DRAFT Regulation, then the average UST

system operator will be unable to comply with an overly prescriptive regulation which differs significantly from the time tested MassDFS regulations with which there is intimate industry familiarity and knowledge.

We look forward to discussing the details of this DRAFT Regulation at the public meeting scheduled for Tuesday, May 1st and we hope that the MassDEP will move toward a more balanced and performance based regulation. We hope that MassDEP also reconsiders its efforts to prematurely adopt proposed federal rules before their time comes. In addition, a performance based UST System Regulation will be more practical and cost-effective to implement than the onerous, proposed DRAFT Regulation.

Very truly yours,
Peter Romano
Peter Romano
President

Attachments

CC: Mr. Gary Moran – Deputy Commissioner, MassDEP
Mr. Edward A. Rachins – Mutual Oil Company, Inc.
Mr. Raymond F. Leather – Cumberland Gulf Group of Companies
Ms. Angela M. Pimental – Cumberland Gulf Group of Companies
Mr. Bruce Garrett – Volta Oil Company, Inc.
Mr. Brian P. Moran – Rackemann Strategic Consulting
Ms. Sarah Weinstein – Assistant Commissioner, MassDEP
IOMA Board of Directors

310 CMR 80.00 Underground Storage Tank Systems

GENERAL IOMA COMMENTS:

1. The original UST regulations authored by the Department of Fire Services were thirty-eight (38) pages long. MassDEP’s proposed regulations for UST systems are 145 pages long. Based on this fact along IOMA believes these regulations have horribly missed the mark, and cannot be considered by any stretch as an example of regulatory streamlining.

2. MassDEP’s desire to adopt proposed Federal rules is premature and short circuit public comment and debate on the merits of and basis for these proposals that is occurring at the national level. MassDEP needs to restrain its eagerness to adopt these draft federal rules until such time they become final rules. During October 2011, the USEPA released a proposed rule to update the federal UST laws. IOMA understands MassDEP’s interest in the federal proposals and possibly considering some of them for incorporation into the current set of state UST regulations. However, IOMA cautions against this curiosity and requests that no federal proposals be incorporated into the Commonwealth’s UST regulations until such time as the federal rules become finalized. In a telephone conversation with Elizabeth McDermott, OSWER/OUST at USEPA, who is managing the federal UST rulemaking, she estimates that a final rule assuming no major controversies, could be out by early 2013. Ms. McDermott also stated that once the final rule is effective, all authorized states would be given an additional three years to phase in and incorporate the new federal rules. EPA and IOMA believe this is adequate time for MassDEP to adjust its rules in the future and comply with any federally promulgated changes. IOMA believes it is premature to incorporate any of these federal proposals into the state’s final UST regulations slated for promulgation in July 2012. Such an approach would short-circuit the benefits of the public debate that will be generated during the federal comment process. For example, one of the federal proposals IOMA is most troubled with involves the hydrostatic testing requirements of containment sumps. IOMA questions whether the millions of gallons hazardous wastewater that would be generated on a national scale and the related trucking, treatment, and disposal costs are worth the environmental gains, especially when liquid sump sensors are installed. Also IOMA believes it will be nearly impossible for MassDEP to predict with certainty which of the federal proposals will survive, be stricken, or become modified after the public comment and rulemaking process ends, let alone predict when they will be completed. IOMA believes it is best to defer action related to all of the federal proposals until the final federal rule is published.

3. Are there other UST regulations in the 527 CMR series that will need amendments other than 527 CMR 9.00 alone. How and when will DFS regulation changes and transparency over the jurisdictional boundaries between MassDEP and Department of Fire Services (DFS) become open for all to see and

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font:(Default) Times New Roman

Formatted: Font:(Default) Times New Roman

Formatted: Font:(Default) Times New Roman

understand. IOMA has been asking this same question for well over three years, and still no response.

4. Overall, the readability and clarity of the regulations needs to be adjusted so it can be accessed by a lay-person. The organization of the entire set of regulations is not readily understood and appears stream of conscience with after the fact insertions of additional regulatory text as opposed to organizing the requirements by a common and consistent themes or subject matter.

5. No cost benefit/feasibility evaluation is presented with or appears to be factored in to the active development of these proposed regulations, and it must. Such an evaluation should not be an afterthought once the regulations are issued for public comment but should be a factor that directly influences these proposals.

6. Many sections of these regulations are disjointed, lack a recognizable structure and organization, and most importantly are not decipherable in some sections, and in most others they are not easily understood. Successful regulations are ones that are easily understood. As a threshold question, UST Ow/Op's need to know where in the regulations they can find all of the requirements that apply to their UST in a situational context and as well as generally. Then Ow/Op's have to understand what the requirements are so they can comply. MassDEP needs to double its efforts at organizing, achieving clarity, and transparency of these proposed rules. These goals were identified by MassDEP as a priority early on when IOMA suggested that MassDEP promulgate the DFS version 527 CMR 9.00 as their own rules without any major changes, gain experience with the program, and then propose informed amendments based on these program experiences, program data, and greater knowledge. MassDEP chose not to, and insisted that the DFS rules needed improvement including greater clarity and organization. It is IOMA's belief that this necessary and fundamental milestone has not yet been achieved by MassDEP.

7. MassDEP needs to fix real problems.

8. More prescriptive and stringent regulation cannot ever substitute for MassDEP inspections and enforcement actions. MassDEP is the only one who can undertake these actions. MassDEP has stated for good reason, that during its ongoing inspections it has at times observed sensors and/or alarms used to monitor an UST which were tampered with, or moved so that the alarm would no longer function. If willful, this is an egregious violation of the rules and should be subject to MassDEP enforcement. However, despite these observations by MassDEP the use of sensor technology should continue to be a trusted and reliable technology, and should not become subject to an expansion of regulatory requirements because of these incidents. Such an approach would be entirely misguided. No matter how stringent or encompassing a rule becomes, some people will for whatever reason, choose not to comply. IOMA believes it would be unfair and punitive for the vast majority of UST owners and operators who do

Formatted: Underline

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Underline

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

not tamper with their UST sensors to be subject to expanded requirements. These additional requirements again will not deter scofflaws, but will only add to the regulatory burden of those owners and operators who are compliant. This is an undesirable result for MassDEP and UST stakeholders alike. IOMA believes the best fix for these situations is enforcement and not regulatory changes.

9. A common theme throughout the regulations is excessive reporting and paperwork. MassDEP needs to reconcile all these elements and eliminate duplication, and determine if the information requested will be used in a meaningful way, otherwise MassDEP should not require its submission.

GENERAL PROVISIONS

OPERATOR TRAINING -This section of the regulations, although recently promulgated should be eligible for additional modifications as needed. Such as ensuring consistency with defined/described roles of A and B operators in the body of the regulations, and establishing reciprocity procedures acknowledging other state certification programs.

RELEASE RESPONSE AND REPORTING

This section is the largest and will likely be the least read, given that the primary tool to document financial responsibility is reliance on the the state Fund established under MGL c. 21(J). The other infrequently used alternative financial responsibility mechanisms described in great detail are responsible for the overall length of this section. The paragraph that will be most widely relied upon (state fund c. 21(J)) is buried deep into the FR section. The state fund mechanism should be listed first in the FR section. As a more general comment, from a regulation reading or user standpoint the FR section should no be embedded in the main working text of regulations, it should be placed at the end of the entire set of regulations or be incorporated into an Appendix, or even better yet, be incorporated by reference to the federal rules.

DESIGN, CONSTRUCTION AND INSTALLATION

OPERATING REQUIREMENTS

This section should be placed after TPI section

THIRD PARTY INSPECTIONS

OUT OF SERVICE SYSTEMS AND CLOSURE

Suggest placing this section after the General Provision section.

DELIVERY PROHIBITION

ENFORCEMENT AND APPEALS

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font:(Default) Times New

Deleted: .

Deleted: FINANCIAL RESPONSIBILITY

Deleted: GENERAL

Deleted: OUT OF SERVICE SYSTEMS AND CLOSURE

Deleted: RELEASE RESPONSE AND REPORTING

FINANCIAL RESPONSIBILITY Insert Financial Responsibility section here

GENERAL PROVISIONS

80.03 Authority

310 CMR 80.00 is promulgated by the Commissioner of the Department of Environmental Protection pursuant to the authority granted by M.G.L. c. 21O, §5, M.G.L. c. 21C, M.G.L. c. 21E, §6 and M.G.L. c. 21A, §16.

The Department of Environmental Protection shall be obligated to conduct an annual review of these regulations through acceptance of public comments on the anniversary of the effective date set forth herein.

80.04 Purpose

310 CMR 80.00 is intended to protect public health, safety and the environment by regulating the design, installation, testing, maintenance, operation, inspection and closure of UST systems and to prevent releases from UST systems.

80.05 Applicability This section is disjointed, lacks a recognizable structure and organization, and most importantly is not decipherable in some sections, and in most others it is not easily understood. Successful regulations are ones that are easily understood. As a threshold question, UST Ow/Op’s need to know where in the regulations they can find all of the requirements that apply to their UST in a situational context and as well as generally. Then Ow/Op’s have to understand what the requirements are so they can comply. This section and others like it fail this simple test of organization, clarity, and transparency. MassDEP needs to organize these regulations so that can be used. This was identified by MassDEP as a priority early on when IOMA suggested that MassDEP promulgate the DFS version 527 CMR 9.00 as their own rules without any major changes, gain experience with the program, and then propose informed amendments based on these program experiences and greater knowledge. MassDEP chose not too, and insisted that the DFS rules needed improvement including greater clarity and organization. It is IOMA’s belief that this milestone has not yet been achieved by MassDEP.

(1) The requirements of 310 CMR 80.00 shall apply to all UST systems, Owners and Operators of UST systems, except as provided in 310 CMR 80.05(6) through (12); Class A, B and C operators; and third-party inspectors.

(2) Whenever any provision in 310 CMR 80.00 requires an action to be taken by any person including an Owner or Operator, either may take the action but all persons are responsible for ensuring that the proper action is taken. The terms “jointly”, “severally” and “liable” are not terms that are used anywhere in the nine sections of MGL c. 21(O). It is not clear why these terms are proposed here, and it appears, lacking an

Formatted: No underline

Formatted: Font:Not Bold

Formatted: No underline

Deleted: -

Deleted: -

Formatted: Font:Italic

Deleted:

Deleted: both

Deleted: , and both the Owner and Operator are jointly and severally liable

Deleted:

explanation, that this section is inconsistent with the authority vested to Department under c.21(O).

The following sections are vivid examples of where greater organization of regulatory requirements are needed to promote understanding which rules apply to which UST or situation. The requirements are presented with details in mind, but no attempt was made to organize these details into a consistently used format throughout the regulations so that they can be easily understood by a Tank Ow/Op. Such an approach could include listing all the applicable sections for a particular UST system based on a combination of tank size, use, exemption, action/activity, contents, Owner, etc... Otherwise Tank Ow/Ops are left wondering what sections apply to them and will have to review the entire set of rules continually to make sure they don't miss a particular regulatory requirement that is embedded in a section that is not intuitive.

(3) Schedule of UST Upgrade Requirements: Airport hydrant fuel distribution systems, UST systems that store fuel solely for use by emergency power generators and emergency engine driven pumps or other emergency related systems and devices, Consumptive use tanks over 1100 gallons installed before January 1, 1989, and pressurized piping installed before January 1, 1989 shall meet the requirements of 310 CMR 80.00 as follows:

IOMA recommends that MassDEP contact the MassOil Heat Council and the Massachusetts Municipal Association for comments on these substantial and costly requirements being proposed for heating oil tanks.

Table A: Schedule of Upgrades

Type of UST System	Section	Effective Date
Airport Hydrant Fueling System	310 CMR 80.16-80.27, 310 CMR 80.48(1)(a) and (b), 310 CMR 80.50-80.56 and 310 CMR 80.58-80.59 <u>Suggest you also add names of each of these sections to improve understanding of these requirements, as opposed to just numeric citations, it will be user friendly and informative at the same time.</u>	Effective date of regulations
Airport Hydrant Fueling System	310 CMR 80.28- 80.49	See phase in schedule in 310 CMR 80.32 Table B
UST systems specifically used to supply fuel to emergency generators or to emergency engine driven pumps, <u>and other emergency related systems and devices.</u>	310 CMR 80.31(4), 80.32(1) and 80.38	1 year after effective date of regulations

Formatted: Indent: First line: 0"

Deleted: , referred to in 310 CMR 80.00 as UST systems specifically used to supply fuel to emergency generators

Deleted: or

Deleted: to

<p>Consumptive use tanks over 1100 gallons installed before January 1, 1989</p>	<p>310 CMR 80.31(4), 80.32(1) and 80.38, and 310 CMR 80.34 and 80.40 <u>IOMA objects to the installation of a cathodic protection system on USTs all ready in place. The overwhelming body of evidence and literature has identified that this can accelerate corrosion of existing UST systems. IOMA requests MassDEP re-consider its technical basis and approach of this requirement to retro-fit cathodic protection on existing UST systems. IOMA also estimates that these requirments will cost each facility upwards of \$25-\$30,000 to comply. The burden of this requirement will likely fall to single station operators, municipalities, schools, large manufacturing, and College's and University's.</u></p>	<p><u>Not nearly enough time to comly</u></p>
<p>Pressurized piping installed before January 1, 1989</p>	<p>310 CMR 80.32(2)(a)</p>	<p>1 year after effective date of regulations</p>

Deleted: 1 year after effective date of regulations
Deleted: -

(4) All UST systems installed after [effective date of rule] shall meet the applicable requirements of 310 CMR 80.00 at installation. This section should be the first paragraph in this section and should replace the current 80.05(1).

(5) Financial Responsibility Exemptions: The financial responsibility requirements at 310 CMR 80.16 through 80.27 shall apply to all Owners and Operators of UST systems including those USTs Owned or Operated by a City or Town, except State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States and except as provided in 310 CMR 80.05(6) through (11).

(a) Owners and Operators shall have the burden of proof to demonstrate that they are not subject to 310 CMR 80.16 through 80.27.

Deleted:
Formatted: Font:Bold
Deleted: -
Deleted: -
Deleted:
Deleted: -
Deleted: -
Deleted: -

(6) Registration Exemptions: The following UST systems are exempt from all requirements of 310 CMR 80.00, except for registration requirements at 310 CMR 80.48(1);

(a) UST systems holding hazardous wastes listed or identified under Subtitle C of the Resource Conservation and Recovery Act or the Massachusetts Hazardous Waste regulations at 310 CMR 30.000, except UST systems holding waste oil.

(b) Equipment or machinery that contains regulated substances for operational purposes, including, but not limited to, hydraulic lift tanks and electrical equipment tanks.

(c) UST systems that contain a *de minimus* concentration of regulated substances less than IOMA suggests that It remains unclear why a standard less than “empty” as defined in the regulations is needed. It would appear that a UST that is closed and then removed from the ground should no longer be subject to regulation. Tanks that never contained a regulated substance also are not regulated under this program. However, these tanks wouldn’t be subject to these regulations in the first place. It is unclear whether any practical benefit exists with the Department’s prior proposal to require onerous and expensive testing of the interior of a UST to demonstrate it no longer contains a regulated substance, and therefore is no longer subject to these regulations. If MassDEP is concerned with change in use scenarios that will involve reuse of a tank for human consumption purposes then a clean tank standard at MCP human health levels is appropriate. Otherwise a more reasonable standard needs to be set for confirming when specific UST regulatory requirements no longer apply.

(d) UST systems with a capacity of 110 gallons or less.

(7) Conditional/Provisional UST Installations: The following UST systems shall not be installed for the purposes of storing regulated substances unless the UST system complies with registration requirements at 310 CMR 80.48(1); release/threat of release response, reporting and remediation requirements at 310 CMR 80.58; the requirement to prevent releases due to corrosion or structural failure for the operational life of the UST system; cathodic protection requirements at 310 CMR 80.34 and 80.40, be constructed of noncorrodible material or be steel clad with a noncorrodible material; and compatibility requirements at 310 CMR 80.46. Suggest a format change be made to improve reading an understanding of this provision. Use a bulleted-list, less words.

(a) UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954, 42 U.S.C. 2011 et al.

(b) UST systems that are part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under 10 CFR part 50, appendix A.

(c) UST systems containing low level radioactive waste or its mixture with hazardous waste regulated by the Nuclear Regulatory Commission and the Department of Public Health.

(8) Consumptive use tanks of 1100 gallons or less are exempt from: all requirements of 310 CMR 80.00, except tank standards at 310 CMR 80.31(3) and

Deleted: Unless otherwise noted, t

Deleted:

Deleted: and release/threat of release response, reporting, and remediation requirements at 310 CMR 80.58

3/29/12 7:29 AM

Comment [1]: STAKEHOLDERS: This change was made in the operator training regulations. Without it, DEP and the regulated community have no standard by which to determine if an UST system has a de minimus concentration of regulated substance. PLEASE COMMENT

3/29/12 7:29 AM

Comment [2]: We are looking into whether wastewater treatment systems that are not wastewater collection systems or part of storm water or wastewater treatment systems regulated under section 402 or 307(b) of the federal Clean Water Act or M.G.L. c. 21, §§26-53 should be regulated under this section.

3/29/12 7:29 AM

Comment [3]: To comply with 40 CFR 280.11

Formatted: Underline

release/threat of release response, reporting and remediation requirements at 310 CMR 80.58.

(9) Consumptive use tanks of more than 1100 gallons are: subject to installation standards at 310 CMR 80.30, 80.31(1) and 80.32, leak detection requirements at 310 CMR 80.31(4) and 80.38, corrosion protection requirements if applicable at 310 CMR 80.34 and 80.40, spill prevention requirements at 310 CMR 80.35(1) and 80.41(1) and (2), overfill protection requirements at 310 CMR 80.35(2) and 80.41(1), (3) and (4), sump requirements at 310 CMR 80.33 and 80.39, emergency response requirement at 310 CMR 80.37, compatibility requirements at 310 CMR 80.46, repair requirements at 310 CMR 80.47, release/threat of release response, reporting and remediation requirements at 310 CMR 80.58, financial responsibility requirements at 310 CMR 80.16-80.27 and closure requirements at 310 CMR 80.49-80.55. Wouldn't it be shorter to list the sections do not apply? Just a thought. More importantly, these proposals represent a significant change from the current regulations and will be costly to achieve compliance. IOMA believes MassDEP is substantially expanding the universe of UST's that are subject to regulation. This will effect some residential and many businesses. The state c. 21J Fund does not cover heating oil USTs, and it will be difficult, if not impossible, for these owners and operators to obtain an acceptable Financial Responsibility mechanism.

Formatted: Underline

(10) Farm or residential tanks of 1100 gallons or less used exclusively for the storage of motor fuel are exempt from all requirements of 310 CMR 80.00 except tank standards at 310 CMR 30.31(1) and release/threat of release response, reporting and remediation requirements at 310 CMR 310 CMR 80.58. (11) Unless directed otherwise by the Department's or a duly authorized On-Scene-Coordinator, Emergency spill or overflow containment UST systems that are emptied within fourteen, (14) days, of the introduction of a regulated substance are exempt from all requirements of 310 CMR 80.00 except registration requirements at 310 CMR 80.48(1), tank standards at 310 CMR 80.31(1) and release/threat of release response, reporting and remediation requirements at 310 CMR 80.58. There are two issues here and IOMA suggests separating them into two paragraphs. The first is the registration requirements and tank standards for Emergency spill and overflow containment USTs; and the second is the timeframe for removing the regulated substance it captured after an accidental spill. IOMA does not believe the swiftness of a response to remove regulated substances from a UST system designed specifically to capture accidental spills, which are defined as "unanticipated and unpredictable" events should be a trigger for broader application of the entire UST regulations. Such an approach is arbitrary and unnecessarily punitive. A more reasonable timeframe measured in days not hours should be established. Such an approach would allow for greater cost-effectiveness in properly managing the removal for these regulated substances.

Deleted: . - ... [1]
Deleted: forty-eight
Deleted: 48
Deleted: hours

(12) Emergency Generators, Engines, and Pumps or other Emergency Devices: UST systems specifically used to supply fuel to emergency generators or to emergency engine driven pumps are exempt from inventory monitoring requirements at 310 CMR 80.42 only. This is confusing - So everything else applies. Suggest strike or consolidate into a consolidated section describing in one place (section) the requirements for these devices/suystems.

80.06 Rules of Construction

- (1) As used in 310 CMR 80.00, words in the singular also include the plural.
- (2) Words in the masculine gender also include the feminine and neuter genders.
- (3) No provision of 310 CMR 80.00 shall be construed to limit the Department's authority to take or arrange for, or to require any person to perform, any response action authorized by M.G.L. c. 21C or M.G.L. c. 21E which the Department deems necessary to protect public health, safety or the environment.
- (4) The provisions of 310 CMR 80.00 are severable, and if any provision herein or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions hereof or applications thereof which can be given effect without the invalid provision or application.
- (5) No provision of 310 CMR 80.00 shall be construed to relieve any person of the necessity of complying with all other applicable federal, state or local laws.

80.07 Computation of Time

Unless otherwise specifically provided by law, 310 CMR 80.00, or any determination issued pursuant to 310 CMR 80.00, any time period prescribed or referred to in 310 CMR 80.00 or in any determination issued pursuant to 310 CMR 80.00 shall begin with the first day following the act which initiates the running of the time period, and shall include every calendar day, including the last day of the time period so computed. If the last day is a Saturday, Sunday, legal holiday, or any other day in which the offices of the Department are closed, the deadline shall run until the end of the next business day. If the time period prescribed or referred to is less than seven (7) days, only days when the offices of the Department are open shall be included in the computation.

80.08 Accurate and Timely Submittals to the Department and Record Keeping

- (1) No person shall knowingly make any false, inaccurate, incomplete or misleading statement in any application, record, report, plan, log or statement which that person submits, or is required to submit, to the Department pursuant to M.G.L. c. 21A, §16, M.G.L. c. 21O, 310 CMR 80.00, or any permit, order, certification or approval issued by the Department. [Suggest MassDEP incorporate the concept and term "willful and not the result of error" as used in M.G.L. c. 21A, §16 to better define the intent of this provision. IOMA requests clarification on the intent of these two almost identical provisions \(80.08 \(1\) and \(2\)\). The significance of the distinctions between them is not transparent.](#)

Deleted: (1) ..

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.5" + Indent at: 1.5"

Previous comment provided to MassDEP on its June 2011 draft,

In 80.08(1) and (2), IOMA appreciates MassDEP’s proposal to distinguish between submitting any false statement and knowingly submitting a false statement. As discussed during the August 2nd meeting, knowingly submitting a false statement is more egregious than unknowingly submitting a false statement, which could occur if a tank owner or operator relies upon the statements of another party as required in these regulations. In addition to clarifying the distinctions above IOMA, also requests MassDEP clarify how omissions of information will be handled. For example IOMA does not believe omissions or errors on MassDEP’s proposed forms fall into the category of making a false statement.

IOMA recommends that MassDEP clarify by identifying in the regulations those requirements that will be considered “false statements”. This may be achieved, in part, by identifying which regulation’s if violated are categorically Class I versus Class II violations. For example what if a question is left blank or an address or phone number is incorrect? What if a UST owner/operator lists 2 instead of 3 tanks? The proposed forms require a tremendous volume of information to be submitted, tracked and updated. IOMA is rightfully concerned with how MassDEP will implement these provisions and seeks clarification to increase program transparency, and provide certainty to UST owners and operators.

(2) No person shall make any false, inaccurate, incomplete or misleading statement in any application, record, report, plan, log or statement which that person submits, or is required to submit, to the Department pursuant to M.G.L. c. 21O, 310 CMR 80.00, or any permit, order, certification or approval issued by the Department.

(3) Any application, record, report, plan, or statement which any person is required to submit to the Department shall be submitted within the time period presented in M.G.L. c. 21O, 310 CMR 80.00, or any order issued by the Department, unless otherwise specified by the Department.

(Duplicate of 80.08(1) above.

Duplicate of 80.08(2) above. 80.09 Accurate and Complete Record Keeping

Any record keeping which any person is required to perform shall be promptly, fully, and accurately performed and shall otherwise be in compliance with 310 CMR 80.00, and any permit, order, certification or approval issued by the Department.

80.10 Accurate Monitoring

Formatted: Indent: First line: 0"

Formatted: List Paragraph, Indent: Left: 1.5", First line: 0"

Deleted: 4) . No person shall knowingly make any false, inaccurate, incomplete or misleading statement in any application, record, report, plan, log or statement which that person keeps, or is required to keep, by the Department pursuant to M.G.L. c. 21A, §16, M.G.L. c. 21O, 310 CMR 80.00, or by any permit, order, certification or approval issued by the Department.

Deleted: (5) . No person shall make any false, inaccurate, incomplete or misleading statement in any application, record, report, plan, log or statement which that person keeps, or is required to keep, by the Department pursuant to M.G.L. c. 21O, 310 CMR 80.00, or by any permit, order, certification or approval issued by the Department.

Deleted: [2]

No person shall falsify, tamper with, or render inaccurate any monitoring device or method which any person maintains, or which is required to be maintained pursuant to M.G.L. c. 210 or 310 CMR 80.00. Any monitoring which any person is required to perform shall be promptly, fully and accurately performed and shall otherwise be in compliance with M.G.L. c. 210, 310 CMR 80.00, or any permit, order, certification or approval issued by the Department.

80.11 Duty to Provide Information

For any of the purposes set forth in M.G.L. c. 210 or 310 CMR 80.00, any Owner or Operator of an UST system shall upon reasonable request of the Department furnish information relating to UST systems, their associated equipment and their contents, conduct monitoring or testing, and permit the Department to have access to, and to copy all records relating to, such UST systems. IOMA requests that the Department specify a minimum timeframe of fourteen (14) days for responding to a “reasonable request” as described in the above section. Without definition IOMA is concerned with the potential for mischief and inconsistent application of this authority across its four regional field offices.

2/16/12 10:33 AM
Comment [4]: This is slightly modified language from c. 210, sec. 6.

80.12 Certification of Submittals

Unless otherwise required by law or 310 CMR 80.00, any person signing a document pursuant to 310 CMR 80.00, shall make the following certification: "I attest under penalty of law that I have personally examined and am familiar with the information contained in this document including all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment." The trigger for usage of this certification language cannot be so widespread that it encompasses any request for information as is implied by the wording of this section. As with many other DEP program’s use of boilerplate “certification language” is appropriately limited to specific written submittals that are designated as they apply in the body of the regulations. If MassDEP maintains the broader application of this language then the use of this certification language needs further discussion.

Deleted: or when providing any other information ordered or requested by the Department pursuant to 310 CMR 80.00
Deleted: certify
Deleted: submitted in this
Deleted: and

80.13 Presumption of Irreparable Harm

Pursuant to M.G.L. c. 210, §8, any violation of any provision of M.G.L. c. 210 or 310 CMR 80.00 or of any order, permit, or approval adopted or issued thereunder shall be presumed to constitute irreparable harm to public health, safety and welfare, and to the environment. Such presumption may be rebutted by the introduction of competent evidence.

80.14 Rights of the Department to Enter and Inspect UST Facility and Records

- (1) For purposes of implementing M.G.L. c. 21O and 310 CMR 80.00, the Department and/or its representative are authorized:
 - a. To enter at reasonable times any establishment or other place where an UST is located; and
 - b. To inspect and obtain samples from any person of any regulated substance contained in such tank; and
 - c. To conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or groundwater.
 - d. Such inspections shall be completed with reasonable promptness.

- (2) Any Owner or Operator of an UST shall upon request of the Department and/or its representatives furnish information relating to such tanks, their associated equipment and their contents, conduct monitoring or testing, and permit the Department to or its representatives to have access to, and to copy all records relating to such tanks. Such requests shall be fulfilled within fourteen (14) days.

IOMA requests that a minimum timeline to respond to such a requests in (2) above be established to promote regional consistency. IOMA suggests using the actual language from c. 21(O) (see above) will provide transparency on the Departments express authority to receive records and request access to a site. As proposed by MassDEP IOMA believes these nuances and distinctions are blurred.

Also presented belwo is IOMA;s prior comment on this section: **Section 6 of Chapter 21O specifically states that “the Department...are authorized (1) to enter at reasonable times any establishment or other place where a UST is located...”. Chapter 21O however, doesn’t support the Department’s regulatory assertion at 80.14(1) above that it has the statutory authority to conduct inspections at UST sites at any time and of its own choosing. Rather, the Department is only authorized or limited to enter a UST site at “reasonable times”. IOMA believes that prior communication with the property owner is therefore required in order to establish a reasonable time for gaining access to the UST location and thereby conducting an inspection. Prior notice also makes extraordinary sense and exemplified in the Department’s proposed requirement that UST Owner’s and Operator’s (see 80.14(2)) have on site the necessary personnel during an inspection. IOMA supports having personnel present to assist in an inspection because heavy steel covers need to be removed prior to inspection, and if not properly removed can result in damage to the gaskets and seals or sensors. Rather than wait for new parts to be ordered and installed, and have the station taken out of service, repairs can be made immediately with minimum interruption of business at the facility. Most importantly IOMA is concerned with UST facility personnel and Inspector safety during these inspections. IOMA members can attest that gas station filling lanes are dangerous places to be even when safety precautions are implemented because of the constant**

Deleted: (1) -

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.5" + Indent at: 1.5"

Formatted: List Paragraph, Numbered + Level: 2 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"

Formatted: Indent: Left: 1", First line: 0"

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.5" + Indent at: 1.5"

Formatted: Indent: Left: 0.5", First line: 0"

flow of moving traffic. IOMA members are also concerned with the equipment damage and injury that may occur during a DEP inspection. Who will be responsible for repairing or replacing accidentally damaged equipment? Who will be liable for any injuries? This is a significant liability issue for Retail Marketers, store owners, and property owners.

The Department employee or representative shall present their credentials at the facility at the time of inspection.

This broad brush assertion needs to be supported by specific statutory authority, otherwise it should be struck. IOMA reviewed c.21(O) and could not find any such authority to support the Department's unfettered access to a UST facility based on these standards.

(3) The Owner or Operator shall provide the necessary personnel during an announced inspection conducted by the Department in order to provide access to UST systems and facilities including, but not limited to, the following: IOMA supports the concept of announced inspections in all cases. However, as presented, this section needs to be expanded to include safeguards for Ow/Ops so that costs to have the necessary personnel on site are addressed. IOMA members have had differing experiences across the different regional offices concerning the number of days of advance notice. In some instance it was ample time to arrange for a routine service visit with the date of the DEP inspection, thereby avoiding premium contractor rates. More often only a couple of days advance notice was provided and contractors were required to be hired at emergency response rates in order to respond on short notice. IOMA believes this is unfair, inequitable and inconsistent application of the law. IOMA is not against inspections but, there need to be standardized notice timeframes placed in the regulations to guide the regional offices implementation. Advance notices should always be in writing and must specify what equipment/system will be evaluated. IOMA members have experienced situations where personnel were brought present on-site but the DEP inspector asked to look at something not related to the UST system and assumed they would be present too, however they were not. Advance and clear communications needs to occur between the inspectors and the facility.

- (a) Regulated substance fillport/sump;
- (b) Automatic tank gauge sump/port;
- (c) Pump sump/port;
- (d) Underground piping/other access ports/sumps;
- (e) Dispenser cabinet/sump;
- (f) Automatic tank gauge console;
- (g) Audible/visual alarms, Too vague! Can't hold someone

accountable to having personnel present if they don't know what will be inspected.

80.15 Definitions

For the purposes of 310 CMR 80.00, the following terms shall have the following meanings:

1/25/12 3:33 PM

Comment [5]: Language from 21O, sec. 6.

Deleted: may at a reasonable time with or without prior notice inspect UST systems and facilities in order to: inspect or obtain samples from any person of any regulated substance in a tank; conduct monitoring or testing of the tanks, associated equipment, contents of the tank or surrounding soils, air, surface water or ground water; have access to, and copy all records, relating to such tanks.

Deleted: (2) . The Department may enter an UST facility at any time to protect public health, safety or the environment.

Deleted: ; and .

... [3]

Abandoned means the relinquishment of dominion and control over an UST system by the Owner, What about the Operators responsibility, or another persons obligations.

Deleted: without it vesting in any other person

Accidental release means any sudden or nonsudden release of a regulated substance from an UST system that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank Owner and/or Operator as used in 310 CMR 80.16 only.

2/16/12 10:37 AM
Comment [6]: EPA definition for FR

Automatic Line Leak Detector means a mechanical or electronic device designed to detect regulated substance or pressure losses in a pressurized product line of a pressurized pumping system and that automatically restricts flow or automatically shuts off flow in a pressurized piping system.

Bodily injury means substantial impairment of the physical condition including, but not limited to, any burn, fracture of any bone, subdural hematoma, injury to any internal organ, or any injury which occurs as the result of repeated harm to any bodily function or organ, including human skin, however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury as used in 310 CMR 80.16 only.

2/16/12 10:40 AM
Comment [7]: EPA definition for FR

Business day means a day of the week that the Department is open for business.

Cathodic Protection or Cathodic Protection System means a technique which inhibits the corrosion of an UST system either through sacrificial or galvanic anode or impressed current.

Cathodic Protection Tester means a person who is certified as follows:

- (a) Certified at least at level CP1 – Cathodic Protection Tester by NACE; Please spell out this acronym or
- (b) Certified as a cathodic protection tester by the Steel Tank Institute (STI); or
- (c) Certified in the UST Cathodic Protection category by the International Code Council (ICC)

Formatted: Font:Bold

CERCLA means the Comprehensive Environmental Response Compensation and Liability Act of nineteen hundred and eighty, 42 U.S.C. section 9601 et seq. as may be amended from time to time.

2/16/12 10:41 AM
Comment [8]: c. 210, sec. 2

Certified UST tightness tester means a person certified by the manufacturer of the testing equipment and only uses the testing equipment on which they are certified.

Change-in-product means changing the type of product in an UST system from a regulated substance to another regulated substance or to a non-regulated substance. Changing from one grade of gasoline to a different grade of gasoline or changing from one motor fuel to another is not a change-in-product.

IOMA recommends that the definition exclude changes in product between motor fuels (gasoline and diesel) should not trigger change in product requirements. IOMA is also concerned with how E-15, once it enters the marketplace will be addressed under this definition?

Chief Financial Officer means, in the case of local government Owners and Operators, the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government as used in 310 CMR 80.16 only.

Deleted: .

2/16/12 10:41 AM

Comment [9]: EPA definition for FR

Commissioner means Commissioner of the Department of Environmental Protection.

Commonwealth means the Commonwealth of Massachusetts.

Component means an element of an UST system including, but not limited to, the tank, piping, pumps, sumps, electrical devices, consoles, cathodic protection system, leak detection system, spill prevention equipment and overfill prevention equipment.

Consumptive Use Tank means a tank used to store fuel oil used exclusively for area heating and/or the heating of domestic water on the premises where stored. A tank used to store waste oil is not a consumptive use tank. However a tank used to store waste oil for on-site consumptive use is considered a consumptive use tank.

Continuous Monitoring means the use of a device capable of automatic, uninterrupted and unattended surveillance. Unclear definition

Controlling interest means direct ownership of at least 50 percent of the voting stock of an entity as used in 310 CMR 80.16 only.

2/16/12 10:41 AM

Comment [10]: EPA definition for FR

Corrosion Expert means a person who is accredited or certified as being qualified by the National Association of Corrosion Engineers (NACE) as a Cathodic Protection Specialist or Corrosion Specialist. The corrosion expert shall follow applicable NACE criteria.

Corrosion Protection means the use of a technology, material, or method of construction to prevent any metallic component of an UST system from corroding (e.g., cathodic protection or the use of fiberglass-reinforced plastic or other polymer resins when constructing tanks or piping).

Department means Massachusetts Department of Environmental Protection.

Dispenser Sump means a sump or pan installed beneath a product dispenser to provide containment and to contain leaks of regulated substance from the dispenser connections and piping. Double-walled means a container or pipe with two complete shells which provide both primary and secondary containment. The container shall have a continuous interstitial space between the primary and secondary shell.

Deleted: secondary

Deleted: .

... [4]

Emergency spill or overflow containment UST system means a tank used to contain accidental spills which are unanticipated and unpredictable. [How does this definition jibe with secondary containment definition? They appear redundant?](#)

Empty means when all regulated substance has been removed from a tank using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the tank, remains in the tank. [How does this definition jibe with the any proposed de-minimus tank definition, temporary closure, permanent closure and change in product, and removal requirements? What is the concept behind having a de-minimus definition.](#)

European Suction System means an underground suction piping system which is sloped back to the tank so that the contents of the piping will drain back into the tank if the suction is released, and only one check valve is included in each suction line and is located directly under the dispenser pump.

Farm means an operation engaged in “agriculture” or “farming” as defined in M.G.L. c.128, s.1A.

Fuel Oil means any hydrocarbon oil as specified by ASTM Standard D396-90, Specification for Fuel Oil.

Guarantor means any person, other than a person liable pursuant to M.G.L. c. 21E, §5, who provides evidence of financial responsibility pursuant to M.G.L. c. 21O.

Hazardous Substances means regulated substances as defined in section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 and 40 CFR Part 302. (This term does not include any substance regulated as a hazardous waste under Subtitle C of the Federal Resource Conservation and Recovery Act and 40 CFR Part 261).

Industrial wastewater holding tank means a tank that is used to accumulate or store industrial wastewater.

Intermediate sump means an impermeable, fluid-tight basin, installed below grade to allow access to fittings and regulated substance piping that is used to allow piping declines to tanks or to provide access at key points in the piping system. Intermediate sumps shall be designed to collect leaked regulated substance and fluids and prevent their introduction into the environment.

Interstitial Monitoring means the continuous surveillance of the space between the walls of a double-walled tank or double-walled piping.

2/16/12 10:42 AM

Comment [11]: c. 21O, sec. 2

Interstitial Space means the space between the primary and secondary barriers of a secondarily contained system (e.g. the space between the two walls of a double-wall tank.)

Leak or Leakage means the escape of regulated substance from an UST system into an UST system component not intended to store regulated substance, including, but not limited to, interstitial spaces, sumps and containment areas. IOMA recommends that the Department consider maintaining clear distinctions or “bright-lines” between the proposed definition of a “leak/leakage” and the definition of a “release” to the environment. Not all leaks enter the environment and become releases. Actually the vast majority of leaks are captured by UST systems containment systems. IOMA does not believe that fixing a dripping fitting in a dispenser sump and cleanup of the containment system needs to comply with the requirements of c.21E and the 310 CMR 40.0000. IOMA believes responses to these incidents can and should be addressed by the UST program. Applying an MCP cleanup approach in IOMA’s opinion would be excessive. However, when leaks do enter the environment all bets are off and the MCP’s regulatory requirements for the notification, assessment and cleanup of the releases to the environment apply.

Deleted: Leakage or Leak

Deleted: , or into the environment.

(1) For tightness tests a leak is the rate that meets or exceeds the applicable standard in 310 CMR 80.44.

(2) For an in-tank monitor or Statistical Inventory Reconciliation a leak is defined as 0.20 gallons per hour or more with the probability of detection of 0.95.

Legal defense cost means any expense that an Owner or Operator or provider of financial assurance incurs in defending against claims or actions brought as used in 310 CMR 80.16 only. :

2/16/12 10:44 AM
Comment [12]: EPA definition for FR

(1) By EPA or the Commonwealth to require corrective action or to recover the costs of corrective action;

(2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

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

Lining or Lined means a liquid-tight non-corrodible material that is bonded firmly to the interior surface of a tank and that is compatible with any material stored in the tank.

Listed means equipment or materials included in a list published by a nationally recognized organization, including, but not limited to American Petroleum Institute, Steel Tank Institute, and Petroleum Engineering Institute, concerned with product evaluation, that maintains periodic inspection of production of listed equipment or materials and whose listing states either that equipment or materials meet appropriate standards or have been tested and found suitable for use in a specific manner.

Local government means [as used in 310 CMR 80.16 only](#):

(1) Cities, municipalities and towns, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and

(2) Special districts and independent school districts established by cities, municipalities or towns, and other general purpose governments to provide essential services.

Manufacturer’s specifications mean information provided or proscribed by the manufacturer of an UST system or component including, but not limited to, manuals, instructions, checklists, testing requirements and maintenance requirements.

Non-European Suction System means a piping system that conveys regulated substance under suction with a check valve [at the tank](#) located so that the regulated substance stays in the line when the suction is released. [Isn’t all piping supposed to be pitched back to the tank with only one check valve? It would be illegal to have more than one valve for this type of system.](#)

Occurrence means [as used in 310 CMR 80.16 only](#) an event, including continuous or repeated exposure to conditions, which results in a release from an UST system. Note: This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of “occurrence” in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of “occurrence.”

Oil-water separator means a tank that utilizes the difference in density between oil or petroleum products and water to physically separate the oil or petroleum product from the water.

Operator means (1) in the case of an UST system in use on November 8, 1984, or brought into use after that date, any person in control of, or having responsibility for, the daily operation of an UST system used for the storage, use, or dispensing of regulated substances or (2) in the case of any UST system in use before November 8, 1984, but not in use at any time on or after that date, any person who owns the land on or in which such tank is or was located.

Out-of-Use means an UST system that has been taken temporarily out-of-service in accordance with 310 CMR 80.51 in excess of five (5) years.

Owner means:

2/16/12 10:44 AM
Comment [13]: EPA definition for FR

Deleted: or valves

2/16/12 10:44 AM
Comment [14]: EPA definition for FR

2/16/12 10:45 AM
Comment [15]: c. 210, sec. 2

2/16/12 10:45 AM
Comment [16]: c. 210, sec. 2

(1) in the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for the storage, use, or dispensing of regulated substances; or

(2) in the case of any UST system in use before November 8, 1984, but not in use at any time on or after that date, any person who owned such tank immediately before the discontinuance of such use.

Person means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, the United States Government, state, municipality, commission, political subdivision of a state, interstate body, consortium, joint venture or commercial entity.

Pressurized Piping System means a pressurized product line system in which regulated substances are supplied to a point away from the tank by means of a pumping unit.

Deleted: Pipe or Piping means the hollow cylinder or the tubular conduit that is constructed of non-earthen materials.

Product Deliverer means any person who delivers or deposits regulated substance into an UST system. This term includes, but is not limited to, oil companies, jobbers, petroleum transportation companies, or other product delivery entities.

Property damage as used in 310 CMR 80.16 only means injury to real or personal property through another's negligence, willful destruction, or by some act of nature. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

2/16/12 10:46 AM
Comment [17]: EPA definition for FR

Provider of financial assurance as used in 310 CMR 80.16 only means an entity that provides financial assurance to an Owner or Operator of an UST system through one of the mechanisms listed in 310 CMR 80.18(1)-(9), including a local government guarantor, insurer, risk retention group, surety, issuer of a letter of credit, the Underground Storage Tank Petroleum Product Cleanup Fund, or the Commonwealth.

2/16/12 10:46 AM
Comment [18]: EPA definition for FR

p.s.i. means pounds per square inch.

RCRA means the Solid Waste Disposal Act, as revised by the Resource Conservation and Recovery Act, as may be further amended from time to time.

2/16/12 10:46 AM
Comment [19]: c. 210, sec. 2

Deleivery Prohibition means a tag, device or mechanism affixed on the UST systems' fill pipes by the Department that clearly identifies a tank as ineligible for regulated substance delivery.

Deleted: Red Tag

Regulated Substance means:

2/16/12 10:46 AM
Comment [20]: c. 210, sec. 2

(1) any substance defined in section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act of 1980. Regulated substance also includes waste oil, but does not include any other substance regulated as a hazardous waste under chapter twenty-one C, and

(2) petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 p.s.i. absolute).

Regulated Substance Piping means piping that conveys regulated substance.

Release means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST system into the ground water, surface water or subsurface soil.

3/1/12 9:01 AM
Comment [21]: c. 21O, sec. 2

Repair means any modification to the UST system that is not routine maintenance.

Replace or Replacement means the removal of an existing UST component and installation of another UST component; and if part of the piping is being replaced, removal and installation **of more than 25% of** the piping connected to a single UST system. The UST stakeholder developed concept of a “substantial modification” appears to have been cast-aside and abandoned. IOMA believes that the 25% threshold is too low and will be all too encompassing. IOMA recommends that if greater than 50% of the piping is replaced it should meet this definition.

Formatted: Font:Bold, Underline

Residential means buildings or dwellings used primarily for human habitation, but not industrial and commercial structures.

Routine Maintenance means the normal operational upkeep of an UST system.

Secondary Containment means a release prevention system for a tank and/or piping where the tank and/or piping have an inner and outer barrier with a space in-between these two barriers for monitoring. Lining a tank or piping shall not constitute secondary containment.

Statistical Inventory Reconciliation (SIR) means a process of evaluating the various sources of errors present in daily inventory records and capable of detecting a leak or discharge from the UST system, including associated piping of 0.20 gallons per hour with the probability of detection of 0.95 and probability of false alarm of 0.05 as determined by an independent testing laboratory using the U.S. Environmental Protection Agency’s standardized test procedures or equivalent.

Sump means an impermeable, fluid-tight basin or pan installed below grade to allow access to piping, pumps, fittings and valves and to collect leaked regulated substance to prevent its introduction into the environment.

Deleted: -

Tank means an underground structure that contains regulated substance. The term shall not include any of the following: (1) any septic tank; or (2) any pipeline facility,

2/16/12 1:32 PM
Comment [22]: derived from “underground storage tank” in c. 21O, sec. 2

including gathering lines, which is regulated under (a) the Natural Gas Pipeline Safety Act of 1968; or (b) the Hazardous Liquid Pipeline Safety Act of 1979; or (3) any surface impoundment pit, pond, or lagoon; or (4) any storm water or waste water collection system; or (5) any flow through process tank; or (6) any liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or (7) any storage tank situated in an underground area, including without limitation, a basement, cellar, or mineworking drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor, and all sides are accessible and visible.

Temporarily out-of-service means the temporary closure of an UST system for not more than five (5) years that occurs when the UST system has been prepared for temporary closure and IS maintained during such temporary closure in accordance with 310 CMR 80.51(4) and the Owner informs the Department of the temporary closure in accordance with 310 CMR 80.51(2).

Termination under 310 CMR 80.16 through 80.27 means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

Threat of Release means a substantial likelihood of a release from an UST system which requires action to prevent or mitigate damage to health, safety, public welfare or the environment which may result from the release.

Third-Party Inspector means an individual certified to conduct third-party inspections in accordance with 310 CMR 80.57(3).

What is the difference between a dispenser sump and a tight dispenser sump? This definition is unnecessary. We do not use the term tight tank or tight piping... where will it end? UST Facility Compliance Date means the date by which an Owner or Operator shall ensure that a third-party inspection is completed and a third-party inspection report is submitted to the Department.

Underground Storage Tank (UST) Facility or Facility means the property on which one or more UST systems and related above-ground structures are located.

Underground Storage Tank (UST) System means any one or combination of tanks, including, without limitation, underground pipes connected thereto, that contains regulated substance and the volume of which, including the volume of underground pipes connected thereto, is ten percent or more beneath the surface of the ground. The term shall not include any of the following tanks or any pipes connected to any of the following: (1) any septic tank; or (2) any pipeline facility, including gathering lines, which is regulated under (a) the Natural Gas Pipeline Safety Act of 1968; or (b) the Hazardous Liquid Pipeline Safety Act of 1979; or (3) any surface impoundment pit, pond, or lagoon; or (4) any storm water or waste water collection system; or (5) any flow through process tank; or (6) any liquid trap or associated gathering lines directly related

2/16/12 1:32 PM
Comment [23]: EPA definition for FR
Deleted: -

Deleted: Tight Dispenser Sump means a dispenser sump that is designed, constructed and installed in a manner to prevent release of regulated substances or fluids into the environment.
Deleted: - [5]

2/16/12 1:33 PM
Comment [24]: Derived from "underground storage tank" in c. 210, sec. 2

to oil or gas production and gathering operations; or (7) any storage tank situated in an underground area, including without limitation, a basement, cellar, or mineworking drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor, and all sides are accessible and visible.

Waste Oil means used or unused waste oil (or any mixture thereof) that is not otherwise hazardous pursuant to 310 CMR 30.120 through 30.136, except that used waste oil with a flash point greater than or equal to 100° F and less than 140° F (solely through use) remains subject to regulation as used waste oil.

FINANCIAL RESPONSIBILITY

This entire section should be placed at the end of the regulations or incorporated by reference to the federal rules. It should not be placed from a user standpoint in the middle of the entire regulations.

80.16 Requirements for Amount and Scope of Financial Responsibility

(1) An Owner or Operator of an UST systems shall maintain and 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 UST systems. Failure to maintain and/or demonstrate financial responsibility shall subject the Owner or Operator to enforcement including, but not limited to, delivery prohibition in accordance with 310 CMR 80.60.

(2) An Owner or Operator shall maintain and demonstrate financial responsibility in at least the following per-occurrence amounts:

(a) For Owners and Operators of UST systems that handle an average of more than 10,000 gallons of regulated substance per month based on annual throughput for the previous calendar year: \$1 million.

(b) For all other Owners and Operators of UST systems: \$500,000.

(3) An Owner or Operator of UST systems shall maintain and 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 UST systems in at least the following annual aggregate amounts:

- (a) For Owners and Operators of 1 to 100 tanks, \$1 million; and
- (b) For Owners and Operators of 101 or more tanks, \$2 million.

(4) The amounts of assurance required under 310 CMR 80.16 excludes legal defense costs.

(5) If an Owner or Operator uses separate mechanisms or separate combinations of mechanisms to satisfy the financial responsibility requirements, the financial mechanisms in total shall be in the full amount specified in 310 CMR 80.16(2) and (3).

(6) If an Owner or Operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different UST systems, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(7) An Owner or Operator shall review the amount of their coverage whenever additional tanks are acquired or installed. If the number of tanks for which assurance must be provided exceeds 100, the Owner or Operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance within sixty (60) days of installing the tanks.

(8) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the Owner and Operator.

3/29/12 7:31 AM
Comment [25]: Consistent with hazardous waste and solid waste regulations.

80.17 Allowable Mechanisms and Combinations of Mechanisms.

The most frequently used FR mechanism should be listed first (i.e., c. 21J Fund).

√(1) An Owner or Operator, including a local government Owner or Operator, may use any one or combination of the mechanisms listed at 310 CMR 80.18(1)-(4) to demonstrate financial responsibility for one or more UST systems. Self-insurance is no longer an allowable mechanism through omission. This will have an adverse impact as Private Insurance will not be readily available. IOMA requests that a self-insurance mechanism be re-instituted as a bona-fide approach to demonstrate Financial Responsibility. The agency has not presented evidence to the contrary that supports its elimination. This approach needs to be re-inserted. In the new federal proposal there is no mention of limiting the self-insurance FR option.

Deleted: -

(2) In addition to the mechanisms listed at 310 CMR 80.18(1)-(4) , an Owner or Operator, of an UST system that stores petroleum may use the mechanism listed at 310 CMR 80.18(5) to demonstrate financial responsibility for one or more UST systems. The citation listed above as 310 CMR 80.18(5) refers to the state Reimbursement Fund or C. 21(J) fund. Local governments are prohibited by statute from eligibility for

Deleted: including a local government Owner or Operator,

reimbursement of response action costs under c.21(J). Cities and Town may apply for grants to cover certain removal and replacement costs for some USTs but they cannot obtain reimbursement from the Fund for response action costs. Suggest DEP describe separately the mechanisms available to city and towns separate from those afforded private parties. (3) In addition to the mechanisms listed at 310 CMR 80.18(1)-(4), a local government Owner or Operator may use any one or combination of the mechanisms listed at 310 CMR 80.18(6)-(9) to demonstrate financial responsibility for one or more UST systems.

80.18 Requirements for Financial Responsibility Mechanisms

Deleted: -

Deleted: - ... [6]

(1) Insurance and risk retention group coverage

(a) An Owner or Operator may obtain liability insurance that conforms to the requirements of 310 CMR 80.18(1) from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in 310 CMR 80.18(1)(b)1., or evidenced by a certificate of insurance worded as specified in 310 CMR 80.18(1)(b)2., except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

1. Endorsement

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number: _____

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

 Name of Insured: _____
 Address of Insured: _____

Endorsement:

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

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the DEP tank number provided in the registration submitted in accordance with 310 CMR 80.48(1), and the name and address of the facility.]

For [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the UST(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 USTs or locations, indicate the amount of coverage for each type of coverage and/or for each UST 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 the owner took ownership of the facility].** The preceding bolded sentence is problematic for: 1) owners who presently do not have a COC under c.21(J) or 2) for owners who do not have a COC and were relying on self insurance. Insurer’s are not going to underwrite coverage with a retro-date where none existed before. MassDEP needs to consult with the Commissioner of Insurance or others with expertise in the Insurance industry to ensure that these regulations are consistent with standard Insurance Industry practices and procedures. As written they are not.

IOMA Previous comment: Insurers establish the retroactive date as the date of inception of the first claims-made UST coverage (subject to proof of prior coverage), or as of the effective date of new coverage, not inception of tank ownership. The federal regulations mention only the effective date of the policy. Providing retroactive coverage back to the date of ownership, if it is available, would increase the cost of UST insurance.

Formatted: Font:Bold

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e); a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached. If the Insurer doesn't get paid their premiums they will terminate the policy. The Department approach here attempts to prevent policy termination. This does not appear to be consistent with Massachusetts and federal laws and routine insurance practices. IOMA again requests MassDEP contact the Division of Insurance on what it can and cannot require.

Deleted: -

Deleted: -

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 from 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 310 CMR 80.18.

Deleted: by

c. The Owner and Operator agrees to furnish to the Massachusetts Department of Environmental Protection (the Department) a signed duplicate original of the policy and all endorsements upon request. The requirement for a duplicate policy would have to be written into the regulation to permit insurers to release the information to the DEP. Otherwise, they will object on grounds of privacy.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], will be effective only upon one-hundred and twenty (120) days written notice to the Owner or Operator and to the Department. This is unreasonable as the federal requirements allow for a 60 day requirement and an exception for non-payment allowing for cancellation upon 10 days notice. Again IOMA requests MassDEP confer with the Division of Insurance concerning typical industry practices and procedures. **Insert for claims-made policies:**

Formatted: Font:Bold

d. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date Sounds like an automatic six-month Extended Reporting Period (ERP) or tail. UST insurers already offer automatic ERP provisions of varying durations included in the basic premium. But, in general, the longer the duration of the ERP coverage, the higher the premium. 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.

Deleted: -

Formatted: Font:Bold

Formatted: Font:Bold

I hereby certify that the wording of this instrument is identical to the wording in 310 CMR 80.18(1)(b)1. and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

2. Certificate of Insurance

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number: _____
Endorsement (if applicable): _____

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured: _____

Address of Insured:

Certification:

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

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the DEP tank number provided in the registration submitted in accordance with 310 CMR 80.48(1) and the name and address of the facility.]

For [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the UST(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 USTs or locations, indicate the amount of coverage for each type of coverage and/or for each UST 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 [the date the Owner took ownership of the facility].

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 310 CMR 80.18.

c. The Owner and Operator agree to furnish to the Department a signed duplicate original of the policy and all endorsements upon request.

d. Cancellation or any other termination of the insurance by the [“Insurer” or “Group”], will be effective only upon one hundred and twenty (120) days written notice to the Owner or Operator and to the Department.

[Insert for claims-made policies:

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

I hereby certify that the wording of this instrument is identical to the wording in 310 CMR 80.18(1)(b)2. and that the [“Insurer” or “Group”] is [“licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the Commonwealth of Massachusetts”].

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

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

(2) Surety Bond

(a) An Owner or Operator may obtain a surety bond that conforms to the requirements of 310 CMR 80.18(2). The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

Performance Bond

Date bond executed: _____

Effective date: _____

Period of coverage: _____

Principal: [legal name and business address of person obtaining the surety bond, i.e. Owner or Operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable):

Surety(ies): [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the DEP tank number provided in the registration submitted in accordance with 310 CMR 80.48(1), and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the tank"].

Penal sums of bond:

Per occurrence \$ _____

Annual aggregate \$ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Massachusetts Department of Environmental Protection (the Department), in the above penal sum 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 sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set

forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required in accordance with 310 CMR 80.16-80.27, 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 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 310 CMR 40.0000 and the Department’s instructions for,” and/or “compensate injured third parties for bodily injury and property damage caused by” either “sudden” or “nonsudden” or “sudden and nonsudden”] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance in accordance with 310 CMR 80.21, and obtain the Department’s written approval of such assurance within 120 days after receipt of the notice of termination by the Principal and the Department (if the dates of receipt are different, the later date shall control) from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect. The Surety(ies) shall also become liable on this bond obligation when:

- (a) There is the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a the Principal as debtor; or
- (b) The Principal, if it has a legal existence, has failed to maintain said legal existence and no successor has assumed its legal obligations in accordance with 310 CMR 80.00.

Such obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum UST;

(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 310 CMR 80.16.

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 Department that the Principal has failed to [“take corrective action, in accordance with 310 CMR 40.0000 and the Department’s instructions,” and/or “compensate injured third parties”] as guaranteed by this bond, the Surety(ies) shall either perform [“corrective action in accordance with 310 CMR 40.0000 and the Department’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 Department in accordance with 310 CMR 80.24.

Upon notification by the Department that the Principal has failed to provide alternate financial assurance as specified in 310 CMR 80.21 and has failed to obtain the Department’s written approval of such assurance within 60 days after the date the notice of cancellation is received by both the Principal and the Department (if the dates of receipt are different, the later date shall control) from the Surety(ies) , the Surety(ies) shall place the total penal sum of the bond guaranteed for the tanks into the standby trust fund as directed by the Department in accordance with 310 CMR 80.24.

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

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

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, and to the Department at the addresses provided herein, provided, however, that cancellation shall not take effect until at least 120 days after the date of receipt of the notice of cancellation by both the Principal, and the Department as shown by the later return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization by the Department for termination of the bond.

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

The individuals 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 310 CMR 80.18(2)(b) as in effect on the date this bond was executed.

Principal

[Signature(s)]

[Names(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

[State of Incorporation: _____]

[Liability limit: \$ _____]

[Signature(s)]

[Names(s) and title(s)]

[Corporate seal]

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

Bond premium: \$ _____

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

(d) The Owner or Operator who uses a surety bond to satisfy the requirements of 310 CMR 80.16 shall establish a standby trust fund in accordance with 310 CMR 80.19 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 Department in accordance with 310 CMR 80.24.

(3) Letter of Credit

(a) An Owner or Operator may obtain an irrevocable standby letter of credit that conforms to the requirements 310 CMR 80.18(3). The institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by The Massachusetts Commissioner of Banking, or the institution shall be a national bank (federally chartered).

(b) The letter of credit shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

[Name and address of issuing institution]

Commissioner

Massachusetts Department of Environmental Protection

One Winter Street

Boston, MA 02108

Attn: UST Program

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ___ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation by you or your designee, of (1) your or your designee's sight draft, bearing reference to this letter of credit, No. ___, and (2) your or your designee's signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Massachusetts General Laws Chapter 210."

This letter of credit may be drawn on to cover the following conditions:

1. [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 tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to

assure different tanks at any one facility, for each tank covered by this instrument, list the DEP tank number provided in the registration submitted in accordance with 310 CMR 80.48(1), and the name and address of the facility.]; or

2. [owner or operator name] has filed for bankruptcy under the United States Bankruptcy Code; or
3. [owner or operator name], if it has a legal existence, has failed to maintain said legal existence and no successor has assumed its legal obligations in accordance with 310 CMR 80.00.

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

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

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

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

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

(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 310 CMR 80.16. This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your or your designee's sight draft within 120 days after the receipt of notification by both you and [owner's or operator's name], as shown on the later of the signed returned receipts.

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's or operator's name] in accordance with you or your designee's instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 310 CMR 80.18(3)(b), as such regulations were constituted on the date shown immediately below.

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

[Date]

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

(c) An Owner or Operator who uses a letter of credit to satisfy the requirements of 80.16 shall also establish a standby trust fund in accordance with 310 CMR 80.19 when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department in accordance with 310 CMR 80.24.

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

(4) Trust Fund

(a) An Owner or Operator may establish a trust fund in accordance with the terms of 310 CMR 80.19. The Owner or Operator shall send an original signed duplicate of the trust agreement to the Department within the applicable time period prescribed in 310 CMR 80.22(1). The trustee shall be a bank or other financial institution which has the authority to act as a trustee and whose trust operations are regulated and examined by the Massachusetts Commissioner of Banking, or the trustee shall be a national bank.

(b) The wording of the trust agreement shall be identical to the wording specified in 310 CMR 80.19(2), and the trust agreement shall be accompanied by a formal certification of acknowledgement identical to the wording specified in 310 CMR 80.19(3). Schedule A of the trust agreement shall be updated within sixty (60) days after change in the amount of the current cost estimate which is subject of the trust agreement.

(5) Underground Storage Tank Petroleum Product Cleanup Fund
[This FR mechanism will be used the most so it should appear first in 80.16.](#)

(a) An Owner or Operator may obtain coverage from the Underground Storage Tank Petroleum Product Cleanup Fund at M.G.L. c. 21J, if the Owner or Operator complies with M.G.L. c. 21J and its implementing regulations 503 CMR 2.00.

(6) Local Government Bond Rating Test

(a) A general purpose local government Owner or Operator and/or local government serving as a guarantor may have a current outstanding issue or issues of general obligation bonds of \$1 million 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.

(b) A local government Owner or Operator or local government serving as a guarantor that is not a general-purpose local government and does not have the legal authority to issue general obligation bonds may have a current outstanding issue or issues of revenue bonds of \$1 million or more, excluding refunded issues and by also having a Moody's rating of Aaa, A, 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 & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

(c) The local government Owner or Operator and/or guarantor shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

(d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government Owner or Operator and/or guarantor shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at

least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) UST(s).

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

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

Issue date	Maturity date	Outstanding amount	Bond rating	Rating agency
				[Moody's or Standard & Poor's]

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

I hereby certify that the wording of this letter is identical to the wording specified in 310 CMR 80.18(6)(d) as such regulations were constituted on the date shown immediately below.

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

(e) To demonstrate that it meets the local government bond rating test, the chief financial officer of local government Owner or Operator and/or guarantor other than a general purpose government shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to

demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert : “sudden accidental releases” and/or “nonsudden accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) UST(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.

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

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

Issue date	Maturity date	Outstanding amount	Bond rating	Rating agency
				[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. The revenue bonds listed are not backed by third-party credit enhancement or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in 310 CMR 80.18(6)(e) as such regulations were constituted on the date shown immediately below.

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

(f) The Department may require reports of financial condition at any time from the local government Owner or Operator, and/or local government guarantor. If the Department finds, on the basis of such reports or other information, that the local government Owner or Operator, and/or guarantor, no longer meets the local government

bond rating test requirements of 310 CMR 80.18(6)(a) or (b), the local government Owner or Operator shall obtain alternative coverage within 30 days after notification of such a finding.

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

(7) Local Government Fund

(a) A local government Owner or Operator may establish a dedicated fund account that conforms to the requirements of 310 CMR 80.18(7). Except as specified 310 CMR 80.18(7)(a)2., 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 of the following requirements:

1. 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 UST systems and is funded for the full amount of coverage required under 310 CMR 80.16, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or

2. 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 UST systems, and is funded for five times the full amount of coverage required under 310 CMR 80.16, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under 310 CMR 80.16, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund; or

3. 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 UST systems. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven year period is hereafter referred to as the “pay-in-period.” The amount of each payment must be determined by this formula:

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

Where TF is the total required financial assurance for the Owner or Operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and;

a. The local government Owner or Operator has available bonding authority, approved through voter referendum (if such 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

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

(b) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government Owner or Operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

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

UST systems 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 310 CMR 80.16, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The local government fund is funded for ten times the full amount of coverage required under 310 CMR 80.16, or funded for part of the required amount of coverage and used in combination with other mechanisms(s) that provide the remaining coverage," or "A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference

between the required amount of coverage and the amount held in the dedicated fund” or “A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government’s debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority”].

The details of the local government fund are as follows:

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

[If fund balance is incrementally funded as specified in 310 CMR 80.18(7)(a)3., 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 310 CMR 80.18(7)(b) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

(8) Local Government Financial Test

(a) An eligible local government Owner or Operator may pass the financial test specified 310 CMR 80.18(8). To be eligible to use the financial test, the local government Owner or Operator shall have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local government financial test, the Owner or Operator shall meet the criteria of 310 CMR 80.18(8)(b) and (c) based on year-end financial statements for the latest completed fiscal year.

(b) The local government Owner or Operator shall 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 non-operating 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, etc.), 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 non-operating 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 310 CMR 80.18(8)(b)1.) 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 non-interest-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 non-security assets.

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

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

(d) To demonstrate that it meets the financial test under 310 CMR 80.18(b), the chief financial officer of the local government Owner or Operator, shall sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter From Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator]. 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] UST[s].

UST systems 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 registration submitted in accordance with 310 CMR 80.48(1).]

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

Worksheet for Municipal Financial Test

Part I: Basic Information

1. Total Revenues

a. Revenues (dollars) _____

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues

from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

b. Subtract interfund transfers (dollars)_____

c. Total Revenues (dollars)_____

2. Total Expenditures

a. Expenditures (dollars) _____

Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.

b. Subtract interfund transfers (dollars)_____

c. Total Expenditures (dollars)_____

3. Local Revenues

a. Total Revenues (from 1c) (dollars) _____

b. Subtract total intergovernmental transfers (dollars)_____

c. Local Revenues (dollars)_____

4. Debt Service

a. Interest and fiscal charges (dollars)_____

b. Add debt retirement (dollars)_____

c. Total Debt Service (dollars)_____

5. Total Funds (Dollars)_____

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

6. Population (Persons)_____

Part II: Application of Test

7. Total Revenues to Population

a. Total Revenues (from 1c) _____

b. Population (from 6) _____

c. Divide 7a by 7b _____

d. Subtract 417 _____

e. Divide by 5,212 _____

f. Multiply by 4.095 _____

8. Total Expenses to Population

a. Total Expenses (from 2c) _____

b. Population (from 6) _____

c. Divide 8a by 8b _____

d. Subtract 524 _____

e. Divide by 5,401 _____

f. Multiply by 4.095 _____

9. Local Revenues to Total Revenues

a. Local Revenues (from 3c) _____

b. Total Revenues (from 1c) _____

c. Divide 9a by 9b _____

d. Subtract .695 _____

e. Divide by .205 _____

f. Multiply by 2.840 _____

10. Debt Service to Population

a. Debt Service (from 4d) _____

b. Population (from 6) _____

c. Divide 10a by 10b _____

d. Subtract 51 _____

e. Divide by 1,038 _____

f. Multiply by -1.866 _____

11. Debt Service to Total Revenues

a. Debt Service (from 4d) _____

b. Total Revenues (from 1c) _____

c. Divide 11a by 11b _____

d. Subtract .068 _____

e. Divide by .259 _____

f. Multiply by -3.533 _____

12. Total Revenues to Total Expenses

a. Total Revenues (from 1c) _____

b. Total Expenses (from 2c) _____

c. Divide 12a by 12b _____

d. Subtract .910 _____

e. Divide by .899 _____

f. Multiply by 3.458 _____

13. Funds Balance to Total Revenues

a. Total Funds (from 5) _____

b. Total Revenues (from 1c) _____

c. Divide 13a by 13b _____

d. Subtract .891 _____

e. Divide by 9.156 _____

f. Multiply by 3.270 _____

14. Funds Balance to Total Expenses

a. Total Funds (from 5) _____

b. Total Expenses (from 2c) _____

c. Divide 14a by 14b _____

d. Subtract .866 _____

e. Divide by 6.409 _____

f. Multiply by 3.270 _____

15. Total Funds to Population _____

a. Total Funds (from 5) _____

b. Population (from 6) _____

c. Divide 15a by 15b _____

d. Subtract 270 _____

e. Divide by 4,548 _____

f. Multiply by 1.866 _____

16. Add $7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937$ _____

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in 310 CMR 80.19(8)(d) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

(e) 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 150 days of the end of the year for which financial statements have been prepared.

(f) The Department may require reports of financial condition at any time from the local government Owner or Operator. If the Department finds, on the basis of such reports or other information, that the local government Owner or Operator no longer meets the financial test requirements of 310 CMR 80.18(8)(b) and (c), the Owner or Operator shall obtain alternate coverage within 30 days after notification of such a finding.

(g) If the local government Owner or Operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within 30 days of notification by the Department that it no longer meets the requirements of the financial test, the Owner or Operator shall notify the Department of such failure within 10 days.

(9) Local Government Guarantee

(a) A local government Owner or Operator may obtain a guarantee that conforms to the requirements 310 CMR 80.18(9). 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 or Operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor shall:

1. Demonstrate that it meets the bond rating test requirement of 310 CMR 80.18(6) and deliver a copy of the chief financial officer's letter as contained in 310 CMR 80.18(6)(d) to the local government Owner or Operator; or

2. Demonstrate that it meets the local government fund requirements of 310 CMR 80.18(7)(a)1, 2, or 3, and deliver a copy of the chief financial officer's letter as contained in 301 CMR 80.18(7)(b) to the local government Owner or Operator; or

3. Demonstrate that it meets the worksheet test requirements of 310 CMR 80.18(8) and deliver a copy of the chief financial officer's letter as contained in 310 CMR 80.18(8)(d) to the local government Owner or Operator.

(b) If the local government guarantor is unable to demonstrate financial assurance under 310 CMR 80.18(6), 80.18(7)(a)1, 2, or 3, or 80.18(8), at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the Owner or Operator and the Department. The guarantee will terminate no less than 120 days after the date the Owner

or Operator and the Department receives the notification, as evidenced by the later return receipt. The Owner or Operator shall obtain alternative coverage as specified in 310 CMR 80.21.

(c) The guarantee agreement shall be worded as specified in 310 CMR 80.18(9)(d), (e), (f) or (g) depending on which of the following guarantee arrangements is selected.

1. If, in the default or incapacity of the Owner or Operator, the guarantor guarantees to fund a standby trust as directed by the Department, the guarantee shall be worded as specified in 310 CMR 80.18(9)(d).

2. If, in the default or incapacity of the Owner or Operator, the guarantor guarantees to make payments as directed by the Department for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in 310 CMR 80.18(9)(e).

(d) If the guarantor is a state, the local government guarantee with standby trust shall be worded exactly as follows, except that instructions in brackets are to be replaced with 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 Massachusetts Department of Environmental Protection (the Department) and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following UST system(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 DEP tank identification number provided in the registration submitted in accordance with 310 CMR 80.48(1), and the name and address of the facility.] This guarantee satisfies 310 CMR 80.16 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 UST(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) Guarantor guarantees to the Department and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a release has occurred at an UST system covered by this guarantee, the guarantor, upon instructions from the Department shall fund a standby trust fund in accordance with the provisions of 310 CMR 80.24, in an amount not to exceed the coverage limits specified above.

In the event that the Department 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 310 CMR 40.0000, the guarantor upon written instructions from the Department shall fund a standby trust fund in accordance with the provisions of, 310 CMR 80.24 in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [”sudden” and/or “nonsudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Department, shall fund a standby trust in accordance with the provisions of 310 CMR 8.24 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

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

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 310 CMR 80.00.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 310 CMR 80.16-27 for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator] and the Department, such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator] and the Department, as evidenced by the later 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 an UST system;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 310 CMR 80.16.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Department, 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 310 CMR 80.18(9)(d) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(e) If the guarantor is a local government, the local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with 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 Massachusetts, herein referred to as guarantor, to the Massachusetts Department of Environmental Protection (the Department) and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements 310 CMR 80.18(6), the local government financial test requirements of 310 CMR 80.18(8), or the local government fund under 310 CMR 80.18(7)(a)1., 2. Or 3.

(2) [Local government owner or operator] owns or operates the following UST(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 DEP tank identification number provided in the registration submitted in accordance with 310 CMR 80.48(1), and the name and address of the facility.] This guarantee satisfies 310 CMR 80.16-27 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 UST(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 the Department and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a release has occurred at an UST covered by this guarantee, the guarantor, upon instructions from the Department shall fund a standby trust fund in accordance with the provisions of 310 CMR 80.24, in an amount not to exceed the coverage limits specified above.

In the event that the Department 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 310 CMR 40.0000, the guarantor upon written instructions from the Department shall fund a standby trust fund in accordance with the provisions of 310 CMR 80.24, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Department, shall fund a standby trust in accordance with the provisions of 310 CMR 80.24 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial

responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator] and the Department, as evidenced by the return receipt.

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

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 310 CMR 80.00.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 310 CMR 80.16-27 for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator] and the Department, such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the later 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 an UST system;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 310 CMR 80.16.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, 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 310 CMR 80.18(9)(e) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(f) If the guarantor is a state, the local government guarantee without standby trust must be worded exactly 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 Massachusetts, herein referred to as guarantor, to the Massachusetts Department of Environmental Protection (the Department) and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following UST system(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 DEP tank identification number provided in the registration submitted in accordance with 310 CMR 80.48(1), and the name and address of the facility.] This guarantee satisfies 310 CMR 80.16 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 UST(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Guarantor guarantees to the Department and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a release has occurred at an UST system covered by this guarantee, the guarantor, upon written instructions from the Department 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 Department 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 310 CMR 40.0000, the guarantor upon written instructions from the Department shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Department, 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] and the Department by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 310 CMR 80.00.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 310 CMR 80.16-27 for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator] and the Department, such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator] and the Department, as evidenced by the later 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, 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 an UST system;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 310 CMR 80.16.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Department, 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 310 CMR 80.18(9)(f) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(g) If the guarantor is a local government, the local government guarantee without standby trust must be worded exactly 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 Massachusetts, herein referred to as guarantor, to the Massachusetts Department of Environmental Protection (the Department) and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 310 CMR 80.18(6), the local government financial test requirements of 310 CMR 80.18(8), the local government fund under 310 CMR 80.18(7)(a)1., 2. or 3.

(2) [Local government owner or operator] owns or operates the following UST system(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 DEP tank identification number provided in the registration submitted in accordance with 310 CMR 80.48(1), and the name and address of the facility.] This guarantee satisfies 310 CMR 80.16-27 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 UST(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 the Department and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a release has occurred at an UST covered by this guarantee, the guarantor, upon written instructions from the Department 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 Department 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 310 CMR 40.0000, the guarantor upon written instructions from the Department shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

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

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial

responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator] and the Department, as evidenced by the return receipt.

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

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 310 CMR 80.00.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 310 CMR 80.16-27 for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator] and the Department, such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the later 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, 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 an UST system;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 310 CMR 80.16.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, 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 310 CMR 80.18(9)(g) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

80.19 Requirements for a Standby Trust

(1) Any Owner or Operator who establishes one or more of the financial assurance mechanisms at 310 CMR 80.18(2), (3) or (9) shall also establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be a bank or other financial institution which has the authority to act as a trustee and whose trust operations are regulated and examined by the Massachusetts Commissioner of Banking or the trustee shall be a national bank.

(2) A standby trust agreement, or trust agreement, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

This Trust Agreement, hereafter referred to as the "Agreement," is entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," "trust" or "individual"], hereafter referred to as the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of ___" or "a national bank"], hereafter referred to as the "Trustee."

Whereas, the Massachusetts Department of Environmental Protection, hereafter referred to as "the Department" an agency of the Commonwealth of Massachusetts, has established certain regulations applicable to the Grantor, requiring that the Grantor shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the UST system(s) identified in Schedule A. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standby trust agreement.

Whereas, the Grantor has elected to establish [insert either “a “trust fund” or “standby trust fund”] to provide all or part of such financial assurance for the UST systems identified in Schedule A; and

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions

As used in this Agreement:

- (a) The term “Grantor” means [name of owner or operator].
- (b) The term “Trustee” means [name of corporate trustee], [insert “incorporated in the State of _____ “ or “a national bank”], and any successor thereof.
- (c) The terms “Department” and “Beneficiary” mean the Massachusetts Department of Environmental Protection, an agency of the Commonwealth of Massachusetts, and any successor of said Department.

Section 2. Identification of the Financial Assurance Mechanism

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Trust Fund

The Grantor and the Trustee hereby establish a trust fund, the “Fund,” for the benefit of the 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 Department’s instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor , any payments necessary to discharge any liability of the Grantor established by the Department.

Section 4. Payment for “Corrective Action” and/or Third-Party Liability Claims”

The Trustee shall make payments from the Fund as directed by the Department in writing. Said payments shall provide for the payment of the costs of “taking corrective action” and/or compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases” arising from operating the tanks covered by this Agreement For Corrective Action and/or Third-Party Liability Claims, the Trustee shall reimburse from the Fund, the Grantor or other persons as specified in writing by the Department. Such reimbursement(s) shall be in the amount(s) as the Department directs in writing.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from an UST system;
- (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 310 CMR 80.16.

Section 5. Payments Comprising the Fund

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

Section 6. Trustee Management

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any affiliates of the Grantor as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or 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.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

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

Section 8. Express Powers of Trustee

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

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

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

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository

with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

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

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

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Department a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund.

Section 11. Advice of Counsel

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

Section 12. Trustee Compensation

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

Section 13. 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 a writing sent to the Grantor, the present Trustee and the Department by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. 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 C or such other designees as the Grantor may designate by amendment to Schedule C. 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 Department to the Trustee shall be in writing, signed by the Commissioner or his designee], 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 Department 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 Department, except as provided for herein.

Section 15. Notice of Nonpayment

The Trustee shall notify the Grantor and the Department, by certified mail, within ten days following the expiration of the 30 day period after the anniversary of the establishment of the Trust, if no payment into the Fund is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 17. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the Department or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. 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 by the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Massachusetts.,

Section 20. Interpretation

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

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals 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 310 CMR 80.19(2) as in effect 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]

(3) The standby trust agreement, or trust agreement must be accompanied by a formal certification of acknowledgement as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

State of [Name of State]
County of [Name of County]

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

[Signature of Notary Public]

[]

My Commission expires [Date]

(4) The Department will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Department 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 trust fund as the depository mechanism for all funds assured in compliance with 310 CMR 80.16-27.

80.20 Substitution of Financial Assurance Mechanisms by Owner or Operator

(1) An Owner or Operator may substitute any alternate financial assurance mechanisms as allowed in 310 CMR 80.17, provided that at all times the Owner or Operator maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of 310 CMR 80.16.

(2) After obtaining alternate financial assurance as specified 310 CMR 80.17, an Owner or Operator may cancel a financial assurance mechanism using applicable procedures.

80.21 Cancellation or Nonrenewal by a Provider of Financial Assurance

(1) Except as otherwise provided, a provider of financial assurance may cancel or not renew a financial assurance mechanism by sending a notice of termination by certified mail to the Department and to the Owner or Operator. The Department of Revenue may notify the Department of the cancellation of a Certification of Compliance by inter-agency database transmission. Upon receiving a notice of termination, the Owner or Operator shall notify the Department in writing, as soon as possible, but in no event later than three (3) business days after receiving the notice. This section places a notice obligation on an Insurer to notify DEP of non-renewal or cancellation by certified mail. This section also requires the ow/op to notify DEP within 3 days of receipt of such notice. This process seems overly cumbersome to implement for Insurers, and to administer and track for Owners and Operators, and for MassDEP to administer to these notices. The three day window to notify DEP of an Insurer’s notification it all ready received, is onerous and duplicative.

Deleted: , the person who established the financial assurance mechanism

(a) Termination of insurance, risk retention coverage, a local government guarantee, a surety bond, or a letter of credit may not occur **until one hundred and twenty (120) days after the date on which the Owner or Operator and the Department receives the notice of termination**, as evidenced by the return receipt. If the dates of receipt are different, the later date shall control. The bolded language above is unreasonable as the federal requirements allow for a 60 day requirement and an exception for non-payment allowing for cancellation upon 10 days notice.

Deleted: -

Formatted: Font:Bold

(2) If a provider of financial responsibility cancels or does not renew for reasons other than incapacity of the provider as specified in 310 CMR 80.26, the Owner or Operator shall obtain alternate coverage 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 provide written documentation to the Department of such failure and submit:

- (a) The name and address of the provider of financial assurance;
- (b) The name and address of the Trustee, if applicable;
- (c) The effective date of termination; and
- (d) A copy of the financial assurance mechanism that is being terminated.

(3) Nothing in 310 CMR 80.21 shall relieve Owners and Operators from their obligation to demonstrate and maintain financial assurance.

80.22 Requirements for Reporting by Owner or Operator

(1) An Owner shall submit to the Department a copy of a surety bond, letter of credit, standby trust and trust fund, as soon as a fully executed copy is received by the Owner or Operator, but in no event later than seven (7) business days after received by the Owner or Operator.

(2) An Owner shall submit to the Department written documentation of its current financial assurance, if the Owner or Operator fails to obtain alternate coverage as required by 310 CMR 80.21, within thirty (30) days after the Owner or Operator receives notice of the following from its financial assurance provider:

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

(b) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;

(c) Other incapacity of a provider of financial assurance.

(3) If the Owner or Operator fails to obtain alternate coverage within sixty (60) days of cancellation of its financial assurance mechanism, the Owner shall submit information in accordance with 310 CMR 80.21(2).

(4) An Owner shall verify compliance with the financial responsibility requirements of 310 CMR 80.16-80.27 on the compliance certification form in accordance with 310 CMR 80.49.

(5) The Department may require an Owner to submit evidence of financial assurance as described 310 CMR 80.23 or other information to determine to compliance with 310 CMR 80.16-80.27 at any time.

80.23 Requirements for Recordkeeping

(1) An Owner or Operator shall maintain documentation, in accordance with 310 CMR 80.23, of financial assurance mechanisms used to demonstrate financial responsibility for an UST system until released from the requirements in accordance with 310 CMR 80.25. The Owner or Operator shall keep the documentation in hard copy or electronically in accordance with 310 CMR 80.48(9). Upon request from the Department, the Owner or Operator shall make the documentation available to the Department as soon as possible, but in no event more than seven (7) business days after receiving the request.

(2) An Owner or Operator shall maintain the following documentation of financial responsibility:

(a) 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 thereto.

(b) An Owner or Operator using a surety bond with a standby trust shall maintain a copy of the surety bond and any amendments thereto, and a copy of the signed standby trust fund agreement and any amendments thereto.

(c) An Owner or Operator using a letter of credit with a standby trust shall maintain a copy of the letter of credit and any amendments thereto, and a copy of the signed standby trust fund agreement and any amendments thereto.

(d) An Owner or Operator using a trust fund shall maintain a copy of the trust fund and any amendment thereto.

(e) An Owner or Operator using the Underground Storage Tank Petroleum Cleanup Fund shall maintain a current certificate of compliance.

(f) An Owner or Operator using the local government bond rating test shall maintain:

1. A copy of its bond rating published within the last twelve (12) months by Moody's or Standard & Poor's; and

2. A copy of the letter signed by the chief financial officer in accordance with 310 CMR 80.18(6)(d) or (e).

(g) An Owner or Operator using a local government fund shall maintain:

1. A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund; and

2. A copy of the letter signed by the chief financial officer in accordance with 310 CMR 90.18(7)(d); and

3. Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established 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

4. If the fund is established using incremental funding backed by bonding authority, the Owner or Operator shall maintain documentation of the required bonding authority, including either the results of a voter referendum under 310 CMR 80.18(7)(c)1., or attestation by the State Attorney General as specified under 310 CMR 80.18(7)(c)2.

(h) An Owner or Operator using the local government financial test 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 in accordance with 310 CMR 80.18(8)(c). Such evidence must be on file no later than one hundred and twenty (120) days after the close of the financial reporting year.

(i) An Owner or Operator using the local government guarantee shall maintain:

1. A copy of the signed standby trust fund agreement and copies of any amendments thereto, if the local government guarantee is supported by a standby trust.

2. A copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year in accordance with 310 CMR 80.18(8)(c), if the local government guarantee is supported by the local government financial test. Such evidence must be on file no later than one hundred and twenty (120) days after the close of the financial reporting year.

3. A copy of the guarantor's bond rating published within the last twelve (12) months by Moody's or Standard & Poor's, if the local government guarantee is supported by the bond rating test.

4. A copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund, if the local government guarantee is supported by the local government fund.

(j) An Owner or Operator using a financial assurance mechanism specified in 310 CMR 80.18(1)-(9) shall maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Financial Responsibility

[Owner or Operator] hereby certifies that it is in compliance with the requirements 310 CMR 80.16-80.27. The financial assurance mechanism(s) used to demonstrate financial responsibility under 310 CMR 80.16-80.27 is (are) as follows:

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

[Signature of Owner or Operator]

[Name of Owner or Operator]

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

1. The Owner or Operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

80.24 Requirements for Drawing on Financial Assurance Mechanisms

(1) Except as specified in 310 CMR 80.24(4), the Department shall direct the Trustee to require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Department, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(a) The Owner or Operator fails to establish alternate financial assurance in accordance with 310 CMR 80.21 within sixty (60) days after receiving notice of termination of the surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(b) The Department determines or suspects in its discretion that a release from an UST system covered by the mechanism has occurred and so notifies the Owner or Operator or the Owner or Operator has notified the Department in accordance with 310 CMR 40.0000 of a release from an UST system covered by the mechanism; or

(c) The commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an Owner or Operator as debtor; or

(d) The Owner or Operator has a legal existence and has filed to maintain said legal existence and no successor has assumed its legal obligations in accordance with 310 CMR 80.00; or

(e) The conditions of 310 CMR 80.24(2)(a) or (2)(b)1. or 2. are satisfied.

(2) The Department may draw on a standby trust fund when:

(a) The Department makes a determination in its discretion that a release has occurred and immediate or long-term corrective action for the release is needed, and the Owner or Operator has not conducted corrective action as required under 310 CMR 40.0000; or

(b) The Department 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 follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

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

[Signatures]

Owner or Operator

Attorney for Owner or Operator

(Notary)

Date

[Signatures]

Claimant(s)

Attorney(s) for Claimant(s)

(Notary)

Date

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 an UST system covered by financial assurance under 310 CMR 80.16-80.27 and the Department determines that the Owner or Operator has not satisfied the judgment.

(3) If the Department determines that the amount of corrective action costs and third-party liability claims eligible for payment under 310 CMR 80.24(2) 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 Department shall pay third-party liability claims in the order in which the Department receives certifications under 310 CMR 80.24(2)(b)1., and valid court orders under 310 CMR 80.24(2)(b)2.

(4) If the guarantor is the state, the local government guarantee without standby trust, shall make payments as directed by the Department under the circumstances described in 310 CMR 80.24(1), (2) and (3).

80.25 Release from Financial Responsibility Requirements

(1) Upon completion of closure of a tank, UST system or facility in accordance with 310 CMR 80.52, an Owner or Operator may request, in writing on a form provided by the Department, that it be released of its responsibility to have financial responsibility for said tank, underground storage system or facility. The Owner or Operator shall continue to maintain and demonstrate financial responsibility unless and until the Department responds in writing within three calendar days that it has determined the Owner or Operator has closed its tank, UST system or facility in accordance with 310 CMR 80.52 and the Owner or Operator is released from the requirements under 310 CMR 80.16 through 80.27. The release from FR requirements should be self-implementing concerning the removal of a Tank (i.e., filing of FP-290R). The ow/op should not have to wait for MassDEP to respond in writing that it no longer needs FR for a non-existent UST. MassDEP needs to give more thought to how it will efficiently regulate and sunset owners and operators responsibilities from applicable elements of the entire UST regulations, including FR, A, B, and C Operator requirements, inspections and recordkeeping when closure and temporary closure occurs. In this instance, IOMA is deeply concerned with MassDEP's ability to move at the "speed of business" and process such a request. This concern is further amplified by the Agency not including a timeframe in the proposal in which it will respond to these requests and hold itself accountable for timely action. If MassDEP elects to retain this approach, IOMA requests MassDEP must respond within 3 calendar days of such a request by a UST owner/operator.

Deleted: -

(2) Upon the date of sale of an UST system or facility, the Owner and Operator shall no longer be required to maintain and demonstrate financial responsibility for the UST system or facility that was sold.

80.26 Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance.

(1) Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an Owner or Operator as debtor, the Owner or Operator shall notify the Department by certified mail of such commencement and submit the appropriate forms listed in 310 CMR 80.23(2) documenting current financial responsibility.

(2) Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government Owner or Operator as debtor, the local government Owner or Operator shall notify the Department by certified mail of such commencement and submit the appropriate documentation listed in 310 CMR 80.23(2) documenting current financial responsibility.

(3) Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor shall notify the local government Owner or Operator by certified mail of such commencement as required under the terms of the guarantee specified in 310 CMR 80.18(9).

(4) An Owner or Operator shall 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 an insurance policy, risk retention group coverage policy, surety bond, letter of credit, or suspension or revocation of the Underground Storage Tank Petroleum Product Cleanup Fund. The Owner or Operator shall obtain alternate financial assurance as specified in 310 CMR 80.21 within thirty (30) days after receiving notice of such an event. If the Owner or Operator does not obtain alternate coverage within thirty (30) days after such notification, the Owner or Operator shall notify the Department.

(5) Within thirty (30) days after receipt of notification that the Underground Storage Tank Petroleum Product Cleanup Fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the Owner or Operator shall obtain alternate financial assurance.

80.27 Requirements for Replenishment of Local Government Guarantees, Letters of Credit, or Surety Bonds

(1) If at any time after a standby trust is funded upon the instruction of the Department with funds drawn from a local government guarantee with standby trust, 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 shall by the anniversary date of the financial mechanism from which the funds were drawn:

(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 section, the full amount of coverage required is the amount of coverage to be provided by 310 CMR 80.16. 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.

Deleted: -

DESIGN, CONSTRUCTION AND INSTALLATION

80.28 General Requirements

Owners and Operators shall comply with all general and specific design, construction and installation requirements in 310 CMR 80.28-80.35, as applicable.

80.29 General Prohibitions

All single-walled steel tanks, except consumptive use tanks, shall be permanently closed and removed from the ground or permanently closed in-place in compliance with 310 CMR 80.52(3) by August 7, 2017.

80.30 Installation Requirements

(1) No UST systems shall be installed except by a person who has been certified to install the UST system in writing by the UST system manufacturer. The installation shall include, but shall not be limited to, all items on the manufacturer's checklist.

(2) The installation of all UST systems, including anchoring of the tank, shall be carried out in accordance with the manufacturer's specifications, accepted engineering practices, and the provisions of 310 CMR 80.28-80.35.

(3) Any damage to the exterior of a tank or its coating shall be repaired before the tank is covered.

(4) Tanks and piping shall be tested separately and shall pass the relevant test prior to putting regulated substance into the tank.

3/29/12 7:41 AM

Comment [26]: STAKEHOLDERS: DEP is considering combining this section with General Operating Requirements so that the requirements for leak detection, cathodic protection, sumps, spill buckets and overfill prevention will be together. Please comment.

Deleted: .

(a) Prior to installation all tanks shall be tested by air pressure not less than three (3) pounds and not more than five (5) pounds per square inch.

Deleted: A

(b) Prior to backfilling the excavation all piping shall be tested hydrostatically or by air pressure to 150% of the maximum anticipated pressure of the system but not less than fifty (50) p.s.i. at the highest point of the system.

Deleted: A

(5) No one in the industry knows of anyone who does this with these credentials. Doesn't need to be an engineer. WHY DEP? IOMA objects to these requirements. IOMA believes this is another example where MassDEP does not know the industry, and has made incorrect assumptions about it. IOMA believes that a legislative authorized UST Regulation Oversight Board is necessary to assist the Agency with any future regulatory development and standards. IOMA estimate this requirement would add an additional \$5-\$10,000 for an installation, where as a TPI could provide the necessary certainty instead for much less cost.

Deleted: All UST systems shall be inspected by a registered professional structural engineer with education and experience in UST system installation prior to being backfilled to ensure the UST system is installed in accordance with 310 CMR 80.28-80.35.

(Structural engineers do not "do" as-built plans, Land Surveyors "do". IOMA does not know what DEP is trying to accomplish with this requirement? IOMA is not unaware of any other State in the United States which requires PEs to conduct UST system inspections; nor, was such a requirement proposed by the US EPA in its proposed UST system regulatory revisions. MassDEP needs to explain it's rationale. Why and what will DEP do with this information? A compelling case to justify these costs needs to be presented. The level of detail is not necessary. Much of this information is covered by local or state permitting.

Deleted: 6) The Owner or Operator shall ensure that every UST system installed after the [effective date of 310 CMR 80.28-80.35] has a set of as-built plans stamped and certified by the registered professional structural engineer who conducted the inspection under 310 CMR 80.30(4) that shall include but not be limited to:

Why should you have to provide a new plan if you remove and do not replace the tank. What will be on the plan?(8) The Owner shall notify the Department within thirty (30) days of the installation of an UST facility, UST system, tank, or piping, on a form provided by the Department, in accordance with 310 CMR 80.48(1).

Formatted: Font:(Default) Times New

Deleted: -
(7) - The as-built plans shall be updated in the event of a change in location of any tank or piping or UST system, the installation of a new UST system or tank, or if an UST system is removed or permanently closed-in- place pursuant to 310 CMR 80.52(3)...

These requirements are not necessary and that only tanks certified by a manufacturer for use "underground" including installation instructions can be used. Also how do we reconcile when specifications from a manufacture conflict with state requirements? Whose rules govern? Also, what if the Ow/Op varies from the manufacturer requirments, to comply with state rules, how will this impact their tank or equipment warranty? MassDEP needs to have further discussions with the industry on these proposals. (12) If within ten (10) feet of a building having a cellar or basement, a tank used for the storage of a Class I flammable liquid shall be placed below the level of the floor of such cellar or basement.

Deleted: -

Deleted: (7) - The as-built plans shall be updated of a change in location of any tank or piping or UST system, the installation of a new UST system or tank, or if an UST system is removed or permanently closed-in- place pursuant to 310 CMR 80.52(3)...

(13) At any fueling facilities where tanks are at an elevation which produces a gravity head on the dispensing unit, the tank outlet shall be equipped with a device, such as a solenoid valve, positioned adjacent to, and downstream from, the outlet of the tank that is installed and adjusted so that liquid cannot flow by gravity from the tank in case of piping or hose failure when the dispenser is not in use.

Deleted: - ... [7]

Deleted: (9) Steel tanks - ... [8]

Deleted: - ... [9]

(14) Piping shall be installed in a trench between the tank area and the pump island. Underground vent lines shall be installed in a trench.

(15) A minimum six-inch-deep bed of well-compacted noncorrosive material such as clean washed sand or gravel shall be placed in a trench before the piping is installed. All trenches shall be wide enough to permit at least six inches of noncorrosive backfill material around all lines.

(16) All piping shall lead from the tops of tanks, and the tops of all tanks shall be below the level of the lowest horizontal pipe used in the connection therein except where the design specifically prevents a possible siphoning condition. What is the context of this requirement? It is unclear what this provision is intended to do.

(17) All pipes used for the conveyance of flammable liquid shall decline to tanks without traps or pockets, and shall be protected against damage. Intermediate sumps installed to allow piping to decline to tanks shall not be considered a trap or pocket provided the sump is monitored for leaks. Piping drops from submerged pumps to allow piping decline to the tank shall not be considered a trap.

(18) A double elbow swing joint or flexible connector shall be installed at all locations where piping changes direction from horizontal to vertical or from vertical to horizontal.

(19) Flexible connectors constructed and listed for underground applications may be used without backfill in below grade tank sumps. This provision may preclude cathodic protection of these connectors?

(20) A permanent dewatering well for the purpose of dewatering the tank grave in order to conduct repairs of the UST system may be installed in accordance with Standard References for Monitoring wells, if the well is seated in the tank grave and the well seals are designed and constructed to prevent migration of fluids from the ground surface into the borehole.

Unnecessary and overly detailed requirements are proposed instead of proposing a "performance standard" based approach which is what is needed most. Also will parties need to comply with these requirements in addition to those implemented during response actions under c.21E? Greater clarity is needed in this section.

(21) The Owner or Operator shall keep a copy of the installer's certification and checklist this should be kept for the operational life of the UST, however the other testing records should not be kept forever., records of all testing results, and inspections in accordance with 310 CMR 310 CMR 80.48(8)(b). What's the purpose of this requirement? What happens if this information becomes lost, or is not handed over during a sale of the facility?

Formatted: Indent: First line: 0.5", Add space between paragraphs of the same style, No bullets or numbering

Deleted: (a) - The following seals are all required and shall be designed and constructed as fol... [10]

Deleted: and as-built plans

80.31 Requirements for Types of Tanks and Leak Detection for Tanks

(1) All tanks, except consumptive use tanks of 1100 gallons or less that are or become subject to 310 CMR 80.00 on and after January 1, 1989 shall be [be double-walled tanks manufactured in accordance with USEPA technical Standardrds 40 CFR 280.](#)

(2) All tanks installed on and after January 1, 1989 shall be equipped with a metallic or nonmetallic striker plate attached to the bottom of the tank at each opening. Such striker plate shall be at least 12" x 12" in area and at least 1/4" thick.

(3) Consumptive use tanks of 1100 gallons or less that are or become subject to 310 CMR 80.00 on and after March 21, 2008 shall [What is the significance of this date? Don't understand applicability? Why this date?](#) be one of the following:

(a) Listed double-walled fiberglass reinforced plastic using materials compatible with fuel oil and equipped with continuous interstitial monitoring.

[\(c\) Listed double-walled metal tank with cathodic protection or bonded fiberglass coating and equipped with continuous interstitial monitoring. Have you conducted any outreach with MassOilheat Council or NEFI?](#)

(4) Leak Detection. All tanks shall be equipped with leak detection equipment.

(a) The Owner or Operator shall install, calibrate, operate and maintain all leak detection equipment in accordance with the manufacturer's specifications.

(b) Tanks installed on and after January 1, 1989 shall be equipped with a system that continuously monitors interstitial space.

1. The sensors shall be installed in accordance with the manufacturers' specifications.

2. [The sampling or testing method shall detect a leak or release through the inner wall in any portion of the UST system that routinely contains product.](#)

3. For UST systems using continuous vacuum, pressure, or hydrostatic methods of interstitial monitoring, the method shall be capable of detecting a breach in both the inner and outer walls of the tank and/or piping.

(c) Tanks installed before January 1, 1989 shall be equipped with at least one of the following leak detection methods:

1. A system that continuously monitors interstitial space.

a. The sensors shall be installed in accordance with the manufacturers' specifications.

Deleted: one of the following: - ... [11]

Deleted: - (b) -

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.38" + Indent at: 0.63"

Formatted: Indent: Left: 0.38"

3/29/12 7:41 AM
Comment [27]: 280.43(g)(1)

b. The sampling or testing method shall detect a leak or release through the inner wall in any portion of the UST system that routinely contains product.

3/29/12 7:41 AM
Comment [28]: 280.43(g)(1)

2. An in-tank monitoring system that is tested at least once a month over a continuous period of six (6) hours to determine if there is a leak and that is capable of detecting a leak or discharge of 0.20 gallons per hour with the probability of detection of 0.95 and a probability of false alarm of 0.05 as determined by an independent testing laboratory using the U.S. Environmental Protection Agency Standard Test Procedures for Evaluating Leak Detection Methods (EPA/530/UST-90/004 through 010) or other equivalent test procedures.

3. A continuous in-tank monitoring system installed and operated in accordance with the manufacturers' specifications that is capable of detecting a leak of 0.20 gallons per hour with the probability of detection of 0.95 and a probability of false alarm of 0.05 as determined by an independent testing laboratory using the U.S. Environmental Protection Agency Standard Test Procedures for Evaluating Leak Detection Methods (EPA/530/UST-90/004 through 010) or other equivalent test procedures.

4. An in-tank monitoring system installed and maintained by a qualified person with inventory data analysis conducted by a trained statistical inventory reconciliation (SIR) vendor. The SIR testing or monitoring methods shall meet the following requirements:

Deleted:

- a. Report a quantitative result with a calculated leak rate;
- b. Be capable of detecting a leak rate of 0.2 gallon per hour; and
- c. Use a threshold that does not exceed one-half the minimum detectible leak rate.

5. Monitoring for vapors in the soil through the use of a continuous monitor or monthly monitoring device in accordance with 40 CFR 280.43(e) with the following provision:

a. Effective [two years after the effective date of this section] monitoring for vapors in the soil shall be prohibited from being used to satisfy the leak detection requirement in 310 CMR 80.31(4) and the Owner or Operator shall have in place an operating leak detection system that satisfies the requirements of 310 CMR 80.31(4)(c)1., 2., 3. or 4.

(d) Alternative methods of leak detection for field-constructed tanks with a capacity greater than 50,000 gallons. Owners and Operators may use one or a

3/29/12 7:41 AM
Comment [29]: STAKEHOLDERS: Field constructed tanks are regulated under 527 CMR 9.00; this is based on EPA proposed regulations that gives these large field constructed tanks alternatives to leak detection. PLEASE COMMENT.

combination of the following alternative methods of leak detection to satisfy the requirements of 310 CMR 80.31(4): [IOMA recommends MassDEP perform outreach with State College and Universities, Institutional facility stakeholders and large manufacturers for comments on these requirements.](#)

1. Conduct an annual bulk [what is a this term bulk?](#) tank tightness test that can detect a 0.5 gallon per hour leak rate;
2. Use an in-tank monitor to perform leak detection at least every thirty (30) days that can detect a leak rate less than or equal to one (1) gallon per hour. This method shall be combined with a **bulk tank tightness** test that can detect a 0.2 gallon per hour leak rate performed at least every three (3) years; or
3. Use an in-tank monitor to perform leak detection at least every thirty (30) days that can detect a leak rate less than or equal to two (2) gallons per hour. This method must be combined with a bulk tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every two (2) years.

Formatted: Font:Bold, Underline

80.32 Requirements and Leak Detection for Product Piping

- (1) Standards for product piping installed on and after January 1, 1989.

- (a) Product piping shall be constructed of:

1. A non-corrodible [flexible](#) material, including but not limited to, fiberglass reinforced plastic and; or

2. Cathodically protected metal, including copper product piping or tubing if it is also adequately protected against physical damage and is secondarily contained.

Deleted: semi-rigid

- (b) All product piping, except European suction piping [and siphon lines](#), shall be installed with secondary containment which may include, but is not limited to, impervious liners if installed prior to [effective date of these regulations] or double-walled piping and shall be continuously monitored for product loss.

- (c) Pressurized piping systems shall be equipped with an automatic line leak detector that accurately detects a leak of three (3) gallons per hour at ten (10) p.s.i. in line pressure within one (1) hour with the probability of detection of 0.95 and probability of false alarm of 0.05.

- (2) Standards for product piping installed before January 1, 1989.

- (a) Pressurized piping shall be equipped with the following:

1. An automatic flow restrictor, automatic shutoff device or a continuous alarm system that accurately detects a leak of three (3) gallons per hour at ten (10) p.s.i. in-line pressure within one (1) hour with the probability of detection of 0.95 and probability of false alarm of 0.05; and

a. Conduct an annual tightness test in accordance with 310 CMR 80.44; or

b. Operate continuous interstitial monitoring; or

c. Conduct monthly SIR analysis in accordance with 310 CMR 80.38(6).

(b) Non-European suction systems shall comply with one of the following:

1. Secondary containment with interstitial monitoring; or

2. A line tightness test conducted every three (3) years in accordance with 310 CMR 80.44.

(c) European suction systems are not required to be equipped with leak detection.

(3) The Owner or Operator shall install, calibrate, operate and maintain all leak detection equipment in accordance with the manufacturer’s specifications.

(4) Owners and Operators of airport hydrant fuel distribution systems shall comply with the leak release detection requirements of 310 CMR 8032 by December 22 of the year listed on the following table:

Table B: Schedule for Phase-in of Leak Detection for Airport Hydrant Fuel Distributions Systems

Type of UST System	Time Frame (after effective date or regulation)	Description of Requirement
Bulk piping associated with airport hydrant fuel distribution systems using 310 CMR 80.32(5)(a) for piping leak detection	Within three (3) years and between years three (3) and (6)	Conduct one (1) bulk piping tightness test in accordance with 310 CMR 80.32(5)(a) using the maximum detectable leak rates for semiannual testing. For bulk piping segments not capable of meeting the 3.0 gallon per hour leak rate, Owner and Operators may

		use a leak rate of up to 6.0 gallons per hour.
Bulk piping associated with airport hydrant fuel distribution systems using 310 CMR 80.32(5)(a) for piping leak detection	Between years six (6) and seven (7)	Conduct one (1) bulk piping tightness test in accordance with 310 CMR 80.32(5)(a) using the maximum detectable leak rates for semiannual testing.
Bulk piping associated with airport hydrant fuel distribution systems using 310 CMR 80.32(5)(a) for piping leak detection	After seven (7) years	Conduct bulk piping tightness testing in accordance with 310 CMR 80.32(4)(a).
Bulk piping associated with airport hydrant fuel distribution systems not using 310 CMR 80.32(5)(a) for piping leak detection	Within three (3) years	Perform leak detection in accordance with 310 CMR 80.32(5).
Underground tanks associated with hydrant fuel distribution systems	Within three (3) years	Perform leak detection in accordance with 310 CMR 80.32(5).

(5) Owners and Operators of underground piping associated with airport hydrant fuel distribution systems and field-constructed tanks may use one or a combination of the following alternative methods of leak detection to comply with 310 CMR 80.32:

(a) Perform a semiannual or annual bulk line tightness test at or above operating pressure in accordance with the table below. Bulk piping segments $\geq 100,000$ gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test may be tested at a leak rate up to 6.0 gallons per hour:

Table C: Maximum Detectable Leak Rate Per Test Section Volume

Test Section Volume (Gallons)	Semiannual Test Maximum Detectable Leak Rate (Gallons Per Hour)	Annual Test Maximum Detectable Leak Rate (Gallons Per Hour)
< 50,000	1.0	0.5
$\geq 50,000$ to < 75,000	1.5	0.75
$\geq 75,000$ to < 100,000	2.0	1.0
$\geq 100,000$	3.0	1.5

(b) Perform continuous interstitial monitoring designed to detect a leak from any portion of the underground piping that routinely contains product in accordance with 310 CMR 80.38(3);

3/29/12 7:41 AM
Comment [30]: STAKEHOLDERS: Is this leak detection reasonable?

(c) Use an in-tank monitor that restricts or shuts off flow of regulated substances through piping or triggers an audible or visual alarm. This method may be used only if it can detect a leak of three (3) gallons per hour at ten (10) pounds per square inch line pressure within one hour or equivalent. When using this method, the following shall also be met:

1. Perform interstitial monitoring designed to detect a leak from any portion of the underground piping that routinely contains product, in accordance with 310 CMR 80.38(3) at least every three (3) months; and
2. Conduct an annual test of the operation of the leak detector to determine that it is operational.

80.33. Requirements for Sumps:

(1) All product dispensers installed or substantially modified on or after April 1, 2008 shall be equipped with a with a tight dispenser sump.

a. 310 CMR 80.33(1) shall not apply to the repair or replacement of the product dispenser alone due to damage or malfunction, but shall apply to any replacement of both the dispenser and the equipment used to connect the dispenser to an UST system.

b. All dispenser sumps shall be continuously monitored for liquids utilizing a dispenser sump sensor(s).

(2) All tanks utilizing a submersible pump, when the pump was installed on or after April 1, 2008 The April 1, 2008 date is unfounded, and we believe is in error., shall be equipped with a sump. All sumps, including intermediate sumps, shall be continuously monitored for liquids.

(3) All sumps shall pass a tightness test at installation to ensure the sump is **liquid tight** need to define "liquid-tight" stanadard! by using vacuum, pressure, or liquid testing. The standard for declaring a failure is 1/8 inch or greater loss of water within one hour (which is equal to a leak rate of 0.05 gallons per hour in a typical 12-inch diameter basin). The Owner or Operator shall keep records of this test in accordance with 310 CMR 80.48(5)(c). This requirement will impose significant costs on Ow/Ops. What's the environmental risk that is being eliminated? What's the costs? Where is the data/evidence to support such a regulatory approach. Focus should be on having dispenser and tank top sumps. Dis-incentive to upgrade tanks. If you fail then you have 30 days to remedy.

(4) Which sump are you talking about. This has the potential to impose significant costs. Why do you need to shed water away? Sumps installed on and after [effective date of this section] shall be designed and installed with a final grade that channels stormwater away from the sump.

3/29/12 7:41 AM
Comment [31]: This exemption is in the current regulations.

Formatted: Font:Bold

80.34. Requirements for Corrosion Protection.

(1) Any metal component of an UST system that is subject to corrosion and is in contact with the ground shall have continuous corrosion protection.

Deleted:

(2) If a tank or product piping or an UST system is manufactured with cathodic protection, it shall comply with a Listed standard.

(3) A field constructed cathodic protection system shall be designed by a corrosion expert.

(a) The cathodic protection system design plans, applications, surveys, drawings, test data and results, shall be reviewed and approved by a corrosion expert and bear the full name, signature, address, certification number and seal of the corrosion expert.

(b) A corrosion expert shall supervise need to define supervise the installation and repair of any cathodic protection system. Cathodic protection systems shall be designed, installed and tested in accordance with a Listed standard and the manufacturer’s specifications. The Owner or Operator shall keep documentation that a corrosion expert supervised the installation and repair of a cathodic protection system in accordance with 310 CMR 80.48(7)(a). What does “supervise” mean? Stand there while the work is happening? This is not practical or cost effective and frankly does not happen.

Formatted: Font:Bold

Formatted: Font:Bold

(c) For UST systems installed on and after [the effective date], the Owner or Operator shall have scaled plans of the field-constructed cathodic protection system. Said plans shall be reviewed and approved by a corrosion expert and shall bear the full name, signature, address, certification number and seal of the corrosion expert and shall be retained in accordance with 310 CMR 80.48(7)(b). This sounds like it will have to be done by a land surveyor or engineer which will drive up the cost of an already expensive job. MassDEP needs to provide evidence that this level of documentation merits the additional costs that will accrue along with any environmental benefits. Lacking such documentation IOMA cannot support this requirement.

Deleted: - ... [12]

Deleted:

Deleted: as built

(4) Within six (6) months of installation, a cathodic protection system shall be tested by a cathodic protection tester to determine that the UST system is protected against corrosion. The cathodic protection system shall pass the applicable test(s). The Owner or Operator shall keep a record of the passed test(s) in accordance with 310 CMR 80.48(5)(a).

80.35. Requirements for Spill and Overfill Prevention Equipment

Prior to making these changes MassDEP needs to present evidence that spill buckets pose a serious threat to the environment that warrants such a significant costs to all UST stakeholders. DEP needs to fix real problems. The option for a double wall spill bucket is not needed. Spill buckets are a maintenance issue not a construction issue. Also IOMA believes a case-by-case review may be necessary for installing the larger capacity spill buckets due to their increased footprint and size in existing and operations USTs. It

may not be feasible to replace the 3 gallon bucket with the 5 gallon bucket, let alone a double-walled set-up. MassDEP needs to establish a self-certification or waiver process as appropriate, for the 5 gallon requirement.

(1) All UST systems shall be equipped with a spill bucket.

(a) Spill buckets, including replacement spill buckets, installed on and after [the effective date of this regulation] shall have a minimum capacity of five (5) gallons and,

1. Shall be double-walled; or

2. Shall be tested every twelve (12) months, pursuant to 310 CMR 80.35(1)(c).

a. If the spill bucket fails the test, it shall be repaired or replaced in accordance with 310 CMR 80.47.

b. The Owner or Operator shall keep records of each test in accordance with 310 CMR 80.48(5)(d).

(b) Spill buckets installed before [effective date of this regulation] shall have a minimum capacity of three (3) gallons.

(c) All spill buckets shall pass a tightness test at installation to ensure the spill bucket is liquid tight by using vacuum, pressure, or liquid testing. The standard for declaring a failure is 1/8 inch or greater loss of water within one hour (which is equal to a leak rate of 0.05 gallons per hour in a typical 12-inch diameter basin). The Owner or Operator shall keep records of this test in accordance with 310 CMR 80.48(5)(d). IOMA is deeply concerned with the tens of thousands of gallons of wastewater that will be generated by hydrostatic testing of spill buckets. This will represent a significant cost to retail marketers and unnecessary air emissions to transport this materials from UST facilities. IOMA is also concerned that MassDEP has chosen to adopt a proposed EPA regulatory proposal into these regulations. IOMA believes this is premature, given that EPA rule making is being criticized for violating procedural safeguards designed to protect small businesses, lack of stakeholder input, and is years away from and final rule. The Commonwealth would be better served by taking a wait and see approach to determine if and when any proposed federal changes become realized. (2) All UST systems shall have an overfill prevention device that is designed to allow a tank tightness test and installed in accordance with the manufacturer's specifications.

(a)

(b) All UST systems shall be equipped with one of the following:

1. An automatic shut off valve, ball float, or flapper that shall automatically and completely shut off flow into the tank when the tank is no more than 95% full.

Deleted: -

Deleted: -

Deleted: - ... [13]

Deleted: Effective [one year after the effective date of regulations] ball floats shall not satisfy the overfill prevention requirement in 310 CMR 80.35(2), but they are not prohibited. -

2. A device which shall sufficiently alert the operator and product deliverer when the tank is at a maximum of 90% full by triggering a high-level alarm.

a. All high level alarms installed on and after [the effective date of this regulation] shall be both visual and audible.

b. All high-level alarms shall be clearly labeled as a tank overflow alarm.

GENERAL OPERATING REQUIREMENTS

80.36 General Requirements

(1) Owners and Operators shall comply with all general and specific general operating requirements in 310 CMR 80.36-80.49, as applicable.

(2) The Owner or Operator shall activate and keep in working condition all electrical equipment, components and alarms for UST systems.

(3) The Owner or Operator shall respond to every UST system alarm and document the response to each alarm **in a report or log** which shall include, but not be limited to, the date and corrective action, if any. The Owner or Operator shall keep records of such alarms in accordance with 310 CMR 80.48(5)(o). [Why does it have to be](#)

Formatted: Font:Bold

on a report or log? Why can't a copy of the print out from the ATG & a copy of a work order demonstrate compliance, even photographs too? Why do we have to create extra paperwork as long as we have the information? MassDEP needs to adopt a more pragmatic and reasonable approach.

(4) The Owner or Operator shall ensure that fill pipe covers of tanks, including at least ~~two~~ (2) inches onto the adjoining fixed metal, cement or paved surface, are painted and maintained in accordance with the following colors: IOMA suggests allowing use of either the API color scheme or the one described below and limit painting to the cover and a 2" overlap onto adjoining surface.

- | | |
|-----------------------|---------------------|
| Unleaded- White | Unleaded Plus- Blue |
| Premium Unleaded- Red | Diesel- Yellow |
| Kerosene- Brown | Fuel Oil- Green |

(5) If all regulated substance is removed from an UST system, the Owner or Operator shall take the UST system temporarily out-of-service in accordance with 310 CMR 80.51 or permanently close it in accordance with 310 CMR 80.52. If any regulated substance remains in an UST system, the UST system shall be regulated under 310 CMR 80.00, unless the regulated substance in the tank is the result of a change-in-product in accordance with 310 CMR 80.50(4). How will seasonal fluctuations that typically occur with heating oil tanks be addressed? Will they have to routinely, temporarily close their tanks every year? If so does that make sense? How do you define "removal of "all regulated substance from the UST system"? Do you mean/want to use the term "empty"?

80.37 Requirements for Emergency Response

(1) The Owner or Operator shall **post a sign at the UST facility** indicating what steps a Class C Operator needs to follow in the event of an emergency, including, but not limited to, the name and phone number of the person or persons to contact in the event of an emergency.

(a) The sign shall be clearly visible, legible and prominently displayed for the Class C Operator. Should the sign be posted inside or outside the facility? Or doesn't it matter?

(2) The Owner or Operator shall develop a written procedure for Class C Operators, describing the steps to take to, respond in the event of an emergency spill, leak or release. The Owner or Operator shall keep the most recent copy of the written procedure in accordance with 310 CMR 80.48(6)(f).

(a) The procedure shall include, but not be limited to, how to access and use the emergency shut-off for the tanks, how to locate the communication device and how to respond to a leak, spill, or release alarms. How will the written procedures be judged at inspection? As long as you have three things you are OK?

Deleted: six

Deleted: 6

Formatted: Font:Bold

Deleted: how UST facility employees and contractors

Deleted: should

(b) The Owner or Operator shall inform all Class C Operators, where the procedure is located and the Class A or B Operator shall train all Class C Operators, on the emergency procedures. Isn't this the sole purview of the Class C Operators? Not contractors nor non-certified employees?

Deleted: employees and contractors of

Deleted: employees

Deleted: and contractors

80.38 Requirements for Leak Detection Systems

This section is remarkably unclear and it is uncertain which requirements apply to which systems, along with the proposed reporting and documentation requirements. MassDEP needs to substantially revise this section, reorganize it and provide greater context and clarity. Otherwise no one will be able to comply because they will not understand it.

(1) The Owner or Operator shall equip all UST systems with a leak detection system in accordance with manufacturer's specifications, 310 CMR 80.31 and 80.32.

(2) The Owner or Operator shall operate and maintain its leak detection systems at all times and in accordance with 310 CMR 80.38(3)-(10), as applicable.

(3) Requirements for leak detection systems that continuously monitor interstitial space ...of what? Is this for a double wall tank? Piping? Greater context is needed to understand this section.

Deleted: .

(a) Sensors shall continuously monitor interstitial space and be maintained in good working order and shall be operated to perform their original design function in accordance with the manufacturer's specifications.

(b) Interstitial space shall be free of solid and liquid material. This requirement appears to prohibit advanced UST technological approaches to monitoring interstitial space through the use of Brine solutions. How will this requirement also address humidity and condensation issues that are common inside the interstitial space? Shouldn't the performance standard be that the interstitial space "be free of regulated substance and groundwater"? MassDEP needs to revisit its technical basis for this requirement and the assumptions it is relying upon. The Department's assumptions are inconsistent with commonly employed UST technologies and industry practice, and fail to anticipate common field conditions.

(c) If the monitor indicates that there may be a leak, by alarm or otherwise, the Owner or Operator shall immediately commence an investigation to determine whether there is a leak.

1. If the Owner or Operator is unable to conclusively determine that there is not a leak, within seventy-two (72) hours after beginning an investigation s/he shall: IOMA requests that 72 hours be used to provide for flexibility for if an issue arise during a weekend and to be consistent with the MCP 72 hour notification thresholds for UST related release conditions. These regulations propose to further restrict response action timelines. This is overreaching and unnecessary.

Deleted: The Owner or Operator shall conclude the investigation

Deleted: within forty-eight (48) hours.

a. Conduct a tightness test of the suspect piping and/or tank in accordance with 310 CMR 80.44 within seventy-two, (72) hours, IOMA requests the following written clarification concerning the requirement for tightness testing. If the leak is limited to piping, the tightness test can be limited to just the piping; if it is just the tank then the tank needs to be tested. If it is uncertain, then both can be tested together or in phases.

i. If the tank or piping fails a tightness test pursuant to 310 CMR 80.44, the Owner or Operator shall comply with all applicable notification requirements described at 310 CMR 40.0300. By using the term "immediately" the Department is taking away the varied timelines used for notification based on site conditions and risk contained in the MCP. Thereby canceling out and making a 2- or 72 hour or 120 day notification obligation to become an immediate one. Further these rules do not offer a timeline or clarity for "immediate" in these rules. IOMA recommends MassDEP strike the term "immediate" and rely upon the wisdom of the MCP to speak to proper notification timelines.

ii. If the tank and/or the piping pass a tightness test pursuant to 310 CMR 80.44, the tank and the piping are considered tight, and the requirements for tightness testing shall be considered complete. This requirement assumes that both piping and tanks will always be tested. This section needs to anticipate that only piping or tanks may be tested, not always both.

(4) Requirements for an in-tank monitoring system. Is this applicable to single wall tanks? Unclear what this requirement applies too. Greater context and organization is needed. The next section, (5), is for continuous in-tank monitoring system – not clear the difference with this section – maybe this section should be "...non-continuous in-tank.." please clarify.

(a) At least once each calendar month, the Owner or Operator shall conduct a test on the tank using the in-tank monitor over a continuous period of six (6) hours, during which no regulated substance shall be delivered to or taken from the tank, in order to determine any loss of regulated substance. A loss of 0.20 gallons per hour or more over a six-hour period with the probability of detection of 0.95 and a probability of false alarm of 0.05 shall constitute a leak. How are rest area service stations and other facilities that operate 24/7 supposed to comply with this requirement? Shutting down one day each month is not an acceptable option. MassDEP needs to identify and propose an adequately protective alternate approach.

(b) If the in-tank monitoring system test identifies a inconclusive result or failed test then: upon a failed result the Owner or Operator shall comply with all applicable notification requirements of 310 CMR 40.0300.

2. If an inconclusive test occurs the Owner or Operator may re-test within 24 hours by conducting another in-tank monitoring system test. If a conclusive test result is obtained then the owner or operator shall comply with 80.38(4)b)(1) or 80.38(4)c)1.a., as applicable. (c) If the Owner or Operator is unable to obtain a conclusive test result

- Deleted: forty-eight
- Deleted: 48
- Deleted: of the conclusion of the investigation
- Deleted: .
- Deleted: immediately
- Deleted:
- Deleted: 000

- Formatted: Font:Bold
- Formatted: Indent: First line: 1"
- Deleted: .
- Formatted: Font:Bold
- Deleted: leak, the result is fail. ... [14]
- Deleted: U
- Deleted: immediately
- Deleted: 0
- Deleted: [15]

as is required in a calendar month, the Owner or Operator shall immediately commence an investigation to determine whether there is a leak.

1. The Owner or Operator shall conclude the investigation within seventy-two (72) hours. If the Owner or Operator is unable to determine that there is not a leak, s/he shall:

a. Conduct a tightness test in accordance with 310 CMR 80.44 within seventy-two (72) hours of the failed test result.

i. If the tank or piping fails a tightness test pursuant to 310 CMR 80.44, the Owner or Operator shall comply with all applicable notification requirements contained in 310 CMR 40.0300.

ii. If the tank and/or the piping pass a tightness test pursuant to 310 CMR 80.44, the tank and the piping are considered tight, and the requirements for tightness testing shall be considered complete.

(d) If the in-tank monitoring system test is conclusive and does not identify a leak, the result is pass and the tank is considered tight.

(e) An in-tank monitoring system shall be tested annually to determine whether the leak detection system is working properly. The Owner or Operator shall keep records of such tests in accordance with 310 CMR 80.48(5)(e).

(5) Requirements for a continuous in-tank monitoring system.

(a) At least once a month, the Owner or Operator shall ensure that there is a conclusive result from the continuous in-tank monitoring system to determine whether there is a leak from the tank. A loss of 0.20 gallons per hour with the probability of detection of 0.95 and a probability of false alarm of 0.05 shall constitute a leak.

(b) If the continuous in-tank monitoring system analysis identifies a leak, the result is fail.

1. Upon a failed result the Owner or Operator shall immediately comply with 310 CMR 40.0000.

(c) If the continuous in-tank monitoring system does not produce a conclusive result in any month due to high tank activity, the Owner or Operator shall immediately take the tank out of service to allow the continuous in-tank monitoring system the minimum sufficient quality test time in accordance with the manufacturer's specification.

(d) If the lack of conclusive result is not due to high tank activity or the Owner or Operator has obtained an inconclusive result after complying with 310

- Deleted: forty-eight
- Deleted: 48
- Deleted: are
- Deleted: forty-eight
- Deleted: 48
- Deleted: immediately
- Deleted: 0

CMR 80.38(5)(d), the Owner or Operator shall immediately commence an investigation to determine if there is a leak.

1. The Owner or Operator shall conclude the investigation within forty-eight (48) hours. If the Owner and Operator are unable to determine that there is not a leak, s/he shall:

a. Conduct a tightness test in accordance with 310 CMR 80.44 within forty-eight (48) hours of the conclusion of the investigation.

i. If the tank or piping fails a tightness test pursuant to 310 CMR 80.44, the Owner or Operator shall immediately comply with 310 CMR 40.0000.

ii. If the tank and the piping pass a tightness test pursuant to 310 CMR 80.44, the tank and the piping are considered tight, and the requirements for tightness testing in 310 CMR 80.44 shall be considered complete.

(e) If the continuous in-tank leak detection system test is conclusive and does not identify a leak, the result is pass and the tank is considered tight.

(f) A continuous in-tank leak detection system shall be tested annually to determine whether the leak detection system is working properly. The Owner or Operator shall keep records of such tests in accordance with 310 CMR 80.48(5)(e).

(6) Requirements for an in-tank monitoring system with Inventory reconciliation (IR) that analyzes inventory, delivery, and dispensing data collected over a calendar month to determine whether or not an UST system is leaking.

(a) The Owner or Operator shall have monthly inventory analyses conducted by a trained IR vendor.

(b) The Owner or Operator shall have equipment and procedures in place to assure that the data provided to the IR vendor is accurate.

(c) If the IR analysis is conclusive and identifies a leak, the result is fail.

1. Upon a failed result the Owner or Operator shall immediately comply with 310 CMR 40.0000.

(d) If the IR analysis is inconclusive, the Owner or Operator shall immediately commence an investigation to determine whether there is a leak.

Deleted: statistical i

Deleted: S

Deleted: S

Deleted: S

Deleted: S

Deleted: S

Deleted:

1. The Owner or Operator shall conclude the investigation within forty-eight (48) hours. If the Owner or Operator are unable to determine that there is not a leak, s/he shall:

a. Conduct a tightness test in accordance with 310 CMR 80.44 within forty-eight (48) hours of the conclusion of the investigation.

i. If the tank or piping fails a tightness test pursuant to 310 CMR 80.44, the Owner or Operator shall immediately comply with 310 CMR 40.0000.

ii. If the tank and the piping pass a tightness test pursuant to 310 CMR 80.44, the tank and the piping are considered tight, and the requirements for tightness testing shall be considered complete.

(e) If the IR analysis is conclusive and does not identify a leak regulated substance the result is pass and the tank is considered tight.

(7) Automatic line leak detectors shall be tested annually to determine whether the automatic line leak detector is working properly. The Owner or Operator shall keep records of such tests in accordance with 310 CMR 80.48(5)(e).

(8) Non-European suction piping shall be tightness tested in accordance with 310 CMR 80.44 every three (3) years if it does not have secondary containment and interstitial monitoring. [What if it does have secondary containment and interstitial monitoring? Are they required to do anything? If not say so. MassDEP needs to clarify and provide context in these regulations concerning this requirement.](#)

(9) If the Owner or Operator cannot demonstrate that its European suction piping is sloped back to the tank and that its one check valve is located directly under the dispenser to the satisfaction of the Department, it shall comply with the standards for non-European piping at 310 CMR 80.32(1)(b) or 80.32(2)(b), as applicable.

(10) Leak detection systems that are repaired or replaced shall be tested prior to being returned to service to determine that they are operational. The Owner or Operator shall keep records of such tests in accordance with 310 CMR 80.48(5)(e).

(11) All leak detection monitoring records shall be kept in accordance with 310 CMR 80.48(5)(f).

[80.39. Requirements for Sumps What if I do not have a sump? Do I need to inspect the STP components on a monthly basis or do nothing? MassDEP needs to clarify these requirements.](#)

(1) Owners and Operators shall operate and maintain sumps in accordance with 310 CMR 80.39.

Deleted: s

- (2) Sumps shall be clean and free of solid and liquid material at all times.

(a) If a sump sensor or visual observation indicates that there is liquid in the sump, the liquid shall be removed immediately and the Owner or Operator shall investigate the source of the liquid and the path of entry to the sump and shall make any necessary repairs in accordance with 310 CMR 80.47. This requirement states that all sources of water intrusion be eliminated within 30 days. IOMA believes this requirement is over reaching, excessive, and unsupported by evidence of actual environmental harm. This requirement proposes a no-risk approach as opposed to a no significant approach. New England's climate is wet not arid. There are also many areas of the Commonwealth where the groundwater table is close to the ground surface. To set out on a campaign to eliminate water in sumps has not been justified, is not pragmatic, ignores our regional climate and geology, and ultimately will prove too costly for compliance. IOMA demands that MassDEP present evidence and cost benefit analyses showing the benefits gained for use of such an approach. A more balanced approach would be to allow an ow/op to determine if a fix is needed from cost/benefit perspective. For example, if a site gets minor surface infiltration that triggers a sensor ten (10) times per year, then it may be more cost effective to pump it out when it happens as opposed to doing a costly major sump or tank pad re-construction.

(b) The solid and liquid material that collects in a sump shall be removed and managed in accordance with applicable local, state and federal laws and regulations.

(3) Sump sensors shall be set at the lowest possible location in the sump, unless the manufacturer's specifications direct otherwise.

- (4) All sumps shall be inspected in accordance with 310 CMR 80.45.

(5) All sumps shall pass an integrity test every three (3) years to ensure the sump is liquid tight by using vacuum or hydrostatic testing. The standard for declaring a failure is 1/8 inch or greater loss of water within one hour (which is equal to a leak rate of 0.05 gallons per hour in a typical 12-inch diameter basin). The Owner or Operator shall keep records of this test, including but not limited to the date of the test and the results, in accordance with 310 CMR 80.48(5)(c). This requirement mirrors the proposed federal UST proposals. IOMA does not support MassDEP's implementation of proposed federal rules that have not yet benefited from the public comment process. How can MassDEP be so confident and predict that these provisions will become promulgated and required as part of federal law. IOMA cannot support such an approach. IOMA also doesn't support the requirement to test every three years. The sump should be tested if there is a confirmed leak to it, but not on a routine basis, to determine if product escaped to the environment.

(a) If the sump fails a test, the Owner or Operator shall investigate the failure and shall make any necessary repairs in accordance with 310 CMR 80.47.

(6) Sumps that are repaired shall pass an integrity test in accordance with 310 CMR 80.39(5). The Owner or Operator shall keep records of such tests in accordance with 310 CMR 80.48(5)(c).

Deleted: to determine that they hold liquid

80.40. Requirements for Corrosion Protection

(1) Owners and Operators shall operate and maintain corrosion protection in accordance with 310 CMR 80.34 and 310 CMR 80.40(2)-(7).

(2) Sacrificial or galvanic anode cathodic protection systems shall be tested at least once every three (3) years by a cathodic protection tester to determine whether the UST system is protected against corrosion.

(a) If any one test point result indicates a negative voltage of at least -0.90 volts, the cathodic protection system shall be tested every three (3) years thereafter.

(b) If any one test point result indicates a negative voltage between -0.85 and -0.90, the cathodic protection system shall be tested every twelve (12) months thereafter.

(c) If any one test point result indicates a negative voltage of less than -0.85 on any of the anodes tested, it is considered a failed test and the Owner and Operator shall comply with 310 CMR 80.40(4).

(3) Impressed current cathodic protection systems shall be tested every twelve (12) months by a cathodic protection tester to determine whether the UST system is protected against corrosion.

(a) In addition to the annual testing, impressed current systems shall be inspected every sixty (60) days by the Owner or Operator in accordance with the manufacturer's specifications to ensure the equipment is operating as designed.

(b) Acceptable system operating voltage and amperage ranges as determined by the corrosion expert shall be affixed to each rectifier.

1. System voltage and amperage readings shall be recorded every sixty (60) days.

2. If the system voltage and amperage readings are outside the range determined to be acceptable by the cathodic protection tester, it is considered a failed test and the Owner or Operator shall comply with 310 CMR 80.40(4).

(c) Systems installed without voltage and/or amperage meters shall be retrofitted with meters upon the first annual test of the system.

(4) The Owner or Operator shall determine the cause of the failed cathodic protection test by immediately retaining a corrosion expert.

(a) If necessary, the Owner or Operator shall repair or replace the cathodic protection system within forty-five (45) days of the date of the failed test.

(b) The Owner or Operator shall document the results of the corrosion expert's determination, including, but not limited to, the date of the investigation and the results, and keep said documentation in accordance with 310 CMR 80.48(5)(b).

(c) If repairs to the cathodic protection system are not completed within forty-five (45) days of the date of the failed test, the Owner or Operator shall either take the UST system temporarily out-of-service in accordance 310 CMR 80.51, or permanently close the UST system in accordance with 310 CMR 80.52. [IOMA believes this is too short a time period to design, and install an upgraded system. Also depending upon discovery timeframes, winter conditions may also complicate and delay construction activities. Does DEP have data that indicates UST's fail if not upgraded within 45 days?](#)

(5) All cathodic protection systems shall be tested by a cathodic protection tester for proper operation within sixty (60) days following an excavation at the UST system.

(6) The Owner or Operator shall keep records of testing of cathodic protection system(s) in accordance with 310 CMR 80.48(5)(a).

80.41. Requirements for Spill Containment and Overfill Prevention

(1) Owners and Operators shall at all times operate and maintain spill containment and overfill prevention equipment in accordance with 310 CMR 80.35 and 310 CMR 80.41(2)-(3).

(2) Maintenance of spill buckets.

(a) The Owner or Operator shall keep spill buckets clean and free of solid and liquid material and the spill bucket and cover shall be free of cracks and holes at all times.

(b) The Owner or Operator shall remove and manage any solid or liquid material that collects within a spill bucket in accordance with local, state and federal laws and regulations.

(c) The Owner or Operator shall maintain spill buckets in accordance with the manufacturer's specifications.

(d) Single-walled spill buckets shall pass an integrity test every twelve (12) months to ensure the spill bucket is liquid tight by using vacuum or hydrostatic

testing. The standard for declaring a failure is 1/8 inch or greater loss of water within one hour (which is equal to a leak rate of 0.05 gallons per hour in a typical 12-inch diameter basin). The Owner or Operator shall keep records of this test in accordance with 310 CMR 80.48(5)(d). [IOMA again asserts that MassDEP should not incorporate a draft federal rule until it becomes mandated. Otherwise MassDEP lacks evidence to support such requirements. IOMA recommends that MassDEP consider allowing visual inspections instead of testing to document spill bucket conditions.](#)

1. If the spill bucket fails the test, the Owner or Operator shall repair or replace the spill bucket in accordance with 310 CMR 80.47.

(3) Overfill prevention equipment.

(a) The Owner or Operator shall maintain overfill prevention equipment required under 310 CMR 80.41 in a fully operational state in accordance with the manufacturer's specifications.

(b) The Owner or Operator shall inspect the overfill prevention equipment every six (6) months in accordance with 310 CMR 80.45. [IOMA requests that MassDEP modify this requirement so that this inspection is only required if the manufacturer requires it. Typically when an overfill protection systems fails it prevents the introduction on product into the tank. IOMA believes this inspection frequency is extreme and will always require vendor assistance and related costs. This requirement should be left for the TPI inspection once every three years. Does DEP have data that indicates that there are releases due to faulty overfill prevention devices to support this requirement?](#)

(c) Overfill prevention equipment that is repaired shall be tested to determine that it is operational. The Owner or Operator shall keep records of such tests in accordance with 310 CMR 80.48(5)(g).

(4) The Owner or Operator shall ensure that the volume available in the tank is greater than the volume of regulated substance to be transferred to the tank before the regulated substance transfer is made.

80.42. Requirements for Inventory Monitoring for Abnormal Regulated Substance Loss

(1) The Owner or Operator of a tank that is not double-walled and does not have continuous monitoring in accordance with 310 CMR 80.31 shall conduct inventory monitoring for abnormal regulated substance loss.

(a) The Owner or Operator of UST systems with tanks that are one thousand (1000) gallons or less may use manual tank gauging in accordance with 310 CMR 80.42(6) in order to satisfy the requirements of 310 CMR 80.42(1).

3/29/12 7:44 AM

Comment [32]: To comply with EPA regulations.

(2) The Owner or Operator subject to inventory monitoring for abnormal regulated substance loss shall:

(a) Take daily measurements and reconcile inventory data daily and monthly;

(b) Measure the liquid in the tank using:

1. A gauge stick or tape with water sensitive paste which shall be capable of measuring liquid in the tank to the nearest 1/8th of an inch; or

2. An automatic tank gauging device of equivalent or better measuring accuracy.

(c) At the close of each calendar month, determine for that month and for each tank or combination of tanks the number of days in which any amount of regulated substance was dispensed and the number of days in which a loss of regulated substance was recorded.

(d) Record all daily measurements and monthly reconciliation.

(3) An abnormal regulated substance loss from any tank or combination of tanks shall mean a loss not explainable by any spillage, temperature variations or other causes in excess of 1% of the volume plus 130 gallons of regulated substance dispensed over a period of a calendar month.

(4) In the event of abnormal regulated substance loss, the Owner or Operator shall take the following steps within the seventy-two (72) hours following the discovery of the abnormal regulated substance loss:

(a) Check the inventory input and output records for mathematical error; and

(b) Check the inventory for an error in measurement.

(5) If the abnormal regulated substance loss cannot be reconcilable in accordance with 310 CMR 80.42(4)(a) or (b), or cannot be affirmatively demonstrated to be the result of theft, the UST system shall be tested for tightness in accordance with 310 CMR 80.44.

(a) If the tank fails a tightness test pursuant to 310 CMR 80.44, the Owner or Operator shall immediately comply with 310 CMR 40.0000.

(b) If the tank passes a tightness test pursuant to 310 CMR 80.44, the tank is considered tight, and the requirements for tightness testing in 310 CMR 80.44 shall be considered complete.

(6) Manual Tank Gauging for Small Tanks. [Does this only apply to underground tanks or does this apply to ASTs as well?](#)

(a) If Owners and Operators use weekly manual tank gauging on tanks that are one thousand (1000) gallons or less to satisfy the inventory monitoring requirements in 310 CMR 80.42(1), they shall comply with the following:

(b) Manual tank gauging shall be performed as follows:

1. Tank liquid level measurements shall be taken and recorded, including date and time of measurements, at the beginning and ending of a period of at least thirty-six (36) hours during which no liquid is added to or removed from the tank;

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

3. The equipment used shall be capable of measuring the level of regulated substance over the full range of the tank’s height to the nearest one-eighth of an inch;

4. A leak shall be suspected if the variation between beginning and ending measurements exceeds the weekly or monthly standard on the following table:

Table D

Nominal tank capacity	Weekly standard (one test)	Monthly standard (average of 4 tests)
500 gallons or less	10 gallons	5 gallons
551-1,000 gallons	13 gallons	7 gallons

(c) In the event of a suspected leak, the Owner and Operator shall comply with 310 CMR 80.42(4) and (5).

(7) The Owner or Operator shall maintain all records of inventory monitoring for abnormal regulated substance loss, including but not limited to sales receipts and monthly measurements in accordance with 310 CMR 80.48(5)(i).

(8) Waste oil tanks connected to oil burning equipment shall be exempt from 310 CMR 80.42 during periods when oil burning equipment is in use.

80.44. Requirements for Tank and Pipe Tightness Testing

3/29/12 7:44 AM
Comment [33]: To comply with EPA regulations.

3/29/12 7:50 AM
Comment [34]: There is no 80.43 because we struck the abnormal water gain section. We'll re-number for the public hearing draft.

(1) Owners and Operators of all UST systems shall meet the following tightness testing standards:

(a) Effective on and before December 31, 2015, tank and piping tightness testing shall be capable of detecting a 0.1 gallon per hour leak rate from the entire UST system, accounting for the effects of thermal expansion or contraction of regulated substance, vapor pockets, tank deformation, evaporation, condensation, and the location of the water table. The probability of detection shall be no less than 95 percent and the probability of a false alarm shall be no more than 5 percent.

(b) Effective on and after January 1, 2016, tank and piping tightness testing shall be capable of detecting a 0.05 gallon per hour leak rate from the entire UST system, accounting for the effects of thermal expansion or contraction of regulated substance, vapor pockets, tank deformation, evaporation, condensation, and the location of the water table. The probability of detection shall be no less than 95 percent and the probability of a false alarm shall be no more than 5 percent.

(c) All pressurized piping tests shall be performed at 150% operating pressure, or the equivalent, but not less than fifty (50) pounds per square inch gauge at the highest point of the system, or if performed at a lower pressure, it shall be able to detect a leak rate equivalent or smaller than that determined by the piping test method's independent performance testing in accordance with U.S. Environmental Protection Agency approved protocols.

(2) Owners or Operators of all UST systems shall meet the following tightness test and reporting requirements:

(a) A tank or pipe tightness test shall be performed by a certified UST tightness tester using the appropriate test for the particular tank or piping.

(b) When a tightness test is performed, the Owner or Operator shall compile a report that shall include, but not be limited to, the following:

1. Date the test was performed;
2. Facility name and address;
3. Facility Owner name and address;
4. Identification of the tank or piping that was tested;
5. Reason for the test, including, but not limited to, the date when the Owner and Operator first discovered the need for the test;
6. Type of tightness test equipment used for the test;

7. Name of the certified tightness tester, his/her certificate number and expiration date, and the name of any persons assisting in the test;
8. Data sheets with test readings recorded;
9. Calculation pertaining to the test method and test results;
10. Location of monitoring or observation well, if used in test procedure;
11. Description of method used to measure the water table, if required, and the result; and
12. Signature of the certified tightness tester attesting to the accuracy of the information of the test result.

(c) The report prepared pursuant to 310 CMR 80.44(2)(b) shall be kept in accordance with 310 CMR 80.48(5)(j).

(3) Tightness Test Failures

(a) An UST system fails a tightness test when the test results indicate a leak from the UST system that exceeds the detection standards at 310 CMR 80.44(1) or (2), as applicable.

(b) The certified tightness tester shall notify the Owner and Operator immediately if the UST system fails a tightness test.

(c) The Owner or Operator shall immediately comply with 310 CMR 40.0000.

80.45. Requirements for Routine Inspections

(1) Owners and Operators are responsible for ensuring that routine inspections meeting the requirements in 310 CMR 80.45(2) and (3) are conducted at all UST systems.

(a) Effective August 8, 2012, a Class A or B operator shall conduct the routine inspections, or the routine inspections shall be conducted under the direction of a Class A or B operator.

(b) Routine inspections shall consist of a 30-day inspection in accordance with 310 CMR 80.45(2) and a 180-day inspection in accordance with 310 CMR 80.45(3).

3/29/12 7:44 AM

Comment [35]: Still under discussion whether we include notification to the fire department.

(2) The following inspections of UST systems shall be conducted at least every thirty (30) days and shall include, but not be limited to:

(a) Inspecting motor fuel dispenser cabinet interiors and dispenser sumps for leaking components and for the presence of solid and liquid material. There should be an exemption for dispensers equipped with a dispenser sump and sensor. They should not require any inspections. Sensors are required to be certified annually and the person doing the certification would see any issues that a sensor didn't catch. MassDEP needs to rely upon sensor technology.

1. Removing solid and liquid material from the UST system in accordance with federal, state and local laws and regulations; and

2. Repairing or replacing components as necessary in accordance with 310 CMR 80.47.

(b) Inspecting each spill bucket for the presence of solid and liquid material.

1. Removing the solid and liquid material from the UST system in accordance with federal, state and local laws and regulations; and

2. Repairing or replacing the spill bucket as necessary in accordance with 310 CMR 80.47.

(c) Visually verifying that the grade level fill covers and turbine sump manhole covers are tight fitting.

(d) Inspecting each leak detection system for proper operation.

1. If using a static or continuous in-tank monitoring system, including JR, verify the ATG sensor is operational and working normally;

2. If using interstitial monitors and sensors, determining that they are on and operational;

3. Confirm no current alarms are occurring and

4. Confirming all necessary repair are made for normal operation of UST system components in accordance with 310 CMR 80.47.

These duplicative requirements (1-4 above) are not necessary. The obligation for compliance all ready exists under other section, and these requirements can only be perceived as piling it on.

Deleted: S

Deleted: verifying that monthly leak detection tests have been conducted

Deleted: Determining whether alarms have been responded to;

Deleted: Repairing or replacing components as necessary

(3) 180-day inspections shall include, but not be limited to:

(a) Inspecting **sumps** Which sumps? Please define if you are referring to STP sumps or Dispenser Sumps/Pans for the presence of solid and liquid material and verifying that the sump sensors are operational and set below the lowest sidewall penetration within each sump, unless the Class A or B operator can demonstrate that the manufacturer’s specification indicate otherwise. Removing the solid and liquid (brine issue) material in accordance with federal, state and local laws and regulations;

Formatted: Font:Bold

(b) Visually inspecting sump components for signs of corrosion, breakage and wear. Repairing or replacing components as necessary in accordance with 310 CMR 80.47.

(c) Verifying that the overflow protection is present and operational. Repairing or replacing components as necessary in accordance with 310 CMR 80.47.

(4) Owners and Operators shall be exempt from 310 CMR 80.45(3)(a) and (b) if:

(a) The UST system has an in-sump sensor that has been properly installed at the bottom of the sump and it is capable of differentiating between water and regulated substance and alerts the Owner or Operators to changes in the placement of the sensor; and Why discriminating? This would be quite costly to remove all of our existing sensors, to update the software and to install new sensors at every station. Does it really matter what is in there, whether it be product or water, because neither is supposed to be present. IOMA requests that the use of discriminating sensors be left for the marketplace to decide. UST owners and operators should be able to consider their use as optional.

3/29/12 7:44 AM
Comment [36]: STAKEHOLDERS: DEP has included this exemptions based on the belief these types of sensors exist. Please comment.

1. The Owner or Operator has documentation of the sensor installation according to the manufacturer’s specifications; and

2. The sumps were inspected during the most recent third-party inspection.

(b) The Owner or Operator has opened or had their **sumps** same issue as above, which sumps are you referring too? Suggest you break out and have different sections for the different sumps uses. opened in response to an alarm that occurred within the previous six (6) months.

Formatted: Font:Bold

1. When the sump was opened in response to the alarm, the inspection in 310 CMR 80.45(3)(a) and (b) was performed; and

2. The response to the alarm and inspection were documented.

(5) The routine inspections shall be recorded on a form that contains at a minimum the following information:

(a) The date of the inspection and the name of the person who conducted the inspection.

(b) Information about whether the component is properly operating and being maintained.

(c) Observations about the condition and status of the components.

(d) Documentation of the repair or replacement needed and the steps taken to repair or replace the component in accordance with 310 CMR 80.48(5)(k).

(e) The signature of the Class A or B operator who conducted or directed the inspection.

(6) The results of each inspection shall be recorded and retained in accordance with 310 CMR 80.48(5)(l).

80.46. Requirements for Compatibility

(1) Owners and Operators shall not introduce, or allow to be introduced, any material into an UST system that is incompatible with the UST system.

(2) The Owner or Operator shall ensure that all UST systems are compatible with the environment in which they are to be installed.

80.47. Requirements for Repairs and Replacements

(1) The Owner or Operator shall repair or replace all UST system components within thirty (30) days of the discovery of the need for repair or replacement, unless the UST system is taken temporarily out-of-service or permanently closed within thirty (30) days of the discovery of the need for the repair or replacement. [This cannot always be done especially during winter conditions. IOMA requests that alternate timeframes and approaches be considered before resorting to temporarily taking a tank out of service or permanent closure.](#)

(a) If a longer timeframe is provided in a specific section of 310 CMR 80.00, the longer timeframe shall apply to that specific repair.

(b) The Owner or Operator shall document the repair or replacement needed and the steps taken to repair or replace the component. This documentation shall be retained in accordance with 310 CMR 80.48(5)(k).

(2) The Owner or Operator shall ensure that any repair of an UST system is performed by a qualified individual, following the manufacturer’s specifications, 310 CMR 80.00 and applicable codes and standards, and the following requirements:

(a) After [effective date of regulations] a tank shall not be lined to extend the operating life of the UST system.

1. A tank shall not be relined. This subsection appears randomly placed and needs greater context.

(b) A tank that has leaked or released regulated substance shall be permanently closed and removed or filled in place in accordance with 310 CMR 80.52, unless the manufacturer of the tank repairs and re-certifies or re-warranties the tank, in writing, and the tank passes a tightness test in accordance with 310 CMR 80.44.

(c) Any part of the UST system, except a tank, that has leaked or released regulated substance or threatens to release regulated substance shall be immediately taken temporarily out-of-service in accordance with 310 CMR 80.51 and be repaired, replaced or permanently closed.

(3) The Owner or Operator shall ensure that all fixed tank components, including, but not limited to, tank tops, and piping are tightness tested in accordance with 310 CMR 80.44 within thirty (30) days following the date of the completion of the repair. What type of repair? All repairs? Even routine repairs & replacements? Clarification is needed. Not all repairs need tightness testing. These rules must differentiate them.

Deleted: s

(4) The Owner or Operator shall maintain records of every repair, including, but not limited to, the date of said repair, for the remaining operating life of the UST system in accordance with 310 CMR 80.48(8)(a). A cap on the length of time these records must be kept needs to be stated here. It cannot be forever.

80.48. Requirements for Registration, Reporting and Recordkeeping MassDEP needs to reconcile and reduce the amount of recordkeeping and reporting under this program because the regulatory burden is immense and overwhelming.

(1) Owners shall submit to the Department, on a form specified by the Department, a registration for all new or replacement tanks, UST systems and UST facilities within thirty (30) days of receiving regulated substance into the UST system. The Owner shall retain a copy of the registration in accordance with 310 CMR 80.48(6)(a).

(a) The registration shall include but, not be limited to, the following:

1. Information about the Owner, Operator and Contact Person(s);

2. Information about the location, age, size and uses of the UST system and type of facility;

3. The components of the UST system; and

4. Financial responsibility information.

(b) Owners shall update the registration if any information on the registration changes, and submit it to the Department within thirty (30) days of the change.

1. If there is a change of Owner of an UST system or facility:

a. Thirty (30) days after the change, the Owner shall report the change to the Department including, but not limited, to the name and contact information for the new Owner, on a form specified by the Department. This requirement as proposed is absurd. MassDEP does not appear to understand the uncertainties surrounding commercial real estate transactions. Many deals often fall apart at closing and compliance with this requirement would be premature and if complied with would create a public record of a very confidential business transaction. This requirement's utility is also highly questionable.

b. Within thirty (30) days of the change, the new Owner shall update the registration form and submit it to the Department.

(2) Owners shall notify the Department, on a form specified by the Department, any of the following:

(a) A change in the product to be placed in an UST system in accordance with 310 CMR 80.50(3):

1. Prior to the change, if the change is from a regulated substance to a non-regulated substance. Too long of a notice. Performance standard should just be "prior to it occurring".

2. Prior to the change, if the change is from a regulated substance to a regulated substance.

(b) Any UST system taken temporarily out-of-service, within thirty (30) days of the change in status in accordance with 310 CMR 80.51(2);

(c) Any temporarily out-of-service UST system brought back into service, within thirty (30) days of being brought back into service in accordance with 310 CMR 80.51(5).

(d) Any UST system removed, within thirty (30) days of removal in accordance with 310 CMR 80.52(2)(c).

3/29/12 7:44 AM

Comment [37]: c. 210, sec. 3

Formatted: Indent: Left: 0", First line: 2"

Deleted: before

Deleted: -

Deleted: Thirty (30) days p

Deleted: Within thirty (30) days

Deleted: of

(e) UST systems closed-in-place within thirty (30) days of UST system being filled in accordance with 310 CMR 80.52(3)(c).

(f) Financial responsibility documents in accordance with 310 CMR 80.22.

(3) The Owner or Operator shall submit to the Department, on a form specified by the Department, information including but not limited to:

(a) Third-party inspection reports in accordance with 310 CMR 80.57(6)(b).

(b) Limited site investigations reports in accordance with 310 CMR This citation does not exist in the regulation. and 80.52(4).

(c) If known at the time of release notification under 310 CMR 40.0000 the source and cause of the reportable release, This cannot be an open ended and ongoing obligation. The information contained in MCP submittals will identify what may or may not have happened. MassDEP need to speak with the waste site cleanup program and avoid duplicative submittals from Owners and Operators.

(d) Temporary out-of-service certification form in accordance with 310 CMR 80.51(4)(g).

(e) Compliance certification in accordance with 310 CMR 80.49.

(4) Upon the sale of an UST system or UST facility, the Owner shall transfer all the records in 310 CMR 80.48(5), (6), (7) and (8) to the new Owner.

(4) For at least five (5) years, the Owner or Operator shall maintain records in hard copy or electronically, and shall make them available to the Department as soon as possible following a request, but in no event more than (7) business days after the request. The records shall include, but are not limited to: This is an excessive amount of records to maintain to document testing and repairs that resulted in the UST system being in compliance. Why does DEP need to know a spill bucket was repaired 5 years ago? MassDEP cannot dictate what gets passed on to another party during a real estate transaction.

(a) Results of all cathodic protection tests in accordance with 310 CMR 80.34(4) and 80.40(6).

(b) Documentation of all investigations of failed cathodic protection tests in accordance with 310 CMR 80.40(4)(b).

Deleted: 80.50(5)(c)

Deleted: S

Deleted: s in accordance with 310 CMR 80.59(2)

Deleted: (5) -

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 3 + Alignment: Left + Aligned at: 0.5" + Tab after: 0.75" + Indent at: 0.75"

- (c) Results of all sump tests in accordance with 310 CMR 80.33(3), 39(5) and (6).
 - (d) Results of all spill bucket tests in accordance with 310 CMR 80.35(1)(a)2.b., 80.35(1)(c) and 80.41(2)(d)
 - (e) Results of all leak detection tests in accordance with 310 CMR 80.38.
 - (f) Leak detection monitoring records in accordance with 310 CMR 80.38(11).
 - (g) Results of all tests to determine that repaired or replaced overfill prevention equipment is operational in accordance with 310 CMR 80.41(3)(c).
 - (h) Records for all inventory monitoring for abnormal regulated substance loss in accordance with to 310 CMR 80.42(7), if applicable.
 - (j) Report of tightness tests conducted after installation in accordance with 310 CMR 80.44(2).
 - (k) Documentation of the repair or replacement needed and the steps taken to repair or replace the component in accordance with 310 CMR 80.47(1)(b).
 - (l) Reports of all routine inspections in accordance with 310 CMR 80.45(6).
 - (m) Documentation that the Class A, Class B and Class C operators were certified in accordance with 310 CMR 80.02(7), (8) and (9).
 - (n) Records to demonstrate compliance with change-in-product requirements at 310 CMR 80.50(7).
 - (o) Records to demonstrate the Owner or Operator responded to all alarms in accordance with 310 CMR 80.36(3).
- (6) The Owner or Operator shall maintain the most recent copy of the following records in hard copy or electronically, and shall make them available to the Department as soon as possible following a request, but in no event more than seven (7) business days after the request.
- (a) A copy of the registration in accordance with 310 CMR 80.48(1).
 - (b) A copy of the third-party inspection report pursuant to 310 CMR 80.57(6)(b).

(c) List of the Class A, Class B and Class C operators of each UST system in accordance with 310 CMR 80.02(11).

(d) Records that the Owner and Operator complied with temporary closure requirements in accordance with 310 CMR 80.51(6).

(e) Records to demonstrate that the Owner and Operator complied with the permanent closure requirements in accordance with 310 CMR 80.52(7).

(f) A copy of the most recent emergency procedure in accordance with 310 CMR 80.37(2).

(7) For the life of a cathodic protection system, the Owner or Operator shall maintain the following cathodic protection records in hard copy or electronically , and shall make them available to the Department as soon as possible following a request, but in no event more than fourteen days, ~~(14) business days~~ after the request.

(a) Documentation that the cathodic protection system installation was supervised by a corrosion expert in accordance with 310 CMR 80.34(3)(b).

(b) An as built, scaled plan of the cathodic protection system, manual and specifications in accordance with 310 CMR 80.34(3)(c).

(8) For the operating life How is this time period determined? of the UST system, the Owner or Operator shall maintain the following records in hard copy or electronically , and shall make them available to the Department as soon as possible following a request, but in no event more than seven (7) business days after the request: MassDEP also needs to clarify that these record keeping requirements apply prospectively only for repair records and more detailed information for new installations. However for existing tanks this information may not be available due to change in ownership. MassDEP needs to clarify these record keeping requirements accordingly.

(a) Records of each repair in accordance with 310 CMR 80.47(4).

(b) A copy of installation information including, but not limited to, the installer's certification and checklist, testing results, inspections and the as-built, scaled plan of the facility in accordance with 310 CMR 80.30(21). Is this only for new installs or is this for existing tanks? As it may not be possible to get this information on existing builds. Is this requirement from the effective date forward?

(9) An Owner or Operator shall maintain documentation of financial assurance mechanisms used to demonstrate financial responsibility in accordance with 310 CMR 80.23 for an UST system Does this apply to all tanks or all tanks with retail distribution? until released from the requirements in accordance with 310 CMR 80.25. The Owner or Operator shall keep the documentation in hard copy or electronically. Upon request from the Department, the Owner or Operator shall make the documentation

Deleted: seven

Deleted: 7

Deleted: hours

Formatted: Font:Bold

Deleted: -

Formatted: Font:Bold

available to the Department as soon as possible, but in no event more than seven (7) business days after receiving the request.

80.49. Requirements for Compliance Certification

(1) Certification Form. No earlier than sixteen (16) months and no later than eighteen (18) months after the UST facility compliance date or the date the third-party inspection report was submitted, whichever is earlier, an Owner or Operator of an UST system shall submit to the Department a compliance certification in accordance with 310 CMR 70.00 on a form specified by the Department. The Owner or Operator shall certify whether or not the Owner and Operator has complied with the following requirements:

(a) Financial responsibility obligations in accordance with 310 CMR 80.16-80.27;

(b) All testing requirements for leak detection, spill containment, overfill prevention, and corrosion protection.

(c) All registration, reporting and record keeping requirements in accordance with 310 CMR 80.48;

(d) Emergency procedure requirements in accordance with 310 CMR 80.37;

(e) Cathodic protection readings have been taken and recorded in accordance with 310 CMR 80.40(3)(b);

(f) All Class A, B and C operators are certified in accordance with 310 CMR 80.02;

(g) All routine inspections have been conducted in accordance with 310 CMR 80.45;

(h) All repairs and replacements have been completed in accordance with 310 CMR 80.47(1);

(i) The UST components and configuration of the UST system have not changed. If the UST system has changed, completion and submission of an amended registration form to the Department in accordance with 310 CMR 80.48(1).

(2) Certification Statement. The Owner and Operator shall comply with the Certification Statement requirements at 310 CMR 70.03(2), except that 310 CMR 70.03(2)(b) and (c) shall not apply.

CHANGE-IN-PRODUCT, OUT-OF-SERVICE SYSTEMS AND CLOSURE

80.50. Requirements for Change-in-Product

- (1) Owners and Operators shall comply with all requirements in 310 CMR 80.50.
- (2) An UST system once used for non-food grade regulated substances shall not be reused to store food products or drinking water.
- (3) The Owner shall notify the Department of a change-in-product on a form provided by the Department in accordance with 310 CMR 80.48(2)(a) and the following timeframes:
 - (a) If the change-in-product is from a regulated substance to a different regulated substance, within thirty (30) days of executing the change.
 - (b) If the change-in-product is from a regulated substance to a non-regulated substance, at least thirty (30) days before executing the change.
 - (c) If the change-in-product is from a non-regulated substance to a regulated substance, within thirty (30) of receiving regulated substance into the UST system, in accordance with 310 CMR 80.48(1).

3/29/12 7:52 AM

Comment [38]: Still under discussion whether we include notification to the fire departments.

(4) If the change-in-product is from a regulated substance to a non-regulated substance, before executing a change-in-product, the Owner or Operator shall remove all solid and liquid material in accordance with 310 CMR 80.56. The Owner or Operator shall manage the solid and liquid material removed from the UST system in accordance with federal, state and local laws and regulations.

(5) If the change-in-product is from a regulated substance to a regulated substance, before executing the change-in-product, the Owner or Operator shall empty the tank. The Owner or Operator shall manage the solid and liquid material removed from the UST system in accordance with federal, state and local laws and regulations.

(6) If the change-in-product is from a regulated substance to a non-regulated substance, the UST system will no longer be subject to 310 CMR 80.00. The Owner or Operator shall conduct a limited site investigation in accordance with 310 CMR 80.52(4) to measure for the presence of a release where contamination is most likely to be present in the subsurface, after notification to the Department of the change-in-product, but before the unregulated change-in-product use is executed.

(7) Owners or Operators shall demonstrate compliance with the requirements for change-in-product by maintaining records/documentation, in accordance with 310 CMR 80.48(5)(n).

80.51. Requirements for Taking an UST System Temporarily Out-of-Service

(1) Owners and Operators shall comply with all requirements in 310 CMR 80.51.

(2) Within thirty (30) days of an UST system being taken temporarily out-of-service, the Owner shall notify the Department on a form specified by the Department in accordance with 310 CMR 80.48(2)(b).

(3) The Owner or Operator shall not take an UST system temporarily out-of-service for more than five (5) years.

(a) If a temporarily out-of-service UST system is not put back into service at the end of five (5) years, the Owner shall permanently close the UST system in accordance with 310 CMR 80.52.

(4) When an UST system is taken temporarily out-of-service, the Owner or Operator shall comply with the following requirements of 310 CMR 80.00 during the entire time period the UST system is temporarily out-of-service:

(a) Empty all solid and liquid material from the UST system to one inch (1") or less; Otherwise, this is very difficult if not impossible for USTs that are temporarily taken out of service. These tanks are still in the ground. All of the sludge cannot be removed unless the tank is tipped and flushed. MassDEP needs to reconsider the assumptions

3/29/12 7:52 AM
Comment [39]: Still under discussion whether we include notification to the fire departments.

Deleted: Remove

Deleted: and have the UST system rendered inert in accordance with 310 CMR 80.56

and technical basis it relied upon in developing this requirement. Why not just meet empty requirements?

1. The Owner or Operator shall manage the solid and liquid material removed from the UST system in accordance with federal, state and local laws and regulations;

(b) Cap, lock and secure all fill lines and fill pipes against tampering;

(c) Keep the vent lines open and operable for the entire period that the UST system is temporarily out-of-service;

(d) Continue operation and maintenance of corrosion protection in accordance with 310 CMR 80.40, if applicable;

(e) Continue to comply with the third-party inspection requirements in accordance with 310 CMR 80.57; and

(f) Maintain financial responsibility in accordance with 310 CMR 80.16-80.27.

(5) Within thirty (30) days before returning the UST system to service, the Owner or Operator shall have the tank and piping tightness tested, at the Owner's or Operator's expense, and shall ensure that the UST system components are calibrated and operating in accordance with the manufacturer's specifications.

(6) Owners or Operators shall demonstrate compliance with the requirements of temporarily out-of-service by maintaining records/documentation in accordance with 310 CMR 80.48(6)(d).

80.52. Requirements for Removal and Permanent Closure In-Place

(1) Owners and Operators shall comply with all requirements in 310 CMR 80.52.

(2) Requirements for Removal of an UST System

(a) Prior to removal of an UST system, the Owner or Operator shall have all the solid and liquid material removed from the UST system, in accordance with 310 CMR 80.56, have the UST system rendered inert and shall secure all openings.

1. The Owner or Operator shall manage all solid and liquid material removed from the UST system in accordance with federal, state and local laws and regulations.

(b) The Owner or Operator shall conduct a limited site investigation in accordance with 310 CMR 80.52(4) within twenty-four (24) hours after the UST system is removed, but prior to backfill of the excavation area.

Deleted: .

(c) The Owner shall notify the Department, on a form specified by the Department, that the UST system was removed, within thirty (30) days of removal in accordance with 310 CMR 80.48(2)(d).

(3) Requirements for Permanent Closure-In-Place

(a) No Owner or Operator shall permanently close an UST system in-place unless it is located under a building and cannot be removed from the ground without first removing the building, or is so located that it cannot be removed from the ground without endangering the structural integrity of another UST system, structure, underground piping or underground utilities.

1. Such a determination shall be made by a registered professional civil or structural engineer, and shall be submitted to the Department with supporting documentation. The determination shall include, at a minimum, sketches, photos and a detailed, written description of why the UST system should be closed-in-place instead of removed.

2. If the Department determines that the submittal does not provide adequate documentation or if it determines that the UST system must be permanently removed in accordance with 310 CMR 80.51(2), it shall inform the Owner within seven days, days of receiving the submittal. MassDEP needs to act with the "speed of business", forty-five days is unconscionable. Given all the safeguards in place, and the preparation by an independent engineer, it should make the review of the submittal routine, despite how infrequent they will be submitted.

3. The Owner or Operator shall have all solid and liquid material removed from the tank, in accordance with 310 CMR 80.56 and shall have the tank filled with clean sand, concrete slurry mix or an inert material if such a material is approved by the Department in writing prior to filling the tank.

a. The Owner or Operator shall manage the solid and liquid material removed from the tank in accordance with federal, state and local laws and regulations.

(b) Before permanent closure-in-place is complete, the Owner or Operator shall conduct a limited site investigation in accordance with 310 CMR 80.52(4).

(c) The Owner shall notify the Department, on a form provided by the Department that the UST system was closed-in-place, within thirty (30) days of the UST system being filled in accordance with 310 CMR 80.48(3)(g). A copy of the limited site investigation in 310 CMR 80.80.52(4) shall be submitted with said form.

(4) Closure Assessment

Deleted: wires

Deleted: forty-five (45)

Deleted: -

Deleted: Limited Site Investigation

(a) At the time of closure the Owner or Operator shall measure for the presence of a regulated substances where contamination is most likely to be present in the subsurface. MassDEP has a current policy for UST closure assessment – does this supersede that policy? Should it be referenced? MassDEP appears to be significantly expanding this current requirement.

Deleted: For limited site investigations conducted in accordance with 310 CMR 80.50 and 80.54,

Deleted: release of

1. In selecting sample types, sample locations, field screening techniques and analytical methods, the Owner or Operator shall consider the nature of the stored regulated substance, the type of backfill, the depth to ground water, the likely human and environmental receptors and other factors appropriate for identifying the presence of a release. In all limited site investigations, a photo ionization detector (PID) or flame ionization detector (FID) shall be employed in the field to detect for the presence of a release.

2. If the Owner or Operator obtains knowledge of a release, the Owner or Operator shall comply with 310 CMR 40.0000.

Sub-section 80.52(5) is missing, or a citation numbering error has occurred.

(6) The Department may require permanent closure of an UST system at any time that it determines the UST system poses a threat to public health, safety or the environment. MassDEP needs to specify the specific statutory authority for this requirement.

(7) Owners and Operators shall demonstrate compliance with the requirement for permanent closure maintaining records/documentation in accordance with 310 CMR 80.48(6)(e).

80.53. Requirements for Out-of-Use UST Systems

If an UST system is out-of-use, the Owner shall permanently close it in accordance with 310 CMR 80.52 unless the UST system is brought back into service under 310 CMR 80.54.

80.54. Requirements for Bringing Out-Of-Use UST Systems Back Into Service

(1) A new Owner that acquires an UST system that becomes an out-of-use UST system after it is acquired What if it were out of use before acquisition which is more likely to be the case? IOMA requests that the regulations anticipate this scenario as well in the regulations. may bring the out-of-use UST system back into service within ninety (90) days after the acquisition is final, if the UST system complies with the most recent standards in 310 CMR 80.00 and the Owner:

- (a) Tests all the UST system components for operability, including, but not limited to a tightness test in accordance with 310 CMR 80.44;
- (b) Performs a third-party inspection in accordance with 310 CMR 80.57(6);
- (c) Performs any repairs identified during the third-party inspection and testing;
- (d) Performs UST system re-tests, if necessary, once the repairs have been completed; and

First of all, why is a site investigation required if the tank passes tightness test? Moreover, this requirement is tantamount to DEP establishing a requirement to test a property for contamination at the time of a real estate transfer. The MCP approach has worked well for the past 25 years without this requirement. To establish such a precedent setting approach in these rules is terribly mis-placed. IOMA does not support this requirement in any form. The requirement is also redundant with numerous safeguards that are used in the marketplace, such those required by financial institutions and other due diligence requirements.

Deleted: (e) - Conducts a limited site investigation in accordance with 310 CMR 80.52(4).

- (2) After the Owner has completed the requirements in accordance with 310 CMR 80.54(1), the Owner shall notify the Department that the UST system meets the requirements of this section when the Owner registers the UST system in accordance with 310 CMR 80.48(1).

80.55. Requirements for Previously Closed-In-Place UST Systems

If, at the sole discretion of the Department the Department determines that a tank or UST system permanently closed-in-place before December 22, 1988, may pose a current or potential threat to human health and the environment, the Owner or Operator of such a tank or UST system shall upon notice from the Department conduct a limited site investigation in accordance with 310 CMR 80.52(4).

80.56. Standards for Cleaning and Closure

- (1) The following cleaning and closure procedures shall be used to comply with 310 CMR 80.50(4), 80.51(4)(a) and 80.52(2)(a) and 80.52(3)(b):

- (a) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";
- (b) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";
- (c) American Petroleum Institute Recommended Practice 1631,

“Interior Lining of Underground Storage Tanks,”; and

(d) The National Institute for Occupational Safety and Health “Criteria for a Recommended Standard * * * Working in Confined Space” may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

(e) USEPA standards for RCRA hazardous debris found at 40 CFR 268.45.

80.57 Third-Party Inspections IOMA requests that MassDEP clarify the certification status of existing TPI’s and the steps, if any, they need to undertake under these new rules.

(1) The third-party inspection program operates on a three (3) year cycle that began on August 8, 2007. Every Owner and Operator was required to have **every UST**

Formatted: Font:Bold

system inspected by a third-party inspector by August 8, 2010 and shall have every UST system inspected by a third-party inspector every three (3) years thereafter. [Does this include underground heating oil or waste oil tanks regardless of size or usage? Please clarify applicability of this requirement.](#)

(2) The Owner and Operator shall have all UST systems at each UST facility inspected by a third-party inspector and submit the third-party inspection report to the Department on or before the UST facility compliance date established in 310 CMR 80.57(2)(a) through (d).

(a) The date the third-party inspection was performed between August 8, 2007 and August 8, 2010 establishes the UST facility compliance date for the time period between August 8, 2010 and August 8, 2013.

(b) The Department will assign each UST facility an UST facility compliance date between August 8, 2013 and August 8, 2016 and that will be the permanent UST facility compliance date for all future third-party inspections, unless an early submittal date changes the UST facility compliance date in accordance with 310 CMR 80.57(2)(b)4.

1. The Owner or Operator shall submit a truthful, accurate and complete third-party inspection report that contains all the information required in 310 CMR 80.57(6) on or before the UST facility compliance date.

2. The Owner or Operator shall submit the third-party inspection report to the Department no later than sixty (60) days after the commencement of the third-party inspection in accordance with 310 CMR 80.57(6)(b)1., 2., or 3.

3. A late submittal shall not alter the UST facility compliance date for future third-party submittals, unless the Department changes the UST facility compliance date in accordance with 310 CMR 80.57(2)(d).

4. An early submittal shall establish the new UST facility compliance date for future submittals, unless the Department changes the UST facility compliance date in accordance with 310 CMR 80.57(2)(d).

(c) If a third-party inspection was required, but not conducted between August 8, 2007 and August 8, 2010, the UST facility compliance date for completion and submittal of the third-party inspection report due between August 8, 2010 and August 8, 2013 shall be August 8, 2013. This shall not relieve the Owner and Operator from the requirement to conduct an initial third-party inspection pursuant to 310 CMR 80.57(2)(a).

(d) If an Owner registers a new UST facility after [the effective date of 310 CMR 80.57], the Department will assign the UST facility an UST facility compliance date.

1. A new or replacement UST system or tank at an existing UST facility shall not alter the UST facility compliance date.

(e) The Department may change the UST facility compliance date for any UST facility provided the Department gives the Owner and Operator ninety (90) days prior written notice. The Department's decision to change the UST facility compliance date shall not be subject to M.G.L. c. 30A, or any other law governing adjudicatory proceedings.

(3) Eligibility and Certification Requirements for a Third-Party Inspector

(a) An individual that meets the requirements of 310 CMR 80.57(3)(b)-(d) shall submit to the Department an application on a form specified by the Department, and accompanying documentation, to demonstrate the individual's eligibility to be a certified third-party inspector.

1. If the Department determines the individual meets the eligibility requirements in 310 CMR 80.57(3)(b)-(d), the individual shall be issued a third-party inspection number and shall be certified as a third-party inspector.

a. All certifications shall be for a fixed term of five (5) years, unless suspended or revoked.

b. In order to renew a certification, the third-party inspector shall re-apply at least ninety (90) days before the certification expires in accordance with 310 CMR 80.57(3)(a).

i. To renew a certification, the third-party inspector shall demonstrate s/he complied with the requirements at 310 CMR 80.57(3)(e).

ii. Any certification which is scheduled to expire shall be automatically extended if the third-party inspector files an application for a new certification at least ninety (90) days before the scheduled expiration date. This automatic extension shall remain in effect until:

A. The Department issues a new certification to the third-party inspector and all opportunities for adjudicatory hearing in accordance with M.G.L. c. 30A, Section 13, before the Department have been exhausted, in which case the new certification shall supersede the extended certification; or

B. The Department denies the application for a new certification and all opportunities for adjudicatory hearing in accordance with M.G.L. c. 30A, Section 13, before the Department have been exhausted, in which case the extended certification shall be deemed expired; or

C. The Department suspends or revokes the extended certification and all opportunities for adjudicatory hearing, if any, in accordance with M.G.L. c. 30A, Section 13, before the Department have been exhausted.

2. If the Department determines the individual does not meet the certification requirements in 310 CMR 80.57(3)(b)-(d), and (e) if applicable, the individual’s application shall be denied in writing.

a. Upon receiving a denial from the Department, the individual may submit a letter to the Department requesting that the Department reconsider its decision. Said letter shall be delivered or postmarked to the Department within thirty (30) days of the date of the denial letter from the Department.

b. The Department may request a meeting with the individual and shall respond to the individual in writing within thirty (30) days of receiving the request.

c. If, upon reconsideration, the Department determines the individual does not meet the certification requirements, it shall notify the individual in writing and the individual may file an administrative appeal of the Department’s decision in accordance with 310 CMR 80.61.

d. An individual may only file such a request for adjudicatory hearing in accordance with 310 CMR 80.61 if the individual timely requests reconsideration of the denial in accordance with 310 CMR 80.57(3)(a)2.a. and is denied after reconsideration.

3. Upon receipt of a third-party inspection number from the Department, the third-party inspector is certified and may conduct third-party inspections provided the third-party inspector meets the performance standards in accordance with 310 CMR 80.57(4).

(b) In order to be certified as a third-party inspector, an eligible individual shall take and pass a third-party inspection examination.

1. The examination shall test eligible individuals on their knowledge of 310 CMR 80.00.

2. The examination may have a field component.

(c) In order to be eligible to take the third-party inspector examination, an individual shall:

1. Meet one of the following pre-qualification requirements:

a.



3/29/12 7:54 AM

Comment [40]: STAKEHOLDERS: We have received comments on this section based on the Vision Statement distributed by MassDEP. If you have alternative suggestions for eligibility for individuals to take the exam please provide them to DEP, if you have not already done so.

Deleted: Hold at least an associate’s degree in science or engineering; or - ... [16]

e. Possess at least five (5) years of experience in the field of underground storage tank construction, operation and maintenance as demonstrated through a resume or other information satisfactory to the Department;
and

2. Meet one of the following additional criteria:

a. Demonstrate knowledge of how to conduct third-party inspections through hands-on, practical experience under the supervision of a certified third-party inspector, by participating in at least ten (10) inspections with that inspector within the past three (3) years; or

b. Hold a third-party inspector certification from another state, and have performed a minimum of ten (10) third-party inspections in that state within the past three (3) years.

(d) A third-party inspector who is registered with the Department under 527 CMR 9.00 as of [effective date of 310 CMR 80.57] may take the examination in accordance with 310 CMR 80.57(3)(b) without meeting the requirements of 310 CMR 80.57(3)(c), provided the third-party inspector has conducted at least ten (10) third-party inspections since August 8, 2007, and provided that the third-party inspector takes the examination within two (2) years from the date the examination first becomes available.

(e) In order to maintain certification, the third-party inspector shall complete annual training provided by the Department.

(f) Third-party inspectors shall maintain records demonstrating their compliance with 310 CMR 80.57(3)(b)-(e), in hard copy or electronically. Upon request from the Department, the third-party inspector shall make the documentation available to the Department as soon as possible, but in no event more than seven (7) business days after the request.

(4) Performance Standards

(a) A third-party inspector shall have the continuing duty to meet the following performance standards:

1. Be a certified third-party inspector before conducting any third-party inspections.

2. Not transfer or assign the certification to any other individual.

3. Personally conduct and complete third-party inspections they sign and certify.

- 4. Conduct and complete third-party inspections in accordance with 310 CMR 80.57(6)(a).
- 5. Provide an accurate and complete third-party inspection report.
- 6. Not make any false, inaccurate or misleading statements in the third-party inspection report.
- 7. Provide any information regarding third-party inspections to the Department upon request, as soon as possible, but in no event more than seven (7) business days following the request.

8. If a third-party inspector identifies site condition(s) at an UST system that trigger, a mandatory delivery prohibition order, in accordance with 310 CMR 80.60(1), the third-party inspector shall:

a. Immediately advise the Owner or Operator of the observed conditions and potential for violations described at 80.60(1) and the Owner or Operator's obligation to notify the Department in accordance with 310 CMR 80.60(2); and

b. If the Owner and Operator fails to Notify the Department within twenty-four (24) hours after informing the Owner or Operator of its obligations and responsibilities, the TPI shall notify the Department of suspect UST site conditions within 2 hours of obtaining knowledge that the Owner or Operator failed to notify the Department.

(5) Prohibitions. At the time of a third-party inspection, a third-party inspector shall not be:

- (a) An Owner or Operator of the UST system the third-party inspector is inspecting;
- (b) The spouse, parent, child, brother or and sister by blood, marriage or adoption of an Owner or Operator of the UST system the third-party inspector is inspecting;
- (c) An employee or contractor, other than a contractor that is the third-party inspector, of the Owner or Operator of the UST system the third-party inspector is inspecting; This should be modified to remove the contractor part (leave employee). The number of available TPIs will go down if this goes through. At a minimum, firms that provide testing only services to the industry should be allowed.

Deleted: a

Deleted: violation of

Deleted: requires

Deleted: and red tag

Deleted: of the violation

Deleted: of the violation no later than

3/29/12 7:54 AM

Comment [41]: DEP originally proposed that the TPI report to DEP. Stakeholders asked that the O/O have an opportunity to report first. DEP is open to either language.

(d) The designated Class A, B or C operator of the UST system the third-party inspector is inspecting; or If the Class A/B operator is a third party contractor, Why is it that the A/B cannot be the same as the TPI. This would be much more cost effective rather than having the same company go out to a station twice.

(e) A person or employee of a person having any financial interest in or daily on-site responsibility of the UST system the third-party inspector is inspecting.

(6) Inspection Requirements

(a) A third-party inspector shall conduct a third-party inspection in accordance with 310 CMR 80.57(6)(a) through observation during the inspection and a review of the records compiled and maintained since the most recent third-party inspection, and shall determine, at a minimum, the following for each registered UST system: Does this include heating oil and Waste oil? Perhaps it should read each registered UST system.

1. Whether the Owner or Operator submitted required documentation to the Department in accordance with 310 CMR 80.48(1)-(4), inclusive.

2. Whether leak detection has been installed, tested and maintained and is fully operational in accordance with 310 CMR 80.31(4), 80.32 and 80.38 and the manufacturer's specifications.

3. Whether corrosion protection, if applicable, has been installed, tested and maintained, and is fully operational in accordance with 310 CMR 80.34, 80.40 and the manufacturer's specifications.

4. Whether sumps have been installed, tested and maintained in accordance with 310 CMR 80.33, 80.39 and the manufacturer's specifications. What if there are no sumps?

5. Whether spill buckets have been installed, tested and maintained in accordance with 310 CMR 80.35(1), 80.41(1) and (2) and the manufacturer's specifications.

6. Whether overfill protection has been installed, tested and maintained, and is fully operational in accordance with 310 CMR 80.35(2), 80.40(1) and (3) and the manufacturer's specifications.

7. Whether daily inventory, if applicable, has been performed and recorded in accordance with 310 CMR 80.42.

8. Whether routine inspections have been conducted and recorded in accordance with 310 CMR 80.45.

Formatted: Font:Bold

9. Whether compliance certification forms have been completed and submitted to the Department in accordance with 310 CMR 80.49.

10. Whether repairs and replacements have been conducted in accordance with 310 CMR 80.47.

11. Whether the emergency response postings and written procedures are in compliance in accordance with 310 CMR 80.37.

12. Whether alarms have been responded to and the response documented in accordance with 310 CMR 80.36(3).

13. Whether visual and/or olfactory observations indicate the presence of a release or a threat of release related to the UST system.

14. Whether financial responsibility is current and documented in accordance with 310 CMR 80.16-27.

15. Whether UST systems that are temporarily out-of-service are being serviced and documented in accordance with 310 CMR 80.51.

16. Whether UST systems that were permanently closed were properly documented in accordance with 310 CMR 80.52.

17. Whether documentation for Class A, B and C operator(s) is current and documented in accordance with 310 CMR 80.02.

18. Whether required records are kept in accordance with 310 CMR 80.48(5), (6) and (7).

(b) A third-party inspector shall record the results of a third-party inspection on a third-party inspection report specified by the Department, shall sign and date such report in accordance with the certification at 310 CMR 80.57(6)(c), and shall provide the report to the Owner or Operator.

1. If the third-party inspection report does not identify any deficiencies, the Owner or Operator shall sign and date the report in accordance with the certification at 310 CMR 80.57(6)(d), and shall submit the third-party inspection report to the Department on or before the UST facility compliance date in accordance with 310 CMR 80.57(6)(e).

2. If the third-party inspection report identifies deficiencies, the Owner or Operator shall correct any deficiencies noted in the report, in accordance with 310 CMR 80.00, sign and date such report in accordance with the certification at 310 CMR 80.57(6)(d), and submit the report on or before the UST facility compliance date.

a. Before the third-party inspection report is submitted, the Owner or Operator shall have a third-party inspector determine whether each deficiency is corrected.

b. A third-party inspector shall re-inspect to determine whether the deficiencies noted on the third-party inspection report have been corrected and shall record their findings on the third-party inspection report. [The need for re-inspection should be limited to items that required actual repair – paperwork issues should not necessitate a return visit to the site.](#)

c. A third-party inspector shall, on the section of the third-party inspection report documenting the re-inspection, sign and date the report in accordance with the certification at 310 CMR 80.57(6)(c), and provide the third-party inspection report to the Owner or Operator.

d. The Owner or Operator shall sign and date the third-party inspection report in accordance with the certification at 310 CMR 80.57(6)(d), and submit the third-party inspection report to the Department on or before the UST facility compliance date in accordance with 310 CMR 80.57(6)(e).

3. In the event that the Owner or Operator is unable to correct the deficiencies by the UST facility compliance date, the Owner or Operator shall sign and date the report in accordance with the certification at 310 CMR 80.57(6)(d) and submit the third-party inspection report with a return to compliance plan, on a form specified by the Department, to the Department on or before the UST facility compliance date in accordance with 310 CMR 80.57(6)(e).

a. The return to compliance plan shall:

i. Identify each deficiency that was not corrected;

ii. Detail what the Owner and Operator will do to return to compliance with each identified deficiency; and

iii. Include the following statement: "I, [name of Owner and/or Operator], attest under the penalties of law: 1. that I have personally examined and am familiar with the information contained in this return to compliance plan, including any and all documents accompanying this certification statement; 2. that, based on my inquiry of those individuals responsible for obtaining the information, the information contained in this submittal is to the best of my knowledge, true, accurate, and complete; and 3. that I am fully authorized to make this attestation on behalf of this UST system or facility. I am aware that there are significant penalties, including, but not limited to possible fines and imprisonment, for submitting false, inaccurate, or incomplete information."

b. The deficiencies identified in the return to compliance plan shall be corrected within thirty (30) days of the submittal of the third-party inspection report or the UST facility compliance date, whichever is earlier, unless the return to compliance plan documents a reasonable basis for why more time is needed to complete the repairs and provides an anticipated completion date.

c. The Department may notify an Owner or Operator that deficiencies shall be completed earlier than the proposed date if the Department determines that the proposed completion date is not reasonable.

(c) A third-party inspector who performed a third-party inspection shall sign and date the third-party inspection report with the inspection with the following certification:

"I attest under the penalties of law: (i) that I am a certified third-party inspector in compliance with 310 CMR 80.57(3); (ii) that I personally performed this inspection of the UST facility in accordance with the 310 CMR 80.57(6), and having fully completed this report, believe the contents of this report and all attachments to be true and accurate as of the time of the inspection; and (iii) that all the information provided to me by the Owner and Operator necessary to complete this report is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties including, but not limited to, possible fines and imprisonment for submitting false, inaccurate, or incomplete information."

(d) The Owner or Operator shall sign, date and submit a third-party inspection report to the Department with the following certification:

"I attest under the penalties of law: (i) that I am the Owner and/or Operator of this UST facility; (ii) that I have personally read this inspection report and understand the contents, including all attachments, deficiencies and recommendations; (iii) that all the information provided by me to the third-party inspector is, to the best of my knowledge, true, accurate, and complete. (iv) that I have not altered, added or deleted any information in this inspection report; and (v) that I am fully authorized to make this attestation on behalf of this facility. I am aware that there are significant penalties including, but not limited to, possible fines and imprisonment for submitting false, inaccurate, or incomplete information."

(e) The Owner or Operator shall ensure that the third-party inspection report is postmarked or submitted electronically by the UST facility compliance date set forth in 310 CMR 80.57(2).

(f) The Owner and Operator shall not alter, add or delete any information in the third-party inspection report.

(7) Nothing contained in 310 CMR 80.57 shall be construed or interpreted to limit the authority of the Department to conduct inspections of UST systems or facilities or to take any other enforcement or other actions with respect to such systems and facilities as is authorized by 310 CMR 80.00 or by any other statute, regulation or other legal authority.

(8) Without limitation, if the Department determines that a third-party inspector has not complied with any provision of 310 CMR 80.57, the Department may require that the third-party inspector re-take the examination in accordance with 310 CMR 80.57(3)(d).

(9) In addition to taking enforcement against a third-party inspector in accordance with 310 CMR 80.61, the Department may deny, suspend or revoke the application or certification of any individual or third-party inspector if the Department determines that the individual or third party inspector has not complied with any provision of 310 CMR 80.57. Such action by the Department shall be subject to opportunity for an adjudicatory hearing pursuant to 310 CMR 80.61.

(a) In an adjudicatory hearing held pursuant to 310 CMR 80.61, the only issue to be adjudicated is whether the Department's decision to deny, suspend or revoke the application or certification of an individual or third party inspector was reasonable in light of the particular facts and circumstances available to the Department at the time of its decision.

(10) Any individual whose application is denied or any third-party inspector whose certification is revoked shall be barred from re-applying as a third-party inspector for up to two (2) years.

RELEASE/THREAT OF RELEASE RESPONSE, REPORTING AND REMEDIATION

80.58 Response to a Release or Threat of Release

In the event of a leak, release or threat of release, the Owner or Operator shall comply with 310 CMR 40.0000.

80.59 Release Reporting

(1) In the event of a leak, Now leaks do not necessarily mean a release to the environment. This section needs to anticipate handling of both situations, one where a leak occurs and one where a release occurs and 21E notification and response actions are required. This section also needs to address immediate re-testing of a UST system or component to confirm that a leak or release has, or, is occurring. whether determined by testing or otherwise, in addition to complying with 310 CMR 40.0000, the following steps shall be taken:

(a) If testing has confirmed that the source of the leak is the piping, the Owner or Operator shall immediately **isolate** the section of the pipe determined to be leaking, take that UST system temporarily out-of-service or permanently out-of-service. Need to clarify the term “isolate”. How do you isolate an underground pipe? Suggest examples of potential responses. Also “out of service” requires emptying “or rendering inert” the tank. If you have a product line leak, you don’t empty the tanks to fix it. Clarification along these lines is needed.

(b) If testing has confirmed that the source of the leak is a particular tank, the Owner or Operator shall within twenty-four (24) hours cause that tank to be emptied of all its product and taken temporarily or permanently out-of-service.

Redundant information

Formatted: Font:Bold

Deleted: (2) . For each reportable release pursuant to 310 CMR 40.0000, the Owner or Operator shall provide the following information to the Department in accordance with 310 CMR 80.48(3)(c), on a form provided by the Department: [17]

DELIVERY PROHIBITION

80.60 Delivery Prohibition

The following comments were sent to MassDEP in October of 2011 on their July 2011 draft. IOMA feels compelled to present them again due to their continuing relevance.

GENERAL IOMA COMMENTS

- 1) IOMA suggests that a separate provision be referenced that defines the procedures for “providing reasonable written notice” as it is used in this section, or establish one consistent standard for the entire regulations.
- 2) IOMA recommends that the regulations specify that an “opportunity to cure” exists for allegations of non-compliance prior to being assessed an NON or other related enforcement action. IOMA envisions that this opportunity to cure is not limited solely to producing record-keeping documentation, but also applies to curing operation or maintenance related compliance issues as well.
- 3) The red tagging and lock out provisions are attention grabbers for owners and operators. Care must be given on how this enforcement approach will be used. IOMA believes that the absence of important spill and leak prevention and detection devices and equipment should be targets for delivery prohibitions. However, IOMA is deeply concerned over the application of delivery prohibition provisions for operation and maintenance related compliance issues. Many compliance issues related to maintenance and operation issues are fairly common such as those related to storm water or groundwater intrusion and from our perspective shouldn’t ever result in enforcement of a delivery prohibition. IOMA is concerned that chronic water intrusion issues will ultimately become targets for threats of or imposition of a delivery prohibition to leverage significant capital expenditures to cure a perceived problem whose scope, gravity, and import for meaningful environmental protection are un-quantified and unknown. A “no risk” approach by MassDEP is not something the industry can afford. IOMA wants to see reasonable limits and transparency incorporated into the procedures for the use of and rescission of delivery prohibitions.
- 4) Once a delivery prohibition is implemented, and after all the concerns are remedied, MassDEP must move at the “speed of business” to remove the red tag and lock, so that the facility may begin accepting deliveries and re-open for business as soon as possible. Exhaustive internal review procedures as described during the meeting will only serve to delay a facilities return to business. IOMA suggests that it allow a Third Party Inspector (TPI) to certify they have returned to compliance as opposed to waiting for a MassDEP inspector to conduct a follow-up inspection and return to the site. Owner and Operators should be able to certify that repairs have been made

3/29/12 8:03 AM

Comment [42]: In its discussion with DFS, the Department will ask whether they are going to continue their red tag program; and after the regulations are promulgated, the Department will issue a guidance document on the delivery prohibition process.

and begin accepting deliveries. Such an approach, if adopted, would be similar to that used by Rhode Island Department of Environmental Management.

5) IOMA recommends that a list-serve email alert system be sent notifying delivery companies of red-tagged stations. Signing-up to be on the list-serve list would be voluntary and would be of great interest to the regional trucking and delivery companies so that they have a way of confirming in advance that a station placing an order or accepting a planned delivery is not “red-tagged”. IOMA maintains that a delivery truck on route to or arriving at a station is notice far too late, and will cause significant economic hardship for the distribution company, who will now have to find another station needing a delivery. These trucks cannot return the undelivered product back to the terminal. MassDEP must develop a real-time method to immediately notify transporters and truckers of stations under a delivery prohibition, as well as notice of those stations whose prohibition has been lifted.

MassDEP has made it clear that deliveries are prohibited, however, a station may continue to dispense fuel from a tank subject to the prohibition. IOMA also suggests that MassDEP clarify in the regulations that a delivery prohibition only applies to a UST and not the entire station, nor to USTs that are in compliance and co-located at the same facility..

(1) The Department shall issue a delivery prohibition order to an Owner or Operator of an UST system after written notice to the Owner or Operator for one or more of the following reasons:

(a) Failure to install spill prevention equipment in accordance with 310 CMR 80.35(1);

(b) Failure to install overfill protection equipment in accordance with 310 CMR 80.35(2);

(c) Failure to install leak detection equipment in accordance with 310 CMR 80.31 and 80.32; or

(d) Failure to install corrosion protection equipment in accordance with 310 CMR 80.34.

(2) This doesn’t make any sense. Subsection (1) above says that the Department will issue a delivery prohibition, but in section (2) says we have to inform the department of any violation in subsection (1) above within 24 hours, otherwise it will be another violation. This requirement should be struck as it is merely piling it on, and doesn’t serve any practical purpose.

Previous IOMA Comment sent to MassDEP on their July 28th Comment Draft: IOMA does not support regulatory provisions that only appear to be “piling-it-on” by imposing a 24-hour self-reporting notification requirement for any of these violations. IOMA believes additional program experience by MassDEP is needed before such a requirement should even be contemplated. For example, IOMA members have recently encountered MassDEP enforcement actions alleging that corrosion protection was not

Deleted: Upon learning of any of the conditions in 310 CMR 80.60(1), the Owner or Operator shall immediately, but in no event more than twenty-four (24) hours after learning of the violation, inform the Department of the violation.

Deleted: .

Formatted: Superscript

installed on metallic parts of a facility, specifically UST manhole covers and Submersible Turbine Pumps (STP), which never receive corrosion protection and were alleged not in place. For example, the manhole covers are not contiguous to the UST system and do not contain or transport regulated substances, while STP's are electric-mechanical pumps placed inside the UST to feed product to the dispensers. STP' and manhole covers are not ever cathodically protected. Under this proposed rule, the facility would also have failed to report these alleged violations within 24 hours. IOMA is concerned with the proper application and consistent enforcement of these requirements. IOMA also believes that this self-reporting notice requirement is inconsistent with DEP's enforcement response guidance related to self-reporting. IOMA questions whether this requirement will chill and not encourage parties to self-report. IOMA wants to better understand the Department's rationale for this provision and respectfully requests MassDEP reconsider the necessity of having this provision at all.

(3) The Department may issue a delivery prohibition order to an Owner or Operator of an UST system after written notice to the Owner or Operator for one or more of the following reasons:

(a) Failure to properly operate or maintain leak detection equipment in accordance with 310 CMR 80.38;

(b) Failure to properly operate or maintain spill prevention in accordance with 310 CMR 80.41(1) and (2);

(c) Failure to operate or maintain overfill protection in accordance with 310 CMR 80.41(1) and (3);

(d) Failure to operate or maintain corrosion protection equipment in accordance with 310 CMR 80.40;

(e) Failure to demonstrate or maintain financial responsibility in accordance with 310 CMR 80.16-80.27; or

▼ This is purposefully vague and establishes far too broad authority to allow essentially any infraction to be eligible for a delivery prohibition order. IOMA appreciates the agencies desire for a catch-all, however a meaningful attempt to attach book-ends to this limitless authority is necessary. ▼

(4) After written notice to the Owner or Operator the delivery prohibition shall become immediately effective when the Department serves a written delivery prohibition order in accordance with 310 CMR 80.61(3) prohibiting the delivery of product to the UST system(s). The delivery prohibition order shall be issued no sooner than twenty-four (24) hours after written notice to the Owner or Operator.

(5) After the delivery prohibition order is served, the Department shall have the authority to lock the fill pipe and affix a red tag to the fill pipe of the UST system(s) that are subject to said order.

Formatted: Indent: First line: 0.5"

Deleted: Any other violation of 310 CMR 80.00 that poses a threat to public health, safety or the environment, as determined by the Department in its sole discretion.

Deleted: -

(6) No person shall deliver or cause product to be delivered or accept, or cause to be accepted delivery of product to an UST system that is subject to a delivery prohibition order that has been served and has a red tag affixed to the fill pipe.

(7) No person shall remove, deface, alter or otherwise tamper with the lock or red tag affixed to an UST system.

(8) The Department, after notification by the Owner or Operator that the repairs have been made, shall make best efforts, no later than 48 hours after receipt of such notification, to confirm that the violation(s) have been corrected. Speed of business!

(b) If the Department determines that the violation(s) have been corrected the Department shall rescind the delivery prohibition order orally and in writing and authorize the immediate removal of the lock and red tag from the UST system. IOMA request now for the 2nd time that MassDEP move at the speed of business to get a red tagged station back into business. The proposed approach is overly bureaucratic. An oral notice by the Department is all that is needed. An Ow/Op does not need to wait for DEP to issue a letter, which could take weeks..

(9) Notwithstanding a delivery prohibition order, the Department may authorize the delivery of product to an ineligible UST system in emergency situations, as determined by the Department in its sole discretion.

(10) Any person subject to a delivery prohibition order shall have the right to an adjudicatory appeal in accordance with 310 CMR 80.61. An adjudicatory appeal will not stay a delivery prohibition order.

Deleted: five (5) business days

Deleted: (a) . If the Department does not confirm the violation(s) have been corrected within five (5) business days, it shall do so as soon as possible... [18]

Deleted: e

ENFORCEMENT AND APPEALS

80.61. Enforcement and Appeals

(1) General. Any failure to comply with M.G.L. c. 210, 310 CMR 80.00, or the terms and conditions of any order, permit, authorization, determination, certification, prohibition or approval issued under 310 CMR 80.00 shall constitute a violation of M.G.L. c. 210 and 310 CMR 80.00. Nothing in 310 CMR 80.00, or in any order issued

pursuant thereto, shall be construed to limit any right of the Department to take enforcement action pursuant to any other authority.

(2) Action by the Department. Whenever the Department has cause to believe that a violation has occurred, it may:

(a) Order the Owner and Operator of the UST system or facility, or any other person responsible for the violation, to cease immediately or at a specified date, all illegal activity and to comply with the provisions of M.G.L. c. 21O, 310 CMR 80.00, or any permit, authorization, determination, registration, or approval issued thereunder. Any person who or which is the subject of said order has the right to request an adjudicatory hearing in accordance with the terms of 310 CMR 80.61(5);

(b) Issue an order to the Owner and Operator of the UST system or facility, in accordance with 310 CMR 80.60. Any person who or which is the subject of said order has the right to request an adjudicatory hearing in accordance with the terms of 310 CMR 80.61(5);

(c) Issue a notice of noncompliance pursuant to M.G.L. c. 21A, § 16 and 310 CMR 5.00, which is not subject to the right to request an adjudicatory hearing in accordance with the terms of 310 CMR 5.00;

(d) Issue a penalty assessment notice pursuant to M.G.L. c. 21A, § 16 and 310 CMR 5.00, which is subject to the right to request an adjudicatory hearing in accordance with the terms of 310 CMR 5.00; or

IOMA recommends that DEP first determine whether this “catch-all” statement is necessary, and if so, DEP needs to indicate, consistent with the other sections, whether such DEP action under this provision is subject to the right to request an adjudicatory hearing. Otherwise IOMA recommends that this provision be struck. IOMA previously made this comment to the agency.

Deleted: (e) . Take such other action provided by 310 CMR 80.00 or other applicable statutory or regulatory authority as the Department deems appropriate.

(3) Service of Administrative Orders. Service of an order issued in accordance with M.G.L. c. 21O or 310 CMR 80.00 by the Department shall be according to one of the following procedures except for processes, notices, and orders issued in the course of an adjudicatory hearing which are governed by the provisions of 310 CMR 1.00:

(a) Service of an order is complete when it is delivered in-hand by an employee or agent of the Department to the person to be served or to any officer, or agent of that person. The fact and date of service is established by the return receipt or affidavit of the person making service.

Deleted: employee

(b) Service of an order when made by any form of mail requiring the return of a receipt signed by the person to be served is complete upon delivery to the person or to any officer, or agent of that person. The fact and date of service is established by the returned receipt. As discussed during stakeholder meetings and as

Deleted: employee,

submitted in IOMA's prior written comments, IOMA believed that we had an understanding with MassDEP concerning not having any employee of a company as an eligible person to receive notice of an order. MassDEP needs to explain its change of position and rationale.

(c) The Department may make service of an order in any other manner, including any form of electronic mail, facsimile or other electronic communications, national overnight carrier, regular mail to the last known address, publication in a newspaper of general circulation, or other method of notification that is reasonably calculated to give actual notice of the order to the person to be served. The Department may use such alternative or substitute methods of service when the person to be served has declined to accept receipt by the other methods of service specified in 80.61(2)(a) and (b). The fact of service in such cases is established by such records as may be available. The date of service shall be the date on which the Department initiates electronic transmission, the date of publication, one day after the date of overnight mailing or three days after the date of regular mailing.

(4) Service of Other Enforcement Documents. Service of Notices of Noncompliance, Penalty Assessment Notices and any other enforcement document shall be in accordance with M.G.L. c. 21A, § 16 and 310 CMR 5.00.

(5) Right to Adjudicatory Hearing.

(a) The following parties shall have the right to an adjudicatory hearing:

1. A person who is the subject of an order issued pursuant to 310 CMR 80.61(2)(a) or (b) has the right to request a hearing on the terms and issuance of such order.

2. An individual whose application to be certified as a third-party inspector is denied by the Department has the right to request a hearing on such denial in accordance with 310 CMR 80.57(3)(a)2.c. and d.

3. A third-party inspector whose certification is denied, suspended or revoked by the Department has the right to request a hearing on such denial, suspension or revocation in accordance with 310 CMR 80.57(9).

Why doesn't the revocation of a Class A or B Operator's Certification afford them the right to an Adjudicatory Hearing. This is inequitable and unfair. MassDEP needs to expand this section to include this process.

(b) Any right to an adjudicatory hearing concerning assessment of a civil administrative penalty and the procedures for requesting such hearing shall be governed by the provisions of 310 CMR 5.00.

(6) Waiver of Right to Adjudicatory Hearing.

(a) Any person who has the right to an adjudicatory hearing in accordance with 310 CMR 80.61(3), except a person subject to a delivery prohibition order, shall be deemed to have waived their right to an adjudicatory hearing, unless the person delivers within twenty-one (21) days a request for an adjudicatory hearing in writing that complies with the requirements for content of filings set forth in 310 CMR 1.01(4) and that is filed in accordance with the methods and procedures set forth in 310 CMR 1.01(3)(a).

(b) Any person who is subject to a delivery prohibition order, in accordance with 310 CMR 80.60 shall be deemed to have waived their right to an adjudicatory hearing, unless the person delivers a request for an adjudicatory hearing in writing that complies with 310 CMR 1.01 and that is:

1. Postmarked within seven (7) days of the date of issuance of the Department’s action in accordance with 310 CMR 80.61(6)(d); or

2. Sent by certified mail and postmarked within seven (7) days of the date of issuance of the Department’s action in accordance with 310 CMR 80.61(6)(d); or

3. Hand delivered to the Department within seven (7) days of the date of issuance of the Department’s action in accordance with 310 CMR 80.61(6)(d).

4. Delivered within twenty-one (21) days of the date of issuance of the Department’s action in accordance with 310 CMR 80.61(6)(d), by any form of electronic mail, facsimile or other electronic communications, or national overnight carrier, or regular mail.

As provided to MassDEP previously at stakeholder meetings and in IOMA’s prior written comments, use of electronic communications is a must, in order to move at the speed of business. IOMA is not aware of any legal prohibitions on this type of communication for serving notice. In fact MassDEP frequently uses electronic cc And electronic signatures on all of its enforcement correspondence.

(c) The request for an adjudicatory hearing shall be submitted to the Department in the manner specified in the appealable document.

(d) The date of issuance of an order, denial, suspension or revocation shall be:

1. The date on which the Department hand delivers the document;

2. The date of receipt if the Department sends the document by certified mail;

Deleted: 3. .

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1.5" + Indent at: 1.75"

Deleted: -

3. Three (3) days after the Department initiates transmission of the document by other methods of notification specified in 310 CMR 80.61(3); or

4. Three (3) days after the Department publishes the document in a newspaper of general circulation.

Deleted: