



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

# Department of Environmental Protection

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## **PROPOSED UNDERGROUND STORAGE TANK REGULATIONS:**

- A. Underground Storage Tank Systems, 310 CMR 80.00 (New)**
- B. Hazardous Waste Management, 310 CMR 30.00 (Proposed Amendments)**
- C. Environmental Results Program, 310 CMR 70.00 (Proposed Amendments)**
- D. UST Operator Training, 310 CMR 80.01-80.02 (Proposed Amendments)**

**Bureau of Waste Prevention**

**February, 2014**

**A. Proposed 310 CMR 80.00**

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 80.00 UNDERGROUND STORAGE TANK SYSTEMS

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## GENERAL PROVISIONS

80.01 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. 210, §5, M.G.L. c. 21C, M.G.L. c. 21E, §6 and M.G.L. c. 21A, §16.

80.02 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 underground storage tank (UST) systems and to prevent releases from UST systems.

80.03 Definitions

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

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.

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:

- (1) Certified at least at level CP1 – Cathodic Protection Tester by NACE: The Corrosion Society; or
- (2) Certified as a Cathodic Protection Tester by the Steel Tank Institute (STI); or
- (3) Certified in the UST Cathodic Protection category by the International Code Council (ICC)

CERCLA means the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. section 9601 et seq. as may be amended from time to time.

Certified tightness tester means a person certified by the manufacturer of the testing equipment to test UST systems using only 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 is not a change-in-product.

Commissioner means Commissioner of the Department of Environmental Protection.

Commonwealth means the Commonwealth of Massachusetts.

Compatible means does not have an adverse affect.

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.

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

Corrosion Expert means a person who is accredited or certified as being qualified by NACE: The Corrosion Society 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 an impermeable, fluid-tight basin installed beneath a regulated substance dispenser to provide secondary containment and to contain leakage of regulated substance from the dispenser connections and piping.

Double-walled means a container or pipe with two complete shells which provide primary and secondary containment. The container shall have a continuous interstitial space between the primary and secondary shell.

Emergency shut-off valve means a listed, rigidly-anchored valve incorporating a fusible link or other thermally actuated device designed to close automatically in the event of a severe impact of fire exposure.

Emergency spill or overflow containment UST system means a tank used solely to contain accidental spills which are unanticipated and unpredictable.

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.

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, §1A.

Fuel Oil means any hydrocarbon oil as specified by the American Society of Testing and Materials (ASTM) Standard D396-90, Specification for Fuel Oil.

Hazardous Substances means regulated substances as defined in section 101(14) of CERCLA and 40 CFR Part 302. (This term does not include any substance regulated as a hazardous waste under Subtitle C of RCRA and 40 CFR Part 261).

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 leakage of regulated substance and fluids and prevent a release into the environment.

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

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).

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, a turbine sump, intermediate and dispenser sumps and containment areas.

Leak Detection means determining whether a release or leakage of a regulated substance has occurred from the UST system.

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 regulated substance stored in the tank.

Listed if referring to equipment or materials means a list published by a nationally recognized organization, including, but not limited to American Petroleum Institute (API), STI, Petroleum Engineering Institute (PEI), and NACE: The Corrosion Society 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.

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.

NACE means NACE International: The Corrosion Society, a globally recognized authority on corrosion control solutions.

Non-European Suction System means a piping system that conveys regulated substance under suction with a check valve in or at the top of the tank located so that the regulated substance stays in the line when the suction is released.

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 80.42, but has exceeded the five year limitation.

Owner means:

- (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.

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

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

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.

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

RCRA means the Solid Waste Disposal Act, 42 U.S.C. §6901 et seq., as revised by the Resource Conservation and Recovery Act, Pub. L. 94-580, 90 Stat. 2795 (1976) as may be further amended from time to time.

Red Tag 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.

Regulated Substance means:

- (1) Any substance defined in section 101(14) of CERCLA. Regulated substance also includes waste oil, but does not include any other substance regulated as a hazardous waste under M.G.L. c. 21C; and
- (2) Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 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.

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. If part of the piping is being replaced, “replace” or “replacement” means removal and installation of more than 50% of the piping connected to a single UST system.

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 release or leakage 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 at EPA/530/UST-90/007 or equivalent.

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, 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 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 80.42(4) and the Owner informs the Department of the temporary closure in accordance with 310 CMR 80.42(2).

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 80.49(4).

Third-Party Inspection Report means the report prepared by the Third-Party Inspector after completion of the third-party inspection in accordance with 310 CMR 80.49(2).

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

UST Facility Compliance Date means the triennial date by which an Owner or Operator shall ensure that a third-party inspection is completed and the third-party inspection report is submitted to the Department, as further defined in 310 CMR 80.49.

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 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.

#### 80.04 Applicability

- (1) The requirements of 310 CMR 80.00 shall apply to:
  - (a) Owners and Operators of UST systems, except as provided in 310 CMR 80.04(5)-(13) which identifies certain UST systems that do not have to comply with all requirements in 310 CMR 80.00;
  - (b) If the UST system has an emergency shut-off valve, the regulations apply to Owners and Operators of the UST system below the emergency shut-off valve, except as provided in 310 CMR 80.04(5)-(13);
  - (c) Class A, B and C operators;
  - (d) Third-party inspectors; and
  - (e) Any person required by 310 CMR 80.00 to certify compliance with 310 CMR 80.00.
- (2) Whenever any provision in 310 CMR 80.00 requires an action to be taken by an Owner or Operator, either may take the action, but both are responsible for ensuring that the proper action is taken, and both the Owner and Operator are jointly and severally liable.
- (3) Schedule of UST System Upgrade Requirements. Owners and Operators of the following UST systems shall comply with the Schedule of Upgrades in Table A:
  - (a) Airport hydrant fuel distribution systems;
  - (b) Pressurized piping installed before May 28, 1999; and
  - (c) UST systems using a submersible pump that do not have a turbine sump.

Table A: Schedule of Upgrades

Type of UST System	Section(s)	Effective Date
Airport Hydrant Fueling System	Registration and Reporting at 310 CMR 80.23, Leakage and Release: Response, Reporting and Remediation at 310 CMR 80.38-80.40, Out-of Service and Closure at 310 CMR 80.41-80.47 and Financial Responsibility at 310 CMR 80.51-80.63	[EFFECTIVE DATE OF REGULATIONS]
	Design, Construction and Installation and General Operating Requirements at 310 CMR 80.14-80.36, except 310 CMR 80.19 and 80.26	[3 years after EFFECTIVE DATE OF REGULATION]
	Leak Detection Requirements at 310 CMR 80.19(3)(d) and (e) and 310 CMR 80.26	As per phase in schedule in 310 CMR 80.19(3)(d) Table B
Pressurized piping installed before May 28, 1999	Leak Detection Requirements for Automatic Line Leak Detectors at 310 CMR 80.19(3)(b)2.	[One year after EFFECTIVE DATE OF REGULATIONS]
UST systems using a submersible pump that do not have a turbine sump	Requirement for Sumps at 310 CMR 80.20 and 80.27	January 1, 2019 or tank top upgrade, whichever is earlier.

- (4) Financial Responsibility. The financial responsibility requirements at 310 CMR 80.51-80.63 shall apply to all Owners and Operators of UST systems except:
- (a) As provided in 310 CMR 80.04(5)-(13); and
  - (b) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States government.
    - 1. Owners and Operators shall have the burden of proof to demonstrate that they are not subject to 310 CMR 80.51-80.63.
- (5) Owners and Operator of the following UST systems are exempt from all requirements of 310 CMR 80.00:

- (a) UST systems holding hazardous wastes listed or identified under Subtitle C of RCRA, M.G.L. c. 21C or 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 substance which means a concentration of regulated substance not exceeding the GW1 groundwater reportable concentrations in the Massachusetts Oil and Hazardous Materials List at 310 CMR 40.1600. If a regulated substance is not listed at 310 CMR 40.1600, the Owner and Operator shall demonstrate *de minimus* by demonstrating that the regulated substance does not display characteristics of ignitability, corrosivity, flammability and/or toxicity in order to be subject to this exemption. Said demonstration shall be kept for four years by the Owner and Operator in accordance with 310 CMR 80.36(1).
  - (d) UST systems with a capacity of 110 gallons or less.
  - (e) UST systems that are part of a storm water or wastewater treatment facility regulated under section 402 or 307(b) of the Federal Clean Water Act or the State Clean Water Act at M.G.L. c. 21 §§26-53, including, but not limited, to industrial wastewater holding tanks and oil water separators.
- (6) Owners and Operators of the following UST systems shall be subject only to the requirements at 310 CMR 80.04(7):
- (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, app. 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.
  - (d) UST systems that are part of a storm water or wastewater treatment facility not regulated under section 402 or 307(b) of the Federal Clean Water Act or the State Clean Water Act at M.G.L. c. 21 §§26-53.

- (7) Owners and Operators of UST systems at 310 CMR 80.04(6) shall comply with the following requirements:
- (a) Prevent releases due to corrosion or structural failure;
  - (b) Be cathodically protected against corrosion in accordance with 310 CMR 80.22 and 80.29, be constructed of non-corrodible material, be steel clad with a non-corrodible material, or be designed in a manner to prevent the release or threatened release of any stored regulated substance; and
  - (c) Be constructed or lined with material that is compatible with the stored regulated substance.
- (8) Owners and Operators of consumptive use tanks of 1100 gallons or less shall be subject only to the following requirements:
- (a) Tank Specifications at 310 CMR 80.17(3), if installed on or after March 21, 2008; and
  - (b) Response to a Release or Threat of Release requirements at 310 CMR 80.38.
- (9) Owners and Operators of consumptive use tanks having a capacity of more than 1100 gallons installed on and after January 1, 1989 are subject only to the following requirements:
- (a) Installation Requirements at 310 CMR 80.16;
  - (b) Tank Specifications at 310 CMR 80.17(1);
  - (c) Specifications for Regulated Substance Piping at 310 CMR 80.18;
  - (d) Leak Detection Requirements at 310 CMR 80.19(2)(b) and 80.26;
  - (e) Sump Requirements at 310 CMR 80.20 and 80.27;
  - (f) Spill Bucket and Overfill Prevention Requirements at 310 CMR 80.21 and 80.28;
  - (g) Corrosion Protection Requirements, if applicable, at 310 CMR 80.22 and 80.29;
  - (h) Emergency Response Requirements at 310 CMR 80.25;
  - (i) Compatibility Requirements at 310 CMR 80.30;

- (j) Repair and Replacement Requirements at 310 CMR 80.33;
  - (k) Leakage and Release: Response, Reporting and Remediation requirements at 310 CMR 80.38-80.40; and
  - (l) Closure Requirement at 310 CMR 80.41-80.47.
- (10) Owners and Operators of consumptive use tanks having a capacity of more than 1100 gallons installed before January 1, 1989 are subject only to the following requirements:
- (a) Installation Requirements at 310 CMR 80.16;
  - (b) Tank Specifications at 310 CMR 80.17(1);
  - (c) Specifications for Regulated Substance Piping at 310 CMR 80.18;
  - (d) Sump Requirements at 310 CMR 80.20 and 80.27;
  - (e) Spill Bucket and Overfill Prevention Requirements at 310 CMR 80.21 and 80.28;
  - (f) Emergency Response Requirements at 310 CMR 80.25;
  - (g) Compatibility Requirements at 310 CMR 80.30;
  - (h) Repair and Replacement Requirements at 310 CMR 80.33;
  - (i) Leakage and Release: Response, Reporting and Remediation requirements at 310 CMR 80.38-80.40; and
  - (j) Closure Requirement at 310 CMR 80.41-80.47.
- (11) Owners and Operators of farm or residential tanks having a capacity of 1100 gallons or less used exclusively for the storage of motor fuel are subject to only the following requirements:
- (a) Tank Specifications at 310 CMR 80.17(1); and
  - (b) Response to a Release or Threat of Release requirements at 310 CMR 80.38.
- (12) Owners and Operators of UST systems used solely for emergency spill or overflow containment that are emptied within forty-eight (48) hours of the introduction of a regulated substance are subject to only the following requirements:

- (a) Tank standards at 310 CMR 80.17(1);
  - (b) Registration requirements at 310 CMR 80.23(1); and
  - (c) Response to a Release or Threat of Release requirements at 310 CMR 80.38.
- (13) Owners and Operators of UST systems specifically used to supply fuel to emergency generators or to emergency engine driven pumps are subject to all requirements of 310 CMR 80.00 except the Inventory Monitoring requirements at 310 CMR 80.31.

#### 80.05 Rules of Construction

- (1) 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.
- (2) 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.
- (3) No provision of 310 CMR 80.00 shall be construed to relieve any person of the necessity of complying with all applicable federal, state or local laws.

#### 80.06 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 days, only days when the offices of the Department are open shall be included in the computation. If the time period is prescribed in hours, the computation is the exact number of hours from the start of the deadline without regard to whether the Department is open, unless the deadline requires delivery of information or documentation to the Department, in which case it is on the next business day after the running of the deadline if that deadline runs on a day when the Department is closed.

#### 80.07 Accurate and Timely Submittals to the Department and Record Keeping

- (1) 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.
- (2) 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.
- (3) 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.

#### 80.08 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.

#### 80.09 Accurate Monitoring

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. 21O 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. 21O, 310 CMR 80.00, or any permit, order, certification or approval issued by the Department.

#### 80.10 Duty to Provide Information

For any of the purposes set forth in M.G.L. c. 21O 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 within the time specified in the Department's request.

#### 80.11 Submittals to the Department

- (1) Any person signing a document or form, required by 310 CMR 80.00 to be signed by the Owner or Operator, shall be signed by:
  - (a) If a sole proprietorship, the sole proprietor;

- (b) If a partnership, a general partner with the authority to bind the partnership;
  - (c) If a trust, a trustee or any other natural person authorized (i) to enter into contracts regarding the trust property, (ii) to bind the trust, or (iii) to encumber or dispose of the trust property;
  - (d) If a limited liability company, a person authorized pursuant to M.G.L. c. 156C, § 24 and the limited liability company's operating agreement to bind the company and all the members;
  - (e) If a corporation or a non-profit corporation, a president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function who has been duly authorized to bind the corporation pursuant to a corporate vote, or an employee of the corporation who has been duly authorized to bind the corporation pursuant to a corporate vote;
  - (f) If a municipality or other public agency, a principal executive officer or ranking elected official who is empowered to enter into contracts on behalf of the municipality or public agency.
- (2) Unless otherwise required by law or 310 CMR 80.00, any person signing a document pursuant to 310 CMR 80.00, or when providing any other information ordered or requested by the Department in writing pursuant to 310 CMR 80.00, shall make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and 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."

#### 80.12 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.

#### 80.13 Department Access to UST Facilities and Records

- (1) Reasonable Access

- (a) For purposes of implementing M.G.L. c. 21O and 310 CMR 80.00, personnel and/or representatives of the Department may, upon presentation of credentials, enter at a reasonable time with or without prior notice UST systems and facilities in order to:
    - 1. Inspect or obtain samples from any person of any regulated substance in a tank;
    - 2. 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.
  - (b) Notwithstanding the foregoing, personnel or authorized representatives of the Department may enter a facility or property if emergency conditions require immediate entry as authorized by law or to protect public health, safety or the environment.
- (2) Department Inspections. The Owner or Operator shall provide the necessary personnel during an announced inspection conducted by the Department in order to provide access to UST records, systems and facilities including, but not limited to, the following:
- (a) Regulated substance fill port/spill bucket;
  - (b) Automatic tank gauge port and console;
  - (c) Turbine and intermediate sumps;
  - (d) Underground piping/other access ports;
  - (e) Dispenser cabinet/dispenser sump;
  - (f) Audible/visual alarms;
  - (g) Overfill prevention equipment; and
  - (h) Any other component of the UST System if the Department informs the Owner or Operator it needs access to the component at the time the inspection is announced.
- (3) Duty to Cooperate. The Owner and Operator shall in no way restrict, impede, or delay an inspection or any request for information by personnel or authorized representatives of the Department where such inspection or request is made pursuant to a reasonable request in accordance with 310 CMR 80.13(1), or in accordance with the conditions of any authorization, determination, modification,

permit, or other approval, or pursuant to the terms of any order or other enforcement document, or as otherwise authorized by law.

- (4) Warrants. Upon denial of access or if the Department cannot locate with reasonable efforts the Owner or Operator, or upon refusal of a person to provide information requested, the Department may seek, from a court, judge, justice or magistrate, a warrant authorizing personnel or authorized representatives of the Department to conduct a reasonable search of the facility or property or to obtain the information requested. This section shall not preclude the Department from gaining access through other legal means, including, but not limited to, a court order or injunctive relief.

## DESIGN, CONSTRUCTION AND INSTALLATION REQUIREMENTS

### 80.14 General Requirements

Owners and Operators shall comply with all general and specific design, construction and installation requirements in 310 CMR 80.14-80.22, as applicable.

### 80.15 General Prohibitions

- (1) All single-walled steel tanks in-service and temporarily out-of-service shall be permanently closed and removed from the ground or permanently closed in-place in compliance with 310 CMR 80.43 by August 7, 2017 except for the following tanks:
  - (a) Consumptive use tanks; and
  - (b) Tanks that were relined prior to August 8, 2007 in accordance with API 1631, 1983 Edition and the Owner or Operator have the following:
    1. A permit and approval that was issued by the Head of the Fire Department for such relining; and
    2. A current, legally valid warranty for said relining.

### 80.16 Installation Requirements

- (1) No UST system shall be installed except by a person who has been certified to install that type of UST system in writing by the UST system manufacturer. The installation shall include, but shall not be limited to, compliance with the manufacturer's specifications and all items on the manufacturer's checklist.
  - (a) The installer shall certify that the UST system was installed in accordance with the manufacture's specifications and that the installer complied with all items on the manufacturer's checklist.
  - (b) The Owner or Operator shall keep a copy of the certifications in 310 CMR 80.16(1) and 80.16(1)(a), manufacturer's specifications and checklist in accordance with 310 CMR 80.36(5).
- (2) The installation of all UST systems, including anchoring of the tank, shall be carried out in accordance with the manufacturer's specifications, listed engineering practices, and the provisions of 310 CMR 80.14-80.22.
- (3) Any damage to the exterior of a tank or its coating shall be repaired before the tank is covered.

- (4) Prior to putting regulated substance into the tank, tanks shall pass an air pressure test of not less than three p.s.i. and not more than five p.s.i., unless otherwise directed by the manufacturer's specifications.
- (5) Prior to putting regulated substance into the UST system, piping shall pass a hydrostatic or air pressure test of 150% of the maximum anticipated pressure of the system but not less than 50 p.s.i. at the highest point of the system.
- (6) All UST systems shall be inspected by the person who prepares the drawing or as-built plans in accordance with 310 CMR 80.16(7), prior to being backfilled, to ensure the UST system is installed in accordance with 310 CMR 80.14-80.22.
  - (a) If the person who prepares the drawing or as-built plans determines the UST system is not installed in accordance with 310 CMR 80.14-80.22, the UST system shall not be backfilled until the Owner or Operator of the UST system complies with all requirements at 310 CMR 80.14-80.22.
- (7) The Owner or Operator shall maintain, until the UST system is removed or permanently closed in accordance with 310 CMR 80.43(2) or (3), a scaled drawing or set of as-built plans prepared by the installer who installed the UST system or a registered professional engineer, of all UST systems installed on and after [EFFECTIVE DATE OF REGULATIONS]. The scaled drawing or as-built plans shall include, but not be limited to:
  - (a) A locus plan or location map showing the location of the UST facility and the GIS coordinates of the UST system(s). The plan or map shall include, but not be limited to, the location of any public well, private well, if readily ascertainable, and any body of surface water within 500 feet of the UST facility. A drinking water well shall be clearly marked on the plan or map.
  - (b) A site plan of the UST facility, including, but not limited to, the location of each UST system and all buildings.
  - (c) UST system details, including but not limited to, schematics of the tanks, piping and turbine, intermediate and dispenser sumps, elevations of each tank and related piping below the final surface grade and a materials list.
  - (d) The scaled drawing or as-built plans shall include a signed statement by the installer or registered professional engineer who prepared the scaled drawing or as-built plans that the UST system was installed in accordance with 310 CMR 80.00, the manufacturer's specifications and the manufacturer's checklist.

- (8) The Owner shall notify the Department within 30 days of the installation of an UST facility, UST system, tank, or piping, on a form specified by the Department, in accordance with 310 CMR 80.23(1).
- (9) If the manufacturer's specifications do not specify the type of backfill material, the Owner or Operator shall comply with one of the following:
  - (a) API Recommended Practice 1615, 6<sup>th</sup> Edition, April 2011, "Installation of Underground Petroleum Storage Systems"; or
  - (b) PEI Recommended Practice 100-11, 2011, "Recommended Practices for Installation of Underground Liquid Storage Systems."
- (10) If within ten 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.
- (11) 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.
- (12) Piping shall be installed in a trench between the tank area and the pump island. Underground vent lines shall be installed in a trench.
- (13) 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 and deep enough to permit at least six inches of noncorrosive backfill material surrounding all lines.
- (14) 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.
- (15) 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 intermediate sump is monitored for leakage and is accessible for repairs and inspections. Piping drops from submerged pumps to allow piping decline to the tank shall not be considered a trap.
- (16) A double elbow swing joint or flexible connector listed for underground applications shall be installed at all locations where piping changes direction from horizontal to vertical or from vertical to horizontal.

- (17) Pressurized systems shall be designed or equipped so that no part of the system will be subjected to pressures above its allowable working pressure in accordance with the manufacturer's specifications.
- (18) A permanent dewatering well for the purpose of dewatering the tank grave in order to conduct repairs of the UST system may be installed 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.
- (a) The following seals are all required and shall be designed and constructed as follows:
1. Annular Seals
    - a. Annular seals shall be placed in the annular space between the well casing and the borehole wall and above the divider seal.
    - b. Annular seals shall consist of a low permeability material that will serve to inhibit the vertical movement of fluids within the annular space.
    - c. An annular seal shall be composed of one or a combination of the following sealants: neat cement, bentonite/cement slurries, or equivalent sealing agents.
  2. Divider Seals
    - a. Divider seals shall consist of a layer of bentonite slurry or pellets designed to prevent the annular seal materials from plugging up the screened area of the well.
    - b. Divider seals shall be placed above the material surrounding the well screen and below the annular seal.
  3. Surface (Apron) Seal
    - a. A surface seal around the top of the well is required even if the annular seal is carried to the surface.
    - b. A surface seal shall be concrete.
    - c. A surface seal shall be shaped so that surface water flows away from the well casing.

- d. Based on site conditions, the surface seal shall extend a minimum of four feet below grade to prevent frost-heaving of the apron.
  - (b) Dewatering wells and seals shall be maintained so as to prevent storm water and/or regulated substances from entering the subsurface as long as the dewatering well is in place.
- (19) The Owner or Operator shall keep a copy of the installer's certifications, manufacturer's specifications and checklist, records of all testing results and inspections and the accurate drawing or as-built plans in accordance with 310 CMR 80.36(5).

#### 80.17 Specifications for Tanks

- (1) Tanks, except consumptive use tanks of 1100 gallons or less, that are installed on and after January 1, 1989 shall be one of the following:
- (a) Listed double-walled cathodically protected metal tanks;
  - (b) Listed double-walled fiberglass reinforced plastic tanks;
  - (c) Listed double-walled composite tanks;
  - (d) Listed double-walled jacketed steel tanks; or
  - (e) Listed tanks that are no less protective of human health and the environment than 310 CMR 80.17(1)(a)-(d), if the following requirements are met:
    - 1. The Owner shall submit an application to the Department for approval demonstrating that the tank is equal to or more protective of human health and the environment than 310 CMR 80.17(1)(a)-(d). This demonstration shall include, but is not limited to, technical information that the tank is noncorrosive or corrosion resistant, and meets or exceeds the performance standards in 310 CMR 80.17(1)(a)-(d).
    - 2. The Department, at its sole discretion, shall determine whether the Owner has made the demonstration required in 310 CMR 80.17(1)(e)1.
    - 3. The Owner shall not install the tank unless and until it receives written approval from the Department.

- (2) Tanks that are installed or that become subject to 310 CMR 80.00, 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 ¼" thick.
- (3) Consumptive use tanks of 1100 gallons or less that are installed on and after March 21, 2008 shall be one of the following:
  - (a) Listed double-walled fiberglass reinforced plastic using materials compatible with fuel oil and equipped with continuous interstitial monitoring.
  - (b) Listed double-walled metal tank with cathodic protection or bonded fiberglass coating and equipped with continuous interstitial monitoring.

#### 80.18 Specifications for Regulated Substance Piping

- (1) UST systems that contain regulated substance piping shall be installed with one of the following piping systems:
  - (a) Pressurized piping system; or
  - (b) European suction system; or
  - (c) Non-European suction system.
- (2) In addition to complying with 310 CMR 80.18(1), regulated substance piping installed in UST systems between January 1, 1989 and [EFFECTIVE DATE OF THE REGULATIONS], shall meet the following requirements:
  - (a) Regulated substance piping shall be constructed of:
    - 1. A non-corrodible material; or
    - 2. Cathodically protected metal, including copper if the copper is adequately protected against physical damage and is secondarily contained.
  - (b) Regulated substance piping, except a European suction system, shall be installed with secondary containment which may include, but is not limited to, impervious liners if installed prior to [EFFECTIVE DATE OF REGULATIONS] or double-walled piping.
- (3) All regulated substance piping installed after [EFFECTIVE DATE OF THE REGULATIONS] shall be double-walled, and shall be constructed of:

- (a) A non-corrodible material; or
- (b) Cathodically protected metal, including copper if the copper is adequately protected against physical damage and is secondarily contained.

#### 80.19 Leak Detection

- (1) UST systems shall be equipped with leak detection equipment.
- (2) Requirements for Tanks
  - (a) The Owner or Operator shall install, calibrate, operate and maintain all leak detection equipment in accordance with the manufacturer's specifications.
  - (b) Tanks (except emergency generator tanks and emergency engine driven pumps) installed on and after January 1, 1989, and emergency generator tanks and emergency engine driven pumps installed on or after [EFFECTIVE DATE OF REGULATIONS], shall be equipped with a system that continuously monitors interstitial space.
    - 1. The interstitial monitors shall be installed in accordance with the manufacturers' specifications.
    - 2. The system shall comply with 310 CMR 80.26(3).
    - 3. The interstitial monitoring shall detect leakage through the inner wall of any tank.
    - 4. For UST systems using continuous vacuum, pressure, or hydrostatic methods of interstitial monitoring, the method shall be capable of detecting a breach in the inner and outer walls of the tank.
  - (c) Tanks (except emergency generator tanks and emergency engine driven pumps) 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.
      - b. The system shall comply with 310 CMR 80.26(3).
      - c. The interstitial monitoring shall detect leakage through the inner wall of any tank.

2. An in-tank monitoring system that is tested at least once a month over the continuous period of time prescribed by the manufacturer's specifications to determine if there is a release or leakage. If the manufacturer's specifications do not prescribe a continuous period of time, the continuous period of time shall be 6 hours. The system shall be capable of detecting a release or leakage 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-90/006) or other equivalent test procedures and complies with 310 CMR 80.26(4).
3. A continuous in-tank monitoring system installed and operated in accordance with the manufacturers' specifications that is capable of detecting a release or leakage 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-90/006) or other equivalent test procedures and complies with 310 CMR 80.26(5).
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:
  - a. Report a quantitative result with a calculated leak rate;
  - b. Be capable of detecting a release or leakage 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-90/006) or other equivalent test procedures;
  - c. Use a threshold that does not exceed one-half the minimum detectible leak rate; and
  - d. Comply with U.S. Environmental Protection Agency Standard Test Procedures for Evaluating Leak Detection

Methods (EPA/530/UST-90/007) or other equivalent test procedures and with 310 CMR 80.26(6).

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 EFFECTIVE DATE OF REGULATIONS], monitoring for vapors in the soil shall be prohibited from being used to satisfy the leak detection requirement in 310 CMR 80.19(1) and the Owner or Operator shall have in place an operating leak detection system that satisfies the requirements of 310 CMR 80.19(2)(c)1., 2., 3. or 4.
- (d) Owners and Operators of field-constructed tanks with a capacity greater than 50,000 gallons may use one of the following methods of leak detection for each tank to satisfy the requirements of 310 CMR 80.19(1):
  1. Conduct an annual bulk tank tightness test that can detect a release or leakage at 0.5 gallon per hour;
  2. Use an in-tank monitor to perform leak detection at least every 30 days that can detect a release or leakage of less than or equal to one gallon per hour. This method shall be combined with a bulk tank tightness test that can detect a release or leakage of 0.2 gallon per hour and be performed at least every three years; or
  3. Use an in-tank monitor to perform leak detection at least every 30 days that can detect a release or leakage of less than or equal to two gallons per hour. This method shall be combined with a bulk tank tightness test that can detect a release or leakage of 0.2 gallon per hour and be performed at least every two years.
- (e) Emergency generator tanks or emergency engine driven pumps installed before [EFFECTIVE DATE OF REGULATIONS] shall comply with at least one of the following leak detection methods:
  1. Leak detection requirements at 310 CMR 80.19(2)(c)1., 2. 3. or 4.;
  2. If the tank has a capacity of 1000 gallons or less, weekly tank gauging in accordance with 310 CMR 80.26(7); or
  3. If the tank has a capacity of more than 1000 gallons, monthly tank gauging in accordance with 310 CMR 80.26(8), and conduct an annual tightness test in accordance with 310 CMR 80.32.

(3) Requirements for Piping

(a) Except as provided in 310 CMR 80.19(3)(c) and (d), for UST systems installed on and after May 28, 1999, the following are the requirements for regulated substance piping, except European suction systems:

1. All regulated substance piping shall have a system that continuously monitors interstitial space.
  - a. The sensors shall be installed in accordance with the manufacturers' specifications.
  - b. The system shall comply with 310 CMR 80.26(3).
  - c. The sampling or testing method shall detect leakage through the inner wall in any portion of the piping that routinely contains product.
2. In addition to complying with 310 CMR 80.19(3)(a)1., pressurized piping systems shall be equipped with an automatic line leak detector that accurately detects a release or leakage of three gallons per hour at ten p.s.i. in line pressure within one hour with the probability of detection of 0.95 and probability of false alarm of 0.05.
3. European suction systems are not required to have leak detection.

(b) Except as provided in 310 CMR 80.19(3)(c) and (d), for UST Systems installed before May 28, 1999, the following are the requirements for regulated substance piping, except European suction systems:

1. All regulated substance piping shall:
  - a. Install a system that continuously monitors interstitial space in accordance with 310 CMR 80.19(3)(a)1.; or
  - b. Conduct quarterly monitoring of secondary containment ports and conduct an annual tightness test in accordance with 310 CMR 80.32; or
  - c. Have 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:

- i. Report a quantitative result with a calculated leak rate;
    - ii. Be capable of detecting a release or leakage 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-90/006) or other equivalent test procedures;
    - iii. Use a threshold that does not exceed one-half the minimum detectible leak rate; and
    - iv. Comply with U.S. Environmental Protection Agency Standard Test Procedures for Evaluating Leak Detection Methods (EPA/530/UST-90/007) or other equivalent test procedures and with 310 CMR 80.26(6).
  2. In addition to complying with 310 CMR 80.19(3)(b)1., pressurized piping systems shall be equipped with an automatic line leak detector that accurately detects a release or leakage of three gallons per hour at ten p.s.i. in line pressure within one hour with the probability of detection of 0.95 and probability of false alarm of 0.05.
  3. European suction systems are not required to have leak detection.
- (c) Owners and Operators of airport hydrant fuel distribution systems shall comply with the leak detection requirements in Table B 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	Description of Requirement	Time Frame after [EFFECTIVE DATE OF REGULATIONS])
Bulk piping associated with airport hydrant fuel distribution systems using 310 CMR 80.19(3)(d)1. for piping leak detection	Conduct one bulk piping tightness test in accordance with 310 CMR 80.19(3)(d)1. 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.	Within three years of [EFFECTIVE DATE OF REGULATIONS] and between years three and six after [EFFECTIVE DATE OF REGULATIONS]
	Conduct one bulk piping tightness test in accordance with 310 CMR 80.19(3)(d)1. using the maximum detectable leak rates for semiannual testing.	Between years six and seven after [EFFECTIVE DATE OF REGULATIONS]
	Conduct bulk piping tightness testing in accordance with 310 CMR 80.19(3)(d)1.	Annually beginning after [seven years after EFFECTIVE DATE OF REGULATIONS]
Bulk piping associated with airport hydrant fuel distribution systems <u>not</u> using 310 CMR 80.19(3)(d)1. for piping leak detection	Perform leak detection in accordance with 310 CMR 80.19(3)(d)2. or 3.	Within three years of [EFFECTIVE DATE OF REGULATIONS]
Underground tanks associated with hydrant fuel distribution systems	Perform leak detection in accordance with 310 CMR 80.19(2).	Within three years of [EFFECTIVE DATE OF REGULATIONS]

(d) Owners and Operators of underground piping associated with airport hydrant fuel distribution systems may use one of the following methods of leak detection to comply with 310 CMR 80.19(3)(c) and 80.19(3)(d):

1. Perform a semiannual or annual bulk line tightness test at or above operating pressure in accordance with Table C below. Bulk piping segments  $\geq$  100,000 gallons not capable of detecting a release or

leakage of three gallons per hour for the semiannual test may be tested at a release/leakage rate up to six gallons per hour, in accordance with Table C:

Table C: Maximum Detectable Release/Leakage Rate Per Test Section Volume

Test Section Volume (Gallons)	Semiannual Test Maximum Detectable Release/Leakage Rate (Gallons Per Hour)	Annual Test Maximum Detectable Release/Leakage Rate (Gallons Per Hour)
< 50,000	1.0	0.5
≥ 50,000 to < 75,000	1.5	0.75
≥ 75,000 to < 100,000	2.0	1.0
≥ 100,000	3.0	1.5

2. Perform continuous interstitial monitoring designed to detect a release or leakage from any portion of the underground piping that routinely contains product in accordance with 310 CMR 80.26(3); or
3. Use a device 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 release or leakage of three gallons per hour at ten p.s.i. line pressure within one hour or equivalent. When using this method, the following shall also be met:
  - a. Perform interstitial monitoring designed to detect a release or leakage from any portion of the underground piping that routinely contains product, in accordance with 310 CMR 80.26(3) at least every three months; and
  - b. Conduct an annual test of the operation of the leak detection equipment to determine that it is operational.

#### 80.20 Requirements for Turbine, Intermediate and Dispenser Sumps

- (1) Regulated substance dispensers installed, repaired or replaced on or after March 21, 2008 shall be equipped with a dispenser sump that shall be continuously monitored for liquids utilizing a dispenser sump sensor(s).
  - (a) 310 CMR 80.20(1) shall not apply to the repair or replacement of the product dispenser alone due to damage or malfunction.
- (2) Tanks utilizing a submersible pump, when the pump was installed on or after March 21, 2008, shall be equipped with a turbine sump. All turbine sumps,

- including intermediate sumps, shall be continuously monitored for liquids utilizing a sump sensor(s).
- (3) Tanks using a submersible pump that do not have a turbine sump, shall be upgraded with a turbine sump by January 1, 2019 or when the tank top is upgraded, whichever is earlier, or that tank shall be removed or permanently closed in accordance with 310 CMR 80.43(2) or (3).
  - (4) Turbine, intermediate and dispenser sumps shall pass a tightness test at installation to ensure the sump is liquid tight by using vacuum, pressure, or liquid testing. The standard for failing is 1/8 inch or greater loss of water within one hour (which is equal to a release/leakage 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 80.36(1).
  - (5) Turbine sumps installed on and after the [EFFECTIVE DATE OF REGULATIONS] shall be designed and installed with a final grade that channels storm water away from the turbine sump.
  - (6) Turbine, intermediate and dispenser sumps shall be constructed so that they are accessible for repairs and inspections.

#### 80.21 Requirements for Spill Buckets and Overfill Prevention Equipment

- (1) UST systems shall be equipped with a spill bucket.
  - (a) Spill buckets, including replacement spill buckets, installed on and after [EFFECTIVE DATE OF REGULATIONS] shall have a minimum capacity of five gallons, unless it is not physically possible to replace a three gallon spill bucket with a five gallon spill bucket. "Not physically possible" means that the area where the three gallon spill bucket is installed cannot be made to accommodate a five gallon spill bucket by any physical means, including, but not limited to, digging or jack hammering.
    1. If it is not physically possible to replace a three gallon spill bucket with a five gallon spill bucket, the Owner or Operator shall certify to the Department it is not physically possible in a letter signed in accordance with 310 CMR 80.11.
    2. If it is not physically possible to replace a three gallon spill bucket with a five gallon spill bucket, the Owner or Operator shall install a spill bucket no smaller than three gallons.
  - (b) Spill buckets installed before [EFFECTIVE DATE OF REGULATIONS] shall have a minimum capacity of three 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 release/leakage 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 80.36(1).
- (2) 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) On and after [EFFECTIVE DATE OF REGULATIONS], new or replacement ball floats shall not be installed as the primary overfill protection device. Ball float valves installed prior to [EFFECTIVE DATE OF THE REGULATIONS] may be used as the primary overfill protection device until the ball float valve is replaced.
    - (b) All UST systems shall be equipped with one of the following:
      - 1. An automatic shut off valve, float or flapper that shall automatically and completely shut off flow into the tank when the tank is no more than 95% full.
      - 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 [EFFECTIVE DATE OF REGULATIONS] shall be visual and audible.
        - b. All high-level alarms shall be clearly labeled as a tank overfill alarm.

#### 80.22 Requirements for Corrosion Protection

- (1) Metal components of an UST system that are subject to corrosion and are in contact with the ground shall have continuous corrosion protection.
  - (a) Riser and fill pipes may be coated or clad with non-corrosive materials, such as fiberglass to comply with 310 CMR 80.22(1).
- (2) If a tank or regulated substance piping 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) The installation and repair of any cathodic protection system shall be completed under the direction of a corrosion expert. Cathodic protection systems shall be designed and installed in accordance with a listed standard and the manufacturer's specifications.
  - (c) For UST systems installed on and after [EFFECTIVE DATE OF REGULATIONS], the Owner or Operator shall have as built, 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 80.36(4).
- (4) Within six months of installation, a cathodic protection system shall be tested by a cathodic protection tester in accordance with the following standards to determine that the UST system is protected against corrosion.
- (a) NACE Standard Test Method: NACE Standard TM0101-2012, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Tank Systems"; or
  - (b) NACE Standard Test Method: NACE Standard TM0497-2002, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems"
- (5) The cathodic protection system shall pass the applicable test(s) at 310 CMR 80.22(4). The Owner or Operator shall keep a record of the passed test(s) in accordance with 310 CMR 80.36(1).
- (a) If the cathodic protection system does not pass the test, the Owner or Operator shall comply with 310 CMR 80.29(5).

## GENERAL OPERATING REQUIREMENTS

80.23. Requirements for Registration and Reporting

- (1) Owners shall sign and submit to the Department, in a format specified by the Department, a registration for UST systems and UST facilities within 30 days of receiving regulated substance into the UST system. The Owner shall retain a copy of the registration in accordance with 310 CMR 80.36(3) until the UST system is removed or permanently closed in accordance with 310 CMR 80.43(2) or (3).
  - (a) The registration shall include, but not be limited to, the following categories of information:
    1. Identity of and contact information for the Owner, Operator and Contact Person(s), including, but not limited to, name, title, address, telephone numbers and email address;
    2. Description of the UST system(s), including, but not limited to, the location, date of installation, size, uses of the UST system(s) and type of facility;
    3. Description of the components of the UST system, including, but not limited to, the type of tank, piping, leak detection, corrosion prevention, spill bucket and overflow prevention;
    4. Description of the financial responsibility mechanism(s), including, but not limited to, the type, amount, expiration date and issuer; and
    5. Description of the UST records received from the previous Owner(s) and Operator(s).
  - (b) Owners shall update the registration if any information on the registration changes, and submit it to the Department within 30 days of the change.
- (2) Owners shall submit to the Department, in a format specified by the Department, notifications of the following including, but not limited to:
  - (a) A change in the product in accordance with 310 CMR 80.41(3):
    1. Seven days prior to the change, if the change is from a regulated substance to a non-regulated substance.
    2. Within 30 days of the change, if the change is from a regulated substance to another regulated substance.

- (b) Any UST system taken temporarily out-of-service, within 30 days of the change in status, in accordance with 310 CMR 80.42(2).
  - (c) Any temporarily out-of-service UST system brought back into service, within 30 days of being brought back into service, in accordance with 310 CMR 80.42(6).
  - (d) Any UST system removed, within 30 days of removal, in accordance with 310 CMR 80.43(2)(c).
  - (e) UST systems closed-in-place within 30 days of UST system being filled, in accordance with 310 CMR 80.43(3)(c).
- (3) The Owner or Operator shall submit to the Department, in a format specified by the Department, information including, but not limited to:
- (a) Third-party inspection reports in accordance with 310 CMR 80.49(2).
  - (b) Assessment reports in accordance with 310 CMR 80.41(4)(b) and 80.43(4).
  - (c) Source and cause of reportable releases in accordance with 310 CMR 80.40.
  - (d) Compliance certification in accordance with 310 CMR 80.34.
- (4) Upon the sale of an UST system or UST facility, the Owner shall transfer all the records required to be retained by 310 CMR 80.36 to the new Owner.

#### 80.24 General Requirements

- (1) Owners and Operators shall comply with all general and specific operating requirements in 310 CMR 80.23-80.36, 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 that indicates leakage, a threat of release or a release, and document the response to each of those alarms 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 80.36(1).
- (4) The Owner or Operator shall ensure that fill pipe covers of tanks are painted and maintained in accordance API Recommended Practice 1637, 3<sup>rd</sup> Edition, 2006,

“Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals”.

- (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 80.42 or permanently close it in accordance with 310 CMR 80.43. If any regulated substance remains in an UST system, the UST system shall comply with all applicable requirements of 310 CMR 80.00, unless the amount of regulated substance in the UST systems meets the *de minimus* standard in 310 CMR 80.04(5)(c).
- (6) After [EFFECTIVE DATE OF REGULATIONS], an Owner or Operator shall not line or reline any tank to extend the operating life of the UST system.

#### 80.25 Requirements for Emergency Response

- (1) The Owner or Operator shall post a sign at the UST facility indicating what steps 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.
- (2) The Owner or Operator shall develop, and update when necessary, a written procedure for how UST facility employees and contractors should respond in the event of an emergency. The Owner or Operator shall keep the most recent copy of the written procedure in accordance with 310 CMR 80.36(3).
  - (a) The procedure shall include, but not be limited to, how to access the emergency shut-off for the tanks, how to locate the communication device and how to respond to alarms that indicate leakage, a threat of release or a release.
  - (b) The Owner or Operator shall inform all Class A, B and C operators where the procedure is located and train Class A, B and C operators on the emergency procedures.

#### 80.26 Requirements for Leak Detection Systems

- (1) The Owner or Operator shall equip UST systems with a leak detection system in accordance with manufacturer’s specifications and 310 CMR 80.19.
- (2) The Owner or Operator shall operate and maintain leak detection systems at all times and in accordance with manufacturer’s specifications and 310 CMR 80.26(3)-(13), as applicable.

- (3) Requirements for UST systems that continuously monitor interstitial space in a double-walled tank and/or double-walled piping as its primary leak detection system are as follows:
- (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 material, water and regulated substance.
  - (c) If the monitor indicates that there may be a release or leakage, by alarm or otherwise, the Owner or Operator shall immediately commence an investigation to determine whether there is a release or leakage.
    - 1. The Owner or Operator shall conclude the investigation within 72 hours of the indication of release or leakage. If the Owner or Operator is unable to conclusively determine that there is not a release or leakage within 72 hours of the indication of release or leakage, s/he shall:
      - a. Conduct a tightness test of the suspected tank or piping in accordance with 310 CMR 80.32 within 72 hours of the conclusion of the investigation.
        - i. If the tank or piping fails a tightness test pursuant to 310 CMR 80.32, the Owner or Operator shall comply with 310 CMR 40.0300.
        - ii. If the tank and the piping pass a tightness test pursuant to 310 CMR 80.32, the tank and the piping are considered tight, and the requirements for tightness testing are satisfied.
    - 2. If the investigation or the tightness test indicates leakage that does not rise to the level of a release or threat of release, the Owner or Operator shall comply with 310 CMR 80.39.
  - (d) A system that continuously monitors interstitial space 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 80.36(1).
- (4) Requirements for those UST systems that use an in-tank monitoring system as its primary leak detection system are as follows:

- (a) At least once each calendar month, the Owner or Operator shall conduct a test using the in-tank monitor over a continuous period of time as prescribed by the manufacturer's specifications, during which no regulated substance shall be delivered to or taken from the tank, in order to determine that there is not a release or leakage of regulated substance. If the manufacturer's specifications do not prescribe a continuous period of time, the continuous period of time shall be 6 hours.
    - 1. A loss of 0.20 gallons per hour or more over the testing period with the probability of detection of 0.95 and a probability of false alarm of 0.05 shall indicate a release or leakage.
  - (b) If at the end of the calendar month, the tank has not passed a test in accordance with 310 CMR 80.26(4)(a)1. to determine there is not release or leakage, the Owner or Operator shall conduct a tightness test of the suspected tank or piping in accordance with 310 CMR 80.32 within 72 hours of the end of the calendar month.
    - 1. If the tank or piping fails a tightness test pursuant to 310 CMR 80.32, the Owner or Operator shall comply with 310 CMR 40.0300.
    - 2. If the tank and the piping pass a tightness test pursuant to 310 CMR 80.32, the tank and the piping are considered tight, and the requirements for tightness testing are satisfied.
  - (c) 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 80.36(1).
- (5) Requirements for those UST systems that use a continuous in-tank monitoring system as its primary leak detection system are as follows:
- (a) Throughout each calendar month, the Owner or Operator shall ensure that the continuous in-tank monitoring system is operating in accordance with the manufacturer's specifications.
  - (b) 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 indicate a release or leakage.
  - (c) If at the end of the calendar month, the continuous in-tank monitoring system indicates a release or leakage in accordance with 310 CMR 80.26(5)(b), the Owner or Operator shall conduct a tightness test of the suspected tank or piping pursuant to 310 CMR 80.32 within 72 hours of the end of the calendar month.

1. If the tank or piping fails a tightness test pursuant to 310 CMR 80.32, the Owner or Operator shall comply with 310 CMR 40.0300.
  2. If the tank and the piping pass a tightness test pursuant to 310 CMR 80.32, the tank and the piping are considered tight, and the requirements for tightness testing are satisfied.
- (d) If the continuous in-tank monitoring system does not produce sufficient data to obtain a conclusive result, the Owner or Operator shall within 24 hours of the end of the calendar month 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.
- (e) If after complying with 310 CMR 80.26(5)(d), the Owner or Operator is still unable to obtain a passing result, the Owner or Operator shall comply with 310 CMR 80.26(5)(c) within 96 hours of the end of the calendar month.
- (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 80.36(1).
- (6) Requirements for an in-tank monitoring system that uses statistical inventory reconciliation (SIR) as its primary leak detection system are as follows:
- (a) The Owner or Operator shall have an inventory analyses conducted by a trained SIR vendor who analyzes inventory, delivery, and dispensing data collected over a calendar month to determine whether or not the UST system has a release or leakage.
  - (b) The Owner or Operator shall have equipment and procedures in place to assure that the data provided to the SIR vendor is accurate.
  - (c) If the SIR analysis is conclusive and identifies a release or leakage, the Owner or Operator shall conduct a tightness test of the suspected tank or piping pursuant to 310 CMR 80.32 within 72 hours of obtaining knowledge of the suspected release or leakage.
    1. If the tank or piping fails a tightness test pursuant to 310 CMR 80.32, the Owner or Operator shall comply with 310 CMR 40.0300.

2. If the tank and the piping pass a tightness test pursuant to 310 CMR 80.32, the tank and the piping are considered tight, and the requirements for tightness testing are satisfied.
- (d) If the SIR analysis is inconclusive, the Owner or Operator shall immediately, upon obtaining knowledge of the inconclusive result, commence an investigation to determine whether there is a release or leakage.
1. The Owner or Operator shall conclude the investigation within 72 hours upon obtaining knowledge of the inconclusive result. If the Owner or Operator is unable to determine that there is not a release or leakage within 72 hours upon obtaining knowledge of the inconclusive result, s/he shall:
    - a. Conduct a tightness test pursuant to 310 CMR 80.32 within 72 hours of the conclusion of the investigation.
      - i. If the tank or piping fails a tightness test pursuant to 310 CMR 80.32, the Owner or Operator shall comply with 310 CMR 40.0300.
      - ii. If the tank and the piping pass a tightness test pursuant to 310 CMR 80.32, the tank and the piping are considered tight, and the requirements for tightness testing are satisfied.
- (e) If the SIR analysis is conclusive and does not identify a release or leakage of regulated substance, the tank is considered tight.
- (f) If SIR data is obtained through an in-tank monitoring system or a continuous in-tank leak detection system, the 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 80.36(1).
- (7) Requirements for emergency generator tanks and emergency engine driven pumps having a capacity of 1000 gallons or less, installed before [EFFECTIVE DATE OF THE REGULATIONS], that conduct weekly tank gauging as its primary leak detection system.
- (a) Manual tank gauging shall be conducted every seven (7) days.
  - (b) Manual tank gauging shall be conducted 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 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 consecutive stick readings at 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 1/8<sup>th</sup> of an inch;
4. A release or leakage shall be suspected if the variation between beginning and ending measurements exceeds the weekly or monthly standard on the following Table D:

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

- (8) Requirements for emergency generator tanks or emergency engine driven pumps having a capacity of more than 1000 gallons, installed before [EFFECTIVE DATE OF THE REGULATIONS] that conduct monthly tank gauging as its primary leak detection system. (These tanks and pumps shall also conduct an annual tightness test in accordance with 310 CMR 80.32).
- (a) Manual tank gauging shall be conducted every 30 days.
  - (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 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 consecutive stick readings at 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 1/8<sup>th</sup> of an inch;

4. A release or leakage shall be suspected if the variation between beginning and ending measurements exceeds the monthly standard on the following Table E:

Table E

Nominal tank capacity	Monthly standard
More than 1000 gallons	7 gallons plus 2 gallons for every additional 1000 gallons capacity

- (9) 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 80.36(1).
- (10) Non-European suction piping, if it does not have secondary containment and continuous monitoring of interstitial space, shall be tightness tested in accordance with 310 CMR 80.32 every three years. The Owner and Operator shall maintain records of the tightness testing in accordance with 310 CMR 80.36(1).
- (11) 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, including, but not limited to, an accurate drawing, as-built plans or installation records, it shall comply with the standards for non-European piping at 310 CMR 80.19(3)(a)1. or 310 CMR 80.19(3)(b)1., as applicable.
- (12) The Owner or Operator shall test those components of the leak detection system that are repaired or replaced, prior to returning the leak detection system to service, to determine that they are operational. The Owner or Operator shall keep records of such tests in accordance with 310 CMR 80.36(1).
- (13) All leak detection records required in 310 CMR 80.26(1)-(12) shall be kept in accordance with 310 CMR 80.36(1).

80.27 Requirements for Turbine, Intermediate and Dispenser Sumps

- (1) Owners and Operators shall operate and maintain turbine, intermediate and dispenser sumps in accordance with 310 CMR 80.27.
- (2) Turbine, intermediate and dispenser sumps shall be clean and free of solid and liquid material at all times.
- (a) If a sensor or visual observation indicates that there is liquid in the sump, the liquid shall be removed immediately. If the liquid is a regulated

substance, the Owner or Operator shall investigate the source of the regulated substance, shall investigate the path of entry to the sump, and shall make any necessary repairs in accordance with 310 CMR 80.33.

- (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) Sensors shall be set in accordance with the manufacturer's specifications, or, if no such specifications exist, the sensors shall be set at the lowest possible location in the sump.
- (4) All tanks using a submersible pump that do not have a turbine sump shall be inspected every 30 days.
- (a) The Owner or Operator shall inspect the area around the submersible pump as follows:
    - 1. Determine if the submersible pump is releasing regulated substance(s); and
    - 2. Visually inspect the submersible pump and other components for signs of corrosion, breakage and wear.
  - (b) The Owner or Operator shall repair or replace components as necessary in accordance with 310 CMR 80.33; and
  - (c) The Owner or Operator shall keep records of this inspection and any repairs or replacements to demonstrate compliance with 310 CMR 80.27(4) in accordance with 310 CMR 80.36(1) through (5).
- (5) The Owner or Operator shall inspect turbine, intermediate and dispenser sumps in accordance with 310 CMR 80.27(6) and the following schedule:
- (a) Single-walled and double-walled sumps without continuous monitoring sensors in the sump and single-walled and double-walled sumps with continuous monitoring that do not meet 310 CMR 80.27(5)(b)1., 2. and 3. shall be inspected every 90 days.
  - (b) Single-walled and double-walled sumps with continuous monitoring sensors in the sump shall be inspected annually, if:
    - 1. The sensors are set in accordance with the manufacturer's specifications, or, if no such specifications exist, the sensors are set at the lowest possible location in the sump; and

2. The sump sensors are tested annually, and the test results indicate the sensors are operating in accordance with the manufacturer's specifications. The Owner or Operator shall keep records of this test in accordance with 310 CMR 80.36(1); and
  3. The Owner or Operator responds to alarms in accordance with 310 CMR 80.24(3).
- (6) Turbine, intermediate and dispenser sumps shall be inspected in accordance with the schedule at 310 CMR 80.27(5) and as follows:
  - (a) The Owner or Operator shall:
    1. Visually inspect the sump to determine if there is solid or liquid material in the sump;
    2. Visually inspect sump components for signs of corrosion, breakage and wear; and
    3. Verify that any sumps sensors are set in accordance with the manufacturer's specifications, or, if no such specifications exist, the sensors are set at the lowest possible location in the sump.
  - (b) The Owner or Operator shall remove and manage solid and liquid material from the sump in accordance with federal, state and local laws and regulations.
  - (c) The Owner and Operator shall repair and replace components as necessary in accordance with 310 CMR 80.33.
  - (d) The Owner or Operator shall keep records of inspections, repairs and replacements to demonstrate compliance with 310 CMR 80.27(5) and (6) in accordance with 310 CMR 80.36(1) and (5).
- (7) The Owner or Operator shall test turbine, intermediate and dispenser sumps on or before [2 years of the effective date of the regulations] in accordance with 310 CMR 80.27(8).
  - (a) Sumps with a sensor will be tested hydrostatically to the level that will activate the sensor or by vacuum testing.
  - (b) Sumps that do not have a sensor will be tested hydrostatically to the top of the sump or by vacuum testing.

- (8) The Owner or Operator shall test the sumps and the sumps shall pass an integrity test in accordance with the schedule at 310 CMR 80.27(7) 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).
  - (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 80.33.
  - (b) The Owner or Operator shall keep records of this test to demonstrate compliance with 310 CMR 80.27(7) and (8), including but not limited to the date of the test and the results, in accordance with 310 CMR 80.36(1).
- (9) Turbine, intermediate and dispenser sumps that are repaired shall pass an integrity test in accordance with 310 CMR 80.27(8) to determine that they hold liquid.
  - (a) The Owner or Operator shall keep records of such tests in accordance with 310 CMR 80.36(1).

#### 80.28 Requirements for Spill Buckets and Overfill Prevention Equipment

- (1) Owners and Operators shall at all times operate and maintain spill buckets and overfill prevention equipment in accordance with 310 CMR 80.21 and 310 CMR 80.28(2)-(3).
- (2) Requirements for the proper operation and maintenance of spill buckets are as follows:
  - (a) The Owner or Operator shall keep spill buckets clean and free of solid and liquid material.
  - (b) The Owner or Operator shall keep the spill bucket and cover free of cracks and holes at all times.
  - (c) 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.
  - (d) The Owner or Operator shall maintain spill buckets in accordance with the manufacturer's specifications.
  - (e) The Owner or Operator shall inspect spill buckets monthly in accordance with the following:

1. Visually inspect the spill bucket to determine if there is solid or liquid material in the spill bucket.
  2. Visually inspect spill buckets for signs of corrosion, breakage and wear.
  3. Verify that sensors are set in accordance with the manufacturer's specifications, if applicable.
- (f) The Owner or Operator shall test spill buckets in accordance with 310 CMR 80.28(2)(g) on or before [two (2) years from the effective date of the regulations] and once every five (5) years thereafter.
- (g) The Owner or Operator shall test spill buckets in accordance with the schedule at 310 CMR 80.28(2)(f) and in accordance with the following requirements:
1. Spill buckets shall pass an integrity test to ensure the spill bucket is liquid tight by using vacuum or hydrostatic testing.
  2. The standard for declaring a failure is 1/8 inch or greater loss of water within one hour (which is equal to a release or leakage of 0.05 gallons per hour in a typical 12-inch diameter basin).
  3. If the spill bucket fails the test, the Owner or Operator shall repair or replace the spill bucket in accordance with 310 CMR 80.33.
- (h) The Owner or Operator shall repair or replace spill buckets as necessary in accordance with 310 CMR 80.33.
- (i) The Owner or Operator shall keep the following spill bucket records in accordance with 310 CMR 80.36(1).
1. Records of spill bucket inspections to demonstrate compliance with 310 CMR 80.28(2)(e).
  2. Records of spill bucket integrity tests to demonstrate compliance with 310 CMR 80.28(2)(f) and (g).
- (3) Requirements for proper operation and maintenance of overfill prevention equipment are as follows:
- (a) The Owner or Operator shall inspect and test the overfill prevention equipment as required by the manufacturer's specifications to verify that the overfill protection is present and operational. If no manufacturer's specifications exist, the Owner or Operator shall inspect and test the

overflow prevention equipment annually to verify that the overflow protection is present and operational.

- (b) The Owner or Operator shall repair or replace components as necessary in accordance with 310 CMR 80.33.
- (c) Overflow prevention equipment that is repaired shall be tested to determine that it is operational.
- (d) The Owner or Operator shall keep records of the following in accordance with 310 CMR 80.36(1):
  - 1. Records of inspections as required by the manufacturer's specifications or, if no manufacturer's specifications exist, an annual inspections to demonstrate compliance with 310 CMR 80.28(3)(a).
  - 2. Records of testing to demonstrate compliance with 310 CMR 80.28(3)(c).
- (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.

#### 80.29 Requirements for Corrosion Protection

- (1) Owners and Operators shall operate and maintain corrosion protection in accordance with 310 CMR 80.22 and 310 CMR 80.29.
- (2) Sacrificial or galvanic anode cathodic protection systems shall be tested by a cathodic protection tester at the following reoccurring frequency and in accordance with the NACE standards at 310 CMR 80.29(3):
  - (a) If test results indicate a negative voltage of at least -0.90 volts or if the system passes the 100-mV cathodic polarization test as indicated in the NACE Standards at 310 CMR 80.29(3)(a) or (b), the system shall be tested at three year intervals thereafter.
  - (b) If test results indicate a negative voltage of between -0.85 and -0.90 the system shall be tested annually thereafter.
  - (c) If test results indicate a negative voltage of less than -0.85 or if the system fails the 100-mV cathodic polarization test as indicated in the NACE Standard at 310 CMR 80.29(3)(a) or (b), the system shall be deemed inadequate and the Owner and Operator shall comply with 310 CMR 80.29(4).

- (3) Sacrificial or galvanic anode cathodic protection systems shall be tested by a cathodic protection tester at the reoccurring frequency in 310 CMR 80.29(2) and in accordance with the following standards:
- (a) NACE Standard Test Method: NACE Standard TM0101-2012, “Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Tank Systems”; or
  - (b) NACE Standard Test Method: NACE Standard TM0497-2002, “Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems.”
- (4) Impressed current cathodic protection systems shall be tested every 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 60 days by the Owner or Operator in accordance with the manufacturer’s specifications or the NACE publications listed at 310 CMR 80.29(3)(a) or (b) 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 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 80.29(5).
  - (c) Systems installed without voltage and/or amperage meters shall be retrofitted with meters upon the first annual test of the system.
- (5) The Owner or Operator shall determine the cause of the failed cathodic protection test by retaining a corrosion expert within five business days of obtaining knowledge of the failed test, unless the cathodic protection tester can make repairs, re-test and the result is a passing test within said five business day period of the failed test.
- (a) If necessary, the Owner or Operator shall repair or replace the cathodic protection system within 120 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.
  - (c) If repairs to the cathodic protection system are not completed within 120 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 80.42, or permanently close the UST system in accordance with 310 CMR 80.43.
- (6) All cathodic protection systems shall be tested by a cathodic protection tester for proper operation within 60 days following an excavation at the UST system.
- (7) The Owner or Operator shall keep the following records in accordance with 310 CMR 80.36(1):
- (a) Documentation of corrosion experts determination in 310 CMR 80.29(5)(b).
  - (b) Records of testing of cathodic protection system(s).

#### 80.30 Requirements for Compatibility

- (1) The Owner and Operator shall not introduce, or allow to be introduced, any material into an UST system that is not compatible 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.

#### 80.31 Requirements for Inventory Monitoring

- (1) Daily Inventory Monitoring
  - (a) The Owner or Operator of a tank that is not double-walled in accordance with 310 CMR 80.17 and does not have continuous monitoring in accordance with 310 CMR 80.19(2)(b), or 80.19(2)(c)1. or 80.19(2)(c)3. shall conduct inventory monitoring for abnormal regulated substance loss.
  - (b) The Owner or Operator of UST systems with tanks having a capacity of 1000 gallons or less may use manual tank gauging in accordance with 310 CMR 80.31(2) in order to satisfy the requirements of 310 CMR 80.31(1)(a).
  - (c) Inventory monitoring for abnormal regulated substance loss shall be performed as follows:

1. Take daily measurements and reconcile inventory data daily and monthly;
  2. Measure the liquid in the tank using:
    - a. A gauge stick or tape with water sensitive paste which shall be capable of measuring liquid in the tank to the nearest 1/8<sup>th</sup> of an inch; or
    - b. An automatic tank gauging device of equivalent or better measuring accuracy.
  3. 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.
  4. Record all daily measurements and monthly reconciliation information.
- (d) 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.
- (e) In the event of abnormal regulated substance loss, the Owner or Operator shall take the following steps within the 72 hours following the discovery of the abnormal regulated substance loss:
1. Check the inventory input and output records for mathematical error; and
  2. Check the inventory for an error in measurement.
- (f) If the abnormal regulated substance loss cannot be reconciled in accordance with 310 CMR 80.31(1)(e) 1. or 2., the UST system shall be tested for tightness in accordance with 310 CMR 80.32.
- (g) If the tank fails a tightness test pursuant to 310 CMR 80.32, the Owner or Operator shall comply with 310 CMR 40.0300.
1. If the tank passes a tightness test pursuant to 310 CMR 80.32, the tank is considered tight, and the requirements for tightness testing in 310 CMR 80.32 are satisfied.
- (2) Manual Tank Gauging for Small Tanks

- (a) If Owners and Operators use weekly manual tank gauging on tanks having a capacity of 1000 gallons or less to satisfy the inventory monitoring requirements in 310 CMR 80.31(1)(a), they shall comply with 310 CMR 80.31(2)(b) and (c).
- (b) Manual tank gauging shall be conducted every seven (7) days 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 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 consecutive stick readings at 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 1/8<sup>th</sup> of an inch;
  4. A release or leakage shall be suspected if the variation between beginning and ending measurements exceeds the weekly or monthly standard on the following Table F:

Table F

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 release or leakage, the Owner and Operator shall comply with 310 CMR 80.31(1)(e) and (f).

(3) Abnormal Water Gain

- (a) In addition to taking daily measurements in accordance with 310 CMR 80.31(1)(c), the Owner or Operator shall also take daily measurements to determine if there is abnormal water gain in the tank.
- (b) The measurement shall be taken using a method in 310 CMR 80.31(1)(c).
- (c) All measurements shall be recorded.

- (d) An abnormal gain of water inside the tank shall be a gain in the water level of more than one inch in a 24 hour period.
- (e) The Owner or Operator shall have the water removed from the tank and managed in accordance with applicable local, state and federal laws and regulations.
- (f) The Owner or Operator shall have the tank checked for water in accordance with 310 CMR 80.31(3)(b)-(d) within 24 hours of the removal of the water, during which time no regulated substance shall be added to the tank.
- (g) In the event of any abnormal water gain, the Owner or Operator shall:
  - 1. Within 72 hours of obtaining knowledge of the abnormal water gain, investigate the cause of the abnormal water gain and make repairs or replacements as necessary.
  - 2. If the Owner or Operator cannot determine the cause of the abnormal water gain, the UST system shall be tested for tightness in accordance with 310 CMR 80.32.
    - a. If the tank fails a tightness test pursuant to 310 CMR 80.32, the Owner or Operator shall comply with 310 CMR 40.0300.
    - b. If the tank passes a tightness test pursuant to 310 CMR 80.32, the tank is considered tight, and the requirements for tightness testing in 310 CMR 80.32 are satisfied.
- (4) Records. The Owner or Operator shall maintain all records of inventory monitoring, including but not limited to sales receipts, weekly and monthly measurements, and records of monitoring for abnormal water gain found at 310 CMR 80.31(3), in accordance with 310 CMR 80.36(1).
- (5) Waste Oil Tanks. Waste oil tanks connected to oil burning equipment shall be exempt from 310 CMR 80.31 during periods when oil burning equipment is in use.

#### 80.32 Requirements for Tank and Pipe/Line Tightness Testing

- (1) Owners and Operators of all UST systems shall meet the following tightness testing standards:
  - (a) Effective through December 31, 2015, tank and piping/line tightness testing shall be capable of detecting a release or leakage of 0.1 gallon per

hour, 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 five percent.

- (b) Effective on and after January 1, 2016, tank and piping/line tightness testing shall be capable of detecting a release or leakage of 0.05 gallon per hour, 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 five percent.
- (2) Owners or Operators of all UST systems shall meet the following tightness test and reporting requirements:
- (a) A tank or pipe/line tightness test shall be performed by a certified tightness tester using the appropriate test for the particular tank or piping/line.
  - (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/line 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. Calculations 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 80.32(2)(b) shall be kept in accordance with 310 CMR 80.36(1).
- (3) Tightness Test Failures
- (a) A tank or piping/line fails a tightness test when the test results indicate a release or leakage from the UST system that exceeds the detection standards at 310 CMR 80.32(1)(a) or (b), as applicable.
  - (b) If the tank or piping/line fails a tightness test, the certified tightness tester shall notify the Owner and Operator and the fire department in the city or town in which the UST system is located immediately, but in no event later than 24 hours after obtaining knowledge of the failed test.
  - (c) The Owner or Operator shall comply with 310 CMR 40.0300.

### 80.33 Requirements for Repairs and Replacements

- (1) A tank that has leakage or has released regulated substances shall be immediately taken temporarily out-of-service in accordance with 310 CMR 80.42, but in no event later than 24 hours of obtaining knowledge of the leakage or release.
  - (a) The tank shall be permanently closed or removed in accordance with 310 CMR 80.43(2) or (3), 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 80.32.
- (2) Any part of the UST system (except a tank) that has leakage or has released regulated substance, or threatens to release regulated substance, shall be immediately taken temporarily out-of-service in accordance with 310 CMR 80.42 and be repaired, replaced or permanently closed or removed in accordance with 310 CMR 80.43(2) or (3).
- (3) The Owner or Operator shall repair or replace all UST system components within 30 days of the discovery of the need for repair or replacement, unless the UST system is taken temporarily out-of-service, removed or permanently closed, in

accordance with 310 CMR 80.42 or 80.43, within 30 days of the discovery of the need for the repair or replacement.

- (a) If a longer timeframe for a repair 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 discovery date of the repair or replacement. This documentation shall be retained in accordance with 310 CMR 80.36(1).
  - (c) If, due to circumstances beyond the Owner and Operator's control, the repair or replacement cannot be conducted within 30 days of the discovery of said repair or replacement, the Owner or Operator shall submit in writing to the Department, within 30 days of the discovery of the need for a repair or replacement, information detailing the circumstances and a schedule for implementing the repairs or replacements. The Department shall review the information and schedule and shall approve or deny the request in writing to the Owner or Operator.
- (4) The Owner or Operator shall ensure that any repair of an UST system is performed by a qualified individual, in accordance with the manufacturer's specifications, 310 CMR 80.00 and applicable codes and standards.
  - (5) If a repair is made to the tank or the piping, the Owner or Operator shall ensure that the tank or piping is tightness tested in accordance with 310 CMR 80.32 within 30 days following the date of the completion of the repair.
  - (6) The Owner or Operator shall maintain records of every repair, including, but not limited to, a description of the repair and the date of said repair, for the remaining operating life of the UST system in accordance with 310 CMR 80.36(5).

#### 80.34 Requirements for Compliance Certification

- (1) Certification Form. The Owner or Operator of an UST system shall submit, to the Department, a compliance certification in accordance with 310 CMR 70.00, no earlier than 16 months and no later than 18 months from the UST facility compliance date or the date of the most recent third-party inspection report submission, whichever is earlier. The compliance certification shall be submitted in a format specified by the Department. The Owner or Operator shall certify whether or not the Owner or Operator has complied with the following requirements:
  - (a) Financial responsibility obligations in accordance with 310 CMR 80.51-80.63;

- (b) All testing requirements for leak detection, sumps, spill buckets, overfill prevention, and corrosion protection in accordance with 310 CMR 80.20, 80.21, 80.22, 80.26, 80.27, 80.28 and 80.29;
  - (c) All registration, reporting and record keeping requirements in accordance with 310 CMR 80.23 and 80.36;
  - (d) Emergency procedure requirements in accordance with 310 CMR 80.25;
  - (e) That cathodic protection readings have been taken and recorded in accordance with 310 CMR 80.29(4)(b);
  - (f) A demonstration that all Class A, B and C operators are certified in accordance with 310 CMR 80.37;
  - (g) For all sump, spill bucket and overfill prevention equipment inspections in accordance with 310 CMR 80.27 and 80.28;
  - (h) That all repairs and replacements have been completed in accordance with 310 CMR 80.33; and
  - (i) That 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 80.23(1).
- (2) Return to Compliance. If the Owner or Operator is out of compliance with any of the requirements on the Certification Form, the Owner or Operator shall submit a Return to Compliance (RTC) Plan with the Certification Form that details what the Owner or Operator will do to return to compliance and the date by which compliance will be achieved. The RTC Plan shall include, but not be limited to, actions the Owner or Operator has taken or will take to come into compliance and remain in compliance with the requirements of 310 CMR 80.00.
- (a) The deficiencies identified in the RTC plan shall be corrected within 30 days of the submittal of the Certification Form, unless the RTC plan documents a reasonable basis for why more time is needed to correct the deficiencies and provides an anticipated completion date.
  - (b) If the Department determines that the proposed completion date is not reasonable, the Department shall notify the Owner or Operator that deficiencies shall be corrected by a date earlier than the proposed date.

- (c) The Owner or Operator shall notify the Department when the deficiencies are corrected in a format specified by the Department.
- (3) Certification for Temporarily Out-Of-Service UST System. The Owner or Operator of an UST system that is temporarily out-of-service shall certify compliance with the requirements at 310 CMR 80.42(4).
- (4) New or Newly Regulated UST Facility. If an UST facility is installed or becomes subject to 310 CMR 80.00 after [EFFECTIVE DATE OF REGULATIONS], the compliance certification statement is due to Department no earlier than 16 months and no later than 18 months after the date of registration in accordance with 310 CMR 80.23.
- (5) Certification Statement. The Owner or 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.

#### 80.35 Requirements for Monthly Inspections

- (1) Owners and Operators are responsible for ensuring that monthly visual inspections meeting the requirements in 310 CMR 80.35(2) are conducted at all underground storage tank systems.
  - (a) A Class A or B operator shall conduct the monthly visual inspections, or the monthly visual inspections shall be conducted under the direct supervision of a Class A or B operator.
- (2) The monthly visual inspection of underground storage tank systems shall include, but not be limited to:
  - (a) Verifying that the electronic monitoring equipment is currently on and properly operating.
  - (b) Inspecting each spill bucket in accordance with 310 CMR 80.28(2)(e).
  - (c) Verifying that grade level fill covers are properly color-coded.
- (3) If the visual inspection indicates that any underground storage tank system components are not properly operating or are not being maintained in accordance with 310 CMR 80.00, manufacturer's specifications and applicable codes and standards, the Owner or Operator shall repair said component(s) in accordance with 310 CMR 80.33.
- (4) Every requirement under 310 CMR 80.35(2) shall be recorded on a monthly inspection report that contains at a minimum the following information:

- (a) Whether the component is properly operating and being maintained.
  - (b) Any repairs conducted on components designated as not operating or being maintained in accordance with 310 CMR 80.00, the manufacturer's specifications and all applicable codes and standards.
- (5) The results of each inspection shall be recorded and retained in accordance with 310 CMR 80.36(1).

#### 80.36 Requirements for Recordkeeping

- (1) For a minimum of four 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 seven business days after the request. The records shall include, but are not limited to:
- (a) A demonstration that an UST system holds a *de minimus* concentration of regulated substance, if applicable, in accordance with 310 CMR 80.04(5)(c).
  - (b) Results of all turbine, intermediate and dispenser sump inspections and integrity tests in accordance with 310 CMR 80.20(4), 80.27(4)(c), 80.27(6)(d) 80.27(8)(b) and 80.27(9)(a).
  - (c) Results of all annual sump sensor testing, if applicable, in accordance with 310 CMR 80.27(5)(b)2. and 80.27(7)(c)2.
  - (d) Results of all spill bucket inspections and integrity tests in accordance with 310 CMR 80.21(1)(c) and 80.28(2)(i).
  - (e) Results of all cathodic protection tests in accordance with 310 CMR 80.22(5) and 80.29(7).
  - (f) Records to demonstrate the Owner or Operator responded to alarms in accordance with 310 CMR 80.24(3).
  - (g) Results of all leak detection tests in accordance with 310 CMR 80.26(1) through (11), as applicable.
  - (h) Leak detection monitoring records in accordance with 310 CMR 80.26(1) through (11), as applicable.
  - (i) Results of inspections and testing of overfill prevention equipment in accordance with 310 CMR 80.28(3)(d).

- (j) Records for all inventory monitoring for abnormal regulated substance loss and abnormal water gain in accordance with to 310 CMR 80.31(4), if applicable.
  - (k) Reports of tightness tests conducted, excluding tests conducted at installation, in accordance with 310 CMR 80.32(2)(c).
  - (l) Documentation of the date the need for the repair or replacement was discovered in accordance with 310 CMR 80.33(3)(b).
  - (m) Records to demonstrate compliance with change-in-product requirements at 310 CMR 80.41(6).
  - (n) Monthly inspection reports in accordance with 310 CMR 80.35(5).
- (2) For at least two years, the Owner or Operator shall maintain records in hard copy or electronically, that each Class A, Class B and Class C operators was certified in accordance with 310 CMR 80.37(7), (8) and (9), and shall make them available to the Department as soon as possible following a request, but in no event more than seven business days after the request.
- (3) Until the UST system is removed or permanently closed in accordance with 310 CMR 80.43(2) or (3), 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 business days after the request.
- (a) A copy of the registration in accordance with 310 CMR 80.23(1).
  - (b) A copy of the third-party inspection report pursuant to 310 CMR 80.49(6)(b).
  - (c) List of the current Class A, Class B and Class C operators of each UST system in accordance with 310 CMR 80.37(11).
  - (d) Records that the Owner and Operator complied with temporary closure requirements in accordance with 310 CMR 80.42(6), if applicable.
  - (e) Records to demonstrate that the Owner and Operator complied with the permanent closure requirements in accordance with 310 CMR 80.43(7), if applicable.
  - (f) Emergency procedures in accordance with 310 CMR 80.25(2).
- (4) For the life of a cathodic protection system, the Owner or Operator shall maintain an as built, scaled plan of the cathodic protection system and manufacturer's

- specifications in accordance with 310 CMR 80.22(3)(c), 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 business days hours after the request.
- (5) Until the UST system is removed or permanently closed in accordance with 310 CMR 80.43(2) or (3), 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 business days after the request:
- (a) Records of each equipment repair or replacement in accordance with 310 CMR 80.33(6).
  - (b) A copy of installation information including, but not limited to, the installer's certification and checklist, testing results, inspections and a copy of the scaled drawing or as-built plans of the UST facility in accordance with 310 CMR 80.16.
- (6) An Owner or Operator shall maintain the most current financial assurance mechanism(s) used to demonstrate financial responsibility in accordance with 310 CMR 80.59 for an UST system until released from the requirements in accordance with 310 CMR 80.61. 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 available to the Department as soon as possible, but in no event more than seven business days after receiving the request.

80.37 [RESERVED]

## LEAKAGE AND RELEASE: RESPONSE, REPORTING AND REMEDIATION

80.38 Response to a Release or Threat of Release

In the event of a release or threat of release, the Owner or Operator shall comply with 310 CMR 40.0000.

80.39 Response to Leakage

- (1) In the event of leakage, whether determined by testing or otherwise, the following steps shall be taken:
  - (a) If testing has confirmed that the source of the leakage is the piping, the Owner or Operator shall immediately:
    1. Isolate and repair the section of the pipe determined to have leakage; or
    2. Take that UST system temporarily out-of-service in accordance with 310 CMR 80.42; or
    3. Remove or permanently close the UST system in accordance with 310 CMR 80.43.
  - (b) If testing has confirmed that the source of the leakage is a particular tank, the Owner or Operator shall, within 24 hours, remove all its regulated substance and:
    1. Take the tank temporarily out-of-service in accordance with 310 CMR 80.42 and repair the tank in accordance with 310 CMR 80.33(1); or
    2. Remove the tank in accordance with 310 CMR 80.43(2); or
    3. Permanently close-in-place the tank in accordance with 310 CMR 80.43(3).

80.40 Reportable Releases

- (1) 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 80.23(3)(c), in a format provided by the Department:
  - (a) The source of each reportable release from an UST system, i.e. the UST component or piece of equipment that failed, if known; and

- (b) The cause of each reportable release from an UST system, i.e. the reason for the failure, if known.

## CHANGE-IN-PRODUCT, OUT-OF-SERVICE SYSTEMS AND CLOSURE

80.41. Requirements for Change-in-Product

- (1) Owners and Operators shall comply with all requirements in 310 CMR 80.41.
- (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 in a format specified by the Department in accordance with 310 CMR 80.23(2)(a) and the following timeframes:
  - (a) If the change-in-product is from a regulated substance to a different regulated substance, within 30 days of executing the change.
  - (b) If the change-in-product is from a regulated substance to a non-regulated substance, at least seven days before executing the change.
  - (c) If the change-in-product is from a non-regulated substance to a regulated substance, within 30 days of receiving regulated substance into the UST system, in accordance with 310 CMR 80.23(1).
- (4) If the change-in-product is from a regulated substance to a non-regulated substance:
  - (a) Before executing a change-in-product, the Owner or Operator shall remove all solid and liquid material in accordance with 310 CMR 80.47. 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; and
  - (b) The UST system will no longer be subject to 310 CMR 80.00, except that the Owner and Operator shall continue to be responsible for remediating any releases of regulated substances that occurred. The Owner or Operator shall conduct an assessment in accordance with 310 CMR 80.43(4), after notification to the Department of the change-in-product, but before the change-in-product is executed.
- (5) If the change-in-product is from a regulated substance to another 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) Owners or Operators shall demonstrate compliance with the requirements for change-in-product by maintaining records/documentation, in accordance with 310 CMR 80.36(1).

#### 80.42. Requirements for Taking an UST System Temporarily Out-of-Service

- (1) Owners and Operators shall comply with all requirements in 310 CMR 80.42.
- (2) Within 30 days of an UST system being taken temporarily out-of-service, the Owner shall notify the Department in a format specified by the Department in accordance with 310 CMR 80.23(2)(b).
- (3) The Owner or Operator shall not take an UST system temporarily out-of-service for more than five years.
  - (a) If a temporarily out-of-service UST system is not put back into service at the end of five years, the Owner or Operator shall permanently close the UST system in accordance with 310 CMR 80.43.
  - (b) A single-walled steel tank that is temporarily out-of-service on August 7, 2017, shall comply with the requirements at 310 CMR 80.15.
- (4) When an UST system is taken temporarily out-of-service, the Owner or Operator shall comply only with the following requirements of 310 CMR 80.00 during the entire time period the UST system is temporarily out-of-service:
  - (a) Remove all solid and liquid material from the UST system and have the UST system rendered inert in accordance with 310 CMR 80.47;
    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 80.29, if applicable;
  - (e) Continue to comply with the third-party inspection requirements in accordance with 310 CMR 80.49;
  - (f) Comply with the Compliance Certification requirements for temporarily out-of-service UST systems in accordance with 310 CMR 80.34(3); and

- (g) Maintain financial responsibility in accordance with 310 CMR 80.51-80.63.
- (5) Within 30 days before returning the UST system to service, the Owner or Operator shall have the tank and piping tightness tested and shall ensure that the UST system components are calibrated and operating in accordance with the manufacturer's specifications.
- (6) Within 30 days before returning the UST system to service, the Owner or Operator shall notify the Department in a format specified by the Department in accordance with 310 CMR 80.23(2)(c).
- (7) Owners or Operators shall demonstrate compliance with the requirements of temporarily out-of-service by maintaining records/documentation in accordance with 310 CMR 80.36(3).

#### 80.43. Requirements for Removal and Permanent Closure In-Place

- (1) Owners and Operators shall comply with the requirements in 310 CMR 80.43.
- (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 80.47, 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 an assessment in accordance with 310 CMR 80.43(4) within 24 hours after the UST system is removed, but prior to backfill of the excavation area.
  - (c) The Owner shall notify the Department, in a format specified by the Department, that the UST system was removed, within 30 days of removal in accordance with 310 CMR 80.23(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 does not notify the Owner within 30 days, the Owner or Operator may proceed with the closure-in-place if it has complied with 310 CMR 80.43(3)(a)1.
3. The Owner or Operator shall have all solid and liquid material removed from the tank, in accordance with 310 CMR 80.47 and shall have the tank filled with clean sand, concrete slurry mix or another inert material if such other 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 an assessment in accordance with 310 CMR 80.43(4).
- (c) The Owner shall notify the Department, in a format specified by the Department that the UST system was closed-in-place, within 30 days of the UST system being filled in accordance with 310 CMR 80.23(2)(e). A copy of the assessment in 310 CMR 80.43(4) shall be submitted with said form.

(4) Assessment

- (a) For assessments conducted in accordance with 310 CMR 80.41 and 80.43, the Owner or Operator shall measure for the presence of a release of regulated substances where contamination is most likely to be present in the subsurface. To determine sampling location(s), sample types, field screening techniques and analytical methods, the Owner or Operator shall consider the regulated substance stored in the UST system and its characteristics; the type of backfill in the area; the depth to groundwater and direction of ground water flow, the distance to surface water bodies. and any other factors appropriate for identifying the presence of a release.

- (b) A photo ionization detector (PID) or flame ionization detector (FID) shall be employed in the field to detect for the presence of a release, if the regulated substance can be detected by a PID or FID.
  - (c) If the Owner or Operator obtains knowledge of a release, the Owner or Operator shall comply with 310 CMR 40.0300.
- (5) 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.
  - (6) Owners and Operators shall demonstrate compliance with the requirement for permanent closure maintaining records/documentation in accordance with 310 CMR 80.36(3).
  - (7) The Owner or Operator may need to obtain a permit from the fire department in which the UST system is located for closure or relocation of an UST system pursuant to M.G.L. c. 210, §1. It is the responsibility of the Owner or Operator to obtain any required permit(s).

#### 80.44. Requirements for Out-of-Use UST Systems

If an UST system is out-of-use, the Owner or Operator shall permanently close the UST system in accordance with 310 CMR 80.43 unless the UST system is brought back into service under 310 CMR 80.45.

#### 80.45. Requirements for Bringing Out-Of-Use UST Systems Back Into Service

- (1) A new Owner that acquires an UST system that is out-of-use may bring the out-of-use UST system back into service within 90 days after the acquisition is final, if the UST system complies with the most recent tank, piping, leak detection, sump, spill bucket, overfill protection and corrosion protection standards in 310 CMR 80.00 and the Owner:
  - (a) Determines that all the UST system components are operable;
  - (b) Passes a tightness test in accordance with 310 CMR 80.32;
  - (c) Has a third-party inspection performed in accordance with 310 CMR 80.49(6); and
  - (d) Performs any necessary repairs in accordance with 310 CMR 80.33.
- (2) After the Owner has completed the requirements in accordance with 310 CMR 80.45(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 80.23(1).

#### 80.46. 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 80.43(4).

#### 80.47. Standards for Cleaning and Closure

- (1) The Owner or Operator shall follow the applicable cleaning and closure procedures to comply with 310 CMR 80.41(4)(a), 80.42(4)(a) and 80.43(2)(a) and 80.43(3)(a)3.:
  - (a) American Petroleum Institute (API) Recommended Practice 1604, 3<sup>rd</sup> Edition, March 1996 “Closure of Underground Petroleum Storage Tanks”, Sections 1, 3, and 4.1 through 4.4; and
  - (b) United States Environmental Protection Agency standards for RCRA hazardous debris found at 40 CFR 268.45.

## DELIVERY PROHIBITION

80.48 Delivery Prohibition

- (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 if one or more of the following conditions exist:
  - (a) Failure to install spill prevention equipment in accordance with 310 CMR 80.21(1);
  - (b) Failure to install overfill protection equipment in accordance with 310 CMR 80.21(2);
  - (c) Failure to install leak detection equipment in accordance with 310 CMR 80.19; or
  - (d) Failure to install corrosion protection equipment in accordance with 310 CMR 80.22.
- (2) Upon learning of any of the conditions in 310 CMR 80.48(1), the Owner or Operator shall immediately, but in no event more than 24 hours after learning of the violation, inform the Department of the violation.
- (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 if one or more of the following conditions exist:
  - (a) Leak detection equipment is not operating in accordance with 310 CMR 80.26;
  - (b) Spill prevention is not operating in accordance with 310 CMR 80.28(1) and (2);
  - (c) Overfill protection is not operating in accordance with 310 CMR 80.28(1) and (3);
  - (d) Corrosion protection equipment is not operating in accordance with 310 CMR 80.29;
  - (e) The Owner or Operator fail to demonstrate or maintain financial responsibility in accordance with 310 CMR 80.51-80.63; or

- (f) Any other violation of 310 CMR 80.00 that poses a significant threat to public health, safety or the environment, as determined by the Department at its sole discretion.
- (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 80.50(3) prohibiting the delivery of product to the UST system(s). The delivery prohibition order shall be issued no sooner than 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.
- (6) No person shall deliver, cause to be delivered, accept for delivery or cause to be accepted for delivery any regulated substance 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, except in accordance with 310 CMR 80.48(10).
- (8) Upon notification from the Owner or Operator that the violations identified in the delivery prohibition order have been corrected, the Department shall, confirm that the violations have been corrected.
- (9) If the Department confirms that the violation(s) have been corrected, the Department shall rescind the delivery prohibition order in writing and remove the lock and red tag from the UST system.
- (10) In the event that the Department does not inspect an UST system within 24-hours of receipt of the notification from the Owner or Operator that the violation(s) identified in the delivery prohibition order have been corrected, a third-party inspector may remove the 'red tag' after providing a certification to the Department, in a format specified by the Department, that the violation(s) has been corrected.
  - (a) Both the Owner or Operator and the third-party inspector shall sign the certification prior to submission to the Department.
- (11) Notwithstanding a delivery prohibition order, the Department may authorize the delivery of product to an UST system that has received a delivery prohibition order in emergency situations, as determined by the Department in its sole discretion.

- (12) Any person subject to a delivery prohibition order shall have the right to an adjudicatory appeal in accordance with 310 CMR 80.50. An adjudicatory appeal shall not stay the effectiveness of a delivery prohibition order.

## THIRD-PARTY INSPECTIONS

80.49 Third-Party Inspections

- (1) The third-party inspection program operates on a three year cycle that began on August 8, 2007. Every Owner and Operator was required to have every UST system inspected by a third-party inspector by August 8, 2010, and have every UST system inspected by a third-party inspector every three years thereafter.
- (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 80.49(2)(a) through (g).
  - (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 triennial third-party inspection.
  - (b) The Owner or Operator shall submit a truthful, accurate and complete third-party inspection report that contains all the information required in 310 CMR 80.49(7) on or before the UST facility compliance date every three years until the UST system is permanently closed in place or removed in accordance with 310 CMR 80.43.
  - (c) The Owner or Operator shall submit the third-party inspection report to the Department no later than 60 days after the commencement of the third-party inspection in accordance with 310 CMR 80.49(7)(c)1., 2., or 3.
  - (d) 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 80.49(2)(g).
  - (e) 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 80.49(2)(g).
  - (f) If an Owner registers a new UST facility after [EFFECTIVE DATE OF REGULATIONS], the Department will assign the UST facility an UST facility compliance date.
    1. If an Owner or Operator installs a new or replacement UST system or tank at an existing UST facility, such installation shall not alter the UST facility compliance date.

- (g) The Department may change the UST facility compliance date for any UST facility provided the Department gives the Owner and Operator 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) Effective 12 months after the Department makes the third-party inspector examination available for eligible individuals to take pursuant to 310 CMR 80.49(4)(b), third-party inspections shall only be performed by third-party inspectors certified in accordance with 310 CMR 80.49(4).
- (4) Eligibility and Certification Requirements for a Third-Party Inspector
- (a) An individual that meets the requirements of 310 CMR 80.49(4)(b)-(d) shall submit to the Department an application in a format 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 80.49(4)(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 years, unless suspended or revoked.
    - b. In order to renew a certification, the third-party inspector shall re-apply at least 90 days before the certification expires in accordance with 310 CMR 80.49(4)(a).
      - i. To renew a certification, the third-party inspector shall demonstrate s/he is in compliance with the requirements at 310 CMR 80.49(4)(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 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; 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, § 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, § 13, before the Department have been exhausted.
2. If the Department determines the individual does not meet the certification requirements in 310 CMR 80.49(4)(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 postmarked or delivered to the Department within 30 days of the date of the denial letter from the Department.
    - b. The Department shall respond to the individual in writing within 30 days of receiving the request for reconsideration.
    - 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 80.50.
    - d. An individual may only file such a request for adjudicatory hearing in accordance with 310 CMR 80.50 if the individual timely requests reconsideration of the denial in accordance with 310 CMR 80.49(4)(a)2.a. and is denied after reconsideration.
  3. Upon receipt of a third-party inspector 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 80.49(5).
- (b) In order to be certified as a third-party inspector, an eligible individual shall take and pass a Department required 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. Possess at least five years of experience in the field of UST installation and/or operation and maintenance, of which two years may be substituted by a bachelors or associates degree in science or engineering, demonstrated through a resume or other information satisfactory to the Department; and
  2. Meet one of the following additional criteria:
    - a. Participate in at least ten inspections with a certified third-party inspector to obtain hands-on, practical experience with third-party inspections. Said inspections shall be conducted within the three years immediately prior to submitting an application in accordance with 310 CMR 80.49(4)(a); or
    - b. Hold a third-party inspector certification from another state, and have performed a minimum of ten third-party inspections in that state within the past three years.
- (d) A third-party inspector who is registered with the Department under 527 CMR 9.00 as of [EFFECTIVE DATE OF REGULATIONS] may take the examination in accordance with 310 CMR 80.49(4)(b) without meeting the requirements of 310 CMR 80.49(4)(c), provided that:
1. The third-party inspector has conducted at least ten third-party inspections since August 8, 2007; and
  2. The third-party inspector takes the Department required examination within two years after the Department makes the third-party inspector examination available for eligible individuals to take pursuant to 310 CMR 80.49(4)(b).
- (e) In order to maintain certification, the third-party inspector shall complete annual training provided by the Department.
- (f) A third-party inspector shall maintain records, in hard copy or electronically, demonstrating compliance with 310 CMR 80.49(4)(b)-(e) until the individual is no longer a certified third-party inspector. 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 business days after the request.

(5) Performance Standards

- (a) A third-party inspector shall have the continuing duty to meet the following performance standards:
1. Effective 12 months after the third-party examination becomes available pursuant to 310 CMR 80.49(4)(b), be a certified third-party inspector before conducting any third-party inspections. Prior to that date, third-party inspectors registered with the Department pursuant to 527 CMR 9.00 may conduct 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 80.49(7)(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 business days following the request.
  8. If a third-party inspector identifies one or more conditions in accordance with 310 CMR 80.48(1), at an UST system the third-party inspector shall:
    - a. Immediately advise the Owner or Operator of the one or more conditions described at 310 CMR 80.48(1) and the Owner or Operator's obligation to notify the Department of the condition(s) in accordance with 310 CMR 80.48(2); and
    - b. Notify the Department of the violation no later than 48 hours after informing the Owner or Operator, unless the third-party inspector receives written confirmation from the Owner or Operator that it notified the Department.

- (6) Prohibitions. At the time of a third-party inspection and for the year immediately preceding the 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 sister by blood, marriage or adoption of an Owner or Operator of the UST system who has performed work on the UST system, or the spouse, parent, child, brother or sister by blood, marriage or adoption of an employee or contractor of the Owner or Operator of the UST system who has performed work on the UST system that the third-party inspector is inspecting;
  - (c) An employee of the UST facility s/he is inspecting or an individual who has performed work at the UST facility s/he is inspecting, under contract or otherwise, other than a contractor who is the third-party inspector;
  - (d) The designated Class A, B or C operator of the UST system the third-party inspector is inspecting; or
  - (e) A person, or employee of a person, having any financial interest in or daily on-site responsibility for the UST system the third-party inspector is inspecting.
- (7) Inspection Requirements
- (a) A third-party inspector shall conduct a third-party inspection in accordance with 310 CMR 80.49(7)(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 UST system:
    - 1. Whether the Owner or Operator submitted required documentation to the Department in accordance with 310 CMR 80.23.
    - 2. Whether leak detection has been installed, tested, maintained and is fully operational in accordance with 310 CMR 80.19, 80.26 and the manufacturer's specifications.
    - 3. Whether corrosion protection, if applicable, has been installed, tested, maintained, and is fully operational in accordance with 310 CMR 80.22, 80.29 and the manufacturer's specifications.

4. Whether turbine, intermediate and dispenser sumps have been installed, inspected, tested and maintained in accordance with 310 CMR 80.20, 80.27 and the manufacturer's specifications.
5. Whether spill buckets have been installed, inspected, tested and maintained in accordance with 310 CMR 80.21(1), 80.28(1) and (2) and the manufacturer's specifications.
6. Whether overfill protection has been installed, inspected, tested, maintained, and is fully operational in accordance with 310 CMR 80.21(2), 80.28(1) and (3) and the manufacturer's specifications.
7. Whether inventory monitoring, if applicable, has been performed and recorded in accordance with 310 CMR 80.31.
8. Whether tightness tests were conducted in accordance with 310 CMR 80.32.
9. Whether compliance certification forms have been completed and submitted to the Department in accordance with 310 CMR 80.34.
10. Whether repairs and replacements have been conducted in accordance with 310 CMR 80.33.
11. Whether the emergency response postings and written procedures are in compliance in accordance with 310 CMR 80.25.
12. Whether alarms have been responded to and the responses documented in accordance with 310 CMR 80.24(3).
13. Whether visual and/or olfactory observations indicate the presence of leakage or release related to the UST system.
14. Whether UST systems that changed product in the UST system complied with 310 CMR 80.41.
15. Whether financial responsibility is current and documented in accordance with 310 CMR 80.51-80.63.
16. Whether UST systems that are temporarily out-of-service are being serviced and documented in accordance with 310 CMR 80.42.
17. Whether UST systems that were permanently closed were properly documented in accordance with 310 CMR 80.43.

18. Whether documentation for Class A, B and C operators is current and documented in accordance with 310 CMR 80.37.
  19. Whether required records are kept in accordance with 310 CMR 80.36.
- (b) The Owner or Operator shall provide the third-party inspector with all necessary records to complete the inspection in accordance with 310 CMR 80.49(7)(a).
- (c) 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 80.49(7)(d), 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 80.49(7)(e), and shall submit the third-party inspection report to the Department on or before the UST facility compliance date in accordance with 310 CMR 80.49(7)(f).
  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 80.49(7)(e), and submit the report to the Department on or before the UST facility compliance date.
    - a. Before the third-party inspection report is submitted, the Owner or Operator shall have the third-party inspector determine whether each deficiency is corrected and the third-party inspector shall record their findings on the third-party inspection report.
    - b. A third-party inspector shall document the findings of the facility's re-inspection in the "Re-inspection" section of the third-party inspection report, sign and date the report in accordance with the certification at 310 CMR 80.49(7)(d), and provide the third-party inspection report to the Owner or Operator.
    - c. The Owner or Operator shall sign and date the third-party inspection report in accordance with the certification at 310 CMR 80.49(7)(e), and submit the third-party inspection

report to the Department on or before the UST facility compliance date in accordance with 310 CMR 80.49(7)(f).

3. In the event that the Owner or Operator is unable to correct the deficiencies identified in the third-party inspection report by the UST facility compliance date, the Owner or Operator shall sign and date the report in accordance with the certification at 310 CMR 80.49(7)(e) and submit the third-party inspection report with a return to compliance (RTC) plan, in a format specified by the Department, to the Department on or before the UST facility compliance date in accordance with 310 CMR 80.49(7)(f).
  - a. The RTC plan shall:
    - i. Identify each deficiency that was not corrected;
    - ii. Detail what the Owner or Operator will do to RTC with each identified deficiency; and
    - iii. Include the following statement: "I, [name of Owner 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 RTC plan shall be corrected and the Owner or Operator shall submit a RTC completion report to the Department, in a format specified by the Department, within 30 days of the submittal of the third-party inspection report or the UST facility compliance date, whichever is earlier. If the RTC plan documents a reasonable basis for a proposed alternative completion date by which the deficiencies will be corrected and the required RTC completion report submitted, the RTC completion

report shall be submitted by this alternative completion date.

- c. If, upon review, the Department determines that the proposed alternative completion date is not reasonable, the Department shall notify the Owner or Operator that deficiencies shall be corrected and the RTC completion report submitted to the Department by a date earlier than the proposed alternative date.
  - d. Before the RTC completion report is submitted, the Owner or Operator shall have a third-party inspector determine whether each deficiency is corrected and the third-party inspector shall record their findings on the RTC completion report.
  - e. The third-party inspector shall sign and date the RTC completion report in accordance with the certification at 310 CMR 80.49(7)(d), and provide the RTC completion report to the Owner or Operator.
  - f. The Owner or Operator shall sign and date the RTC completion report in accordance with the certification at 310 CMR 80.49(7)(e), and submit the RTC completion report to the Department on or before the RTC completion date.
- (d) A third-party inspector who performs a third-party inspection shall sign and date the third-party inspection report 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 80.49(4); (ii) that I personally performed this inspection of the UST facility in accordance with the 310 CMR 80.49(7)., 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."

- (e) 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 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."
- (f) The Owner or Operator shall ensure that the third-party inspection report is hand delivered, postmarked or submitted electronically to the Department by the UST facility compliance date set forth in 310 CMR 80.49(2).
- (g) The Owner and Operator shall not alter or delete any information in the third-party inspection report.
- (8) Nothing contained in 310 CMR 80.49 shall be construed or interpreted to limit the authority of the Department to conduct inspections of UST systems or facilities or to take any 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.
- (9) Without limitation, if the Department determines that a third-party inspector has not complied with any provision of 310 CMR 80.49, the Department may require that the third-party inspector re-take the examination in accordance with 310 CMR 80.49(4)(d).
- (10) In addition to taking enforcement against a third-party inspector in accordance with 310 CMR 80.50, 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 80.49 or 310 CMR 80.48(10). Such action by the Department shall be subject to opportunity for an adjudicatory hearing pursuant to 310 CMR 80.50.

- (a) In an adjudicatory hearing held pursuant to 310 CMR 80.50, 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.
  
- (11) Any individual whose application is denied or any third-party inspector whose certification is revoked shall be barred from re-applying to become a third-party inspector for up to two years.

## ENFORCEMENT AND APPEALS

80.50. Enforcement and Appeals

- (1) General. Any failure to comply with M.G.L. c. 21O, 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. 21O 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, certification 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 80.50(5);
  - (b) Issue an order to the Owner and Operator of the UST system or facility, in accordance with 310 CMR 80.48. 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 80.50(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
  - (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, employee, or agent of that person. The fact and date of service is established by the return receipt or affidavit of the person making service.
  - (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, employee, or agent of that person. The fact and date of service is established by the returned receipt.
  - (c) The Department may make service of an order in an alternative 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 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 80.50(3)(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 80.50(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 80.49(4)(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 80.49(10).

- (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 80.50(2), shall be deemed to have waived their right to an adjudicatory hearing, unless the person delivers to the Department a request for an adjudicatory hearing in writing within 21 days of the date of issuance in accordance with 310 CMR 80.50(6)(c) 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) The request for an adjudicatory hearing shall be submitted to the Department in the manner specified in the appealable document.
  - (c) 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;
    - 3. Three days after the Department initiates transmission of the document by other methods of notification specified in 310 CMR 80.50(3); or
    - 4. Three days after the Department publishes the document in a newspaper of general circulation.

## FINANCIAL RESPONSIBILITY

80.51 Definitions. The following definitions shall apply only to 310 CMR 80.51-80.63. Note: The definitions in this section are intended to assist in the understanding of these regulations and are not intended either to limit the meaning of the terms in a way that conflict with standard insurance usage or to prevent the use of other standard insurance terms in place of defined terms.

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 or Operator.

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.

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.

Controlling interest means direct ownership of at least 50 percent of the voting stock of an entity.

Financial reporting year means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:

- (1) a 10-K report submitted to the SEC;
- (2) an annual report of tangible net worth submitted to Dun and Bradstreet; or
- (3) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration.

“Financial reporting year” may thus comprise a fiscal or a calendar year period.

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.

General Purpose Local Government means a local government entity that does not perform a single function or limited range of functions. A General Purpose Local Government, includes, but is not limited to, municipalities, counties, townships, towns, villages and parishes.

Legal defense cost means any expense that an Owner or Operator or provider of financial assurance incurs in defending against claims or actions brought:

- (1) By the Environmental Protection Agency (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.

Local government means:

- (1) Cities, municipalities and towns, separately chartered and operated special districts (including, but not limited to, local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution in the Commonwealth; and
- (2) Special districts and independent school districts established by cities, municipalities or towns, and other general purpose governments to provide essential services.

Occurrence means an event, including continuous or repeated exposure to conditions, which results in a release from an UST system.

Property damage means injury to real or personal property. 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.

Provider of financial assurance 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 80.54(1)-(11), including a guarantor, 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.

Substantial business relationship means the extent of a business relationship necessary under Massachusetts state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued “incident to that relationship” if it arises from and depends on existing economic transactions between the guarantor and the Owner or Operator.

Substantial governmental relationship means the extent of a governmental relationship necessary under Massachusetts state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued

“incident to that relationship” if it arises from a clear commonality of interest in the event of an UST release such as coterminous boundaries, overlapping constituencies, common ground-water aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

Termination means only those changes that could result in a gap in coverage such 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.

#### 80.52 Requirements for Amount and Scope of Financial Responsibility

- (1) All Owners or Operators 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. 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 80.48.
- (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 80.52 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 80.52(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 annual aggregate 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 annual aggregate amount of at least \$2 million within 60 days of installing the tank(s) that exceeds 100.
- (8) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the Owner and Operator.

#### 80.53 Allowable Mechanisms and Combinations of Mechanisms

- (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 80.54(2)-(5) and 80.54(10)-(11) to demonstrate financial responsibility for one or more UST systems.
- (2) In addition to the mechanisms listed at 310 CMR 80.54(2)-(5) and 80.54(10)-(11), an Owner or Operator that is not a local government Owner or Operator of an UST system that stores petroleum may use the mechanism listed at 310 CMR 80.54(1) to demonstrate financial responsibility for one or more UST systems.
- (3) In addition to the mechanisms listed at 310 CMR 80.54(2)-(5) and 80.54(10)-(11), a local government Owner or Operator may use any one or combination of the mechanisms listed at 310 CMR 80.54(6)-(9) to demonstrate financial responsibility for one or more UST systems.

#### 80.54 Requirements for Financial Responsibility Mechanisms

- (1) Underground Storage Tank Petroleum Product Cleanup Fund
  - (a) An Owner or Operator may satisfy the requirements of 310 CMR 80.52 by obtaining 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.
- (2) Insurance and risk retention group coverage
  - (a) An Owner or Operator may satisfy the requirements of 310 CMR 80.52 by obtaining liability insurance that conforms to the requirements of 310 CMR 80.54(2) 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 80.54(2)(b)1., or evidenced by a certificate of insurance worded as specified in 310 CMR 80.54(2)(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 80.23(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].

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 two are hereby amended to conform with subsections (a) through (e);

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

b. The [“Insurer” or “Group”] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the [“Insurer” or “Group”]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 310 CMR 80.54.

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.

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

[Insert for claims-made policies:

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

I hereby certify that the wording of this instrument is identical to the wording in 310 CMR 80.54(2)(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 80.23(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 ].

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

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 80.54.

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”], except for non-payment of premium or misrepresentation by the insured, shall be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is received by the insured.

[Insert for claims-made policies]:

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

I hereby certify that the wording of this instrument is identical to the wording in 310 CMR 80.54(2)(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 or Risk Retention Group]

[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 the Commonwealth of Massachusetts.

(3) Surety Bond

- (a) An Owner or Operator may satisfy the requirements of 310 CMR 80.52 by obtaining a surety bond that conforms to the requirements of 310 CMR 80.54(3). The surety company issuing the bond shall 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 80.23(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 80.51-80.63, 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 M.G.L. c. 21E, 310 CMR 40.0000, other applicable laws and regulations 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) indentified above, or if the Principal shall provide alternate financial assurance in accordance with 310 CMR 80.57, 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 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:

- (i) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (ii) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (iii) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (iv) 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;
- (v) 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 80.52.

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 M.G.L. c. 21E, 310 CMR 40.0000, other applicable laws and regulations 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 M.G.L. c. 21E, 310 CMR 40.0000, other applicable laws and regulations 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 80.60.

Upon notification by the Department that the Principal has failed to provide alternate financial assurance as specified in 310 CMR 80.57 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 80.60.

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 Whereof, 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 80.54(3)(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 80.52 shall establish a standby trust fund in accordance with 310 CMR 80.55 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 80.60.
- (4) Letter of Credit
- (a) An Owner or Operator may satisfy the requirements of 310 CMR 80.52 by obtaining an irrevocable standby letter of credit that conforms to the requirements 310 CMR 80.54(4). 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 80.23(1), and the name and address of the facility.]; or

2. There is the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the Principal as debtor; 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 80.52.

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 letter of 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 80.54(4)(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 310 CMR 80.52 shall also establish a standby trust fund in accordance with 310 CMR 80.55 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 80.60.
- (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.

(5) Trust Fund

- (a) An Owner or Operator may satisfy the requirements of 310 CMR 80.52 by establishing a trust fund in accordance with the terms of 310 CMR 80.54(5) and 80.55. 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 80.58(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 80.55(2), and the trust agreement shall be accompanied by a formal certification of acknowledgement identical to the wording specified in 310 CMR 80.55(3).
- (c) The trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.
- (d) If the value of the trust fund is greater than the required amount of coverage, the Owner or Operator may submit a written request to the Department for release of the excess.
- (e) If other financial assurance as specified in 310 CMR 80.54 is substituted for all or part of the trust fund, the Owner or Operator may submit a written request to the Department for release of the excess.
- (f) Within 60 days after receiving a request from the Owner or Operator for release of funds as specified in 310 CMR 80.54(5)(d) or (e), the Department shall instruct the trustee to release to the Owner or Operator such funds as the Department specifies in writing.

(6) Local Government Bond Rating Test

- (a) A Local Government Owner or Operator may satisfy the requirements of 310 CMR 80.52 by meeting the Local Government Bond Rating Test in 310 CMR 80.54(6).
- (b) 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.

- (c) 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, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & 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.
- (d) 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.
- (e) 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 80.54(6)(e) as such regulations were constituted on the date shown immediately below.

[Date] \_\_\_\_\_  
 [Signature] \_\_\_\_\_  
 [Name] \_\_\_\_\_  
 [Title] \_\_\_\_\_

- (f) 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 80.54(6)(f) as such regulations were constituted on the date shown immediately below.

[Date] \_\_\_\_\_  
 [Signature] \_\_\_\_\_  
 [Name] \_\_\_\_\_  
 [Title] \_\_\_\_\_

- (g) 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 80.54(6)(b) through (e), the local government Owner or Operator shall obtain alternative coverage within 30 days after notification of such a finding.
- (h) 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 satisfy the requirements of 310 CMR 80.52 by establishing a dedicated fund account that conforms to the requirements of 310 CMR 80.54(7). Except as specified 310 CMR 80.54(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 80.52, 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 80.52, or funded for five times a portion of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If at any time, other than during the pay-in-period defined in subparagraph 3 below, the fund is funded for less than five times the amount of coverage required under 310 CMR 80.52, 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 80.52, 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 80.52, 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 80.54(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 80.54(7)(b) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

(8) Local Government Financial Test

- (a) A Local Government Owner or Operator may satisfy the requirements of 310 CMR 80.52 by passing the financial test specified at 310 CMR 80.54(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 80.54(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 80.54(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) The local government Owner or Operator shall have a letter signed by the chief financial officer worded as specified in 310 CMR 80.54(8)(e).
  - (e) To demonstrate that it meets the financial test under 310 CMR 80.54(8)(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 80.23(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 80.54(8)(e) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

- (f) 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.
- (g) 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 80.54(8)(b) and (c), the Owner or Operator shall obtain alternate coverage within 30 days after notification of such a finding.
- (h) 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 ten days.

## (9) Local Government Guarantee

- (a) A local government Owner or Operator may satisfy the requirements of 310 CMR 80.52 by obtaining a guarantee that conforms to the requirements 310 CMR 80.54(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 80.54(6) and deliver a copy of the chief financial officer's letter as contained in 310 CMR 80.54(6)(d) to the local government Owner or Operator; or
  2. Demonstrate that it meets the local government fund requirements of 310 CMR 80.54(7)(a)1, 2, or 3, and deliver a copy of the chief financial officer's letter as contained in 310 CMR 80.54(7)(b) to the local government Owner or Operator; or
  3. Demonstrate that it meets the worksheet test requirements of 310 CMR 80.54(8) and deliver a copy of the chief financial officer's letter as contained in 310 CMR 80.54(8)(e) to the local government Owner or Operator.
- (b) If the local government guarantor is unable to demonstrate financial assurance under 310 CMR 80.54(6), 80.54(7)(a)1, 2, or 3, or 80.54(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 80.57.
- (c) The guarantee agreement shall be worded as specified in 310 CMR 80.54(9)(d) or (e) 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 80.54(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 80.54(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 80.23(1), and the name and address of the facility.] This guarantee satisfies 310 CMR 80.52 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 80.60, 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 M.G.L. c. 21E, 310 CMR 40.0000 and other applicable laws and regulations, the guarantor upon written instructions from the

Department shall fund a standby trust fund in accordance with the provisions of, 310 CMR 80.60 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 80.60 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 ten 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 80.51-80.63 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 80.52.

(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 80.54(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 80.54(6), the local government financial test requirements of 310 CMR 80.54(8), or the local government fund under 310 CMR 80.54(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 80.23(1), and the name and address of the facility.] This guarantee satisfies 310 CMR 80.51-80.63 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 instructions from the Department shall fund a standby trust fund in accordance with the provisions of 310 CMR 80.60, 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 M.G.L. c. 21E, 310 CMR 40.0000 and other applicable laws and regulations, the guarantor upon written instructions from the Department shall fund a standby trust fund in accordance with the provisions of 310 CMR 80.60, 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 80.60 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 ten 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 80.51-80.63 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 80.52.

(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 80.54(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:

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- (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 80.23(1), and the name and address of the facility.] This guarantee satisfies 310 CMR 80.52 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 M.G.L. c. 21E, 310 CMR 40.0000 and other applicable laws and regulations, 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 ten 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 80.51-80.63 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 80.52.

(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 80.54(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 80.54(6), the local government financial test requirements of 310 CMR 80.54(8), the local government fund under 310 CMR 80.54(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 80.23(1), and the name and address of the facility.] This guarantee satisfies 310 CMR 80.51-80.63 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 M.G.L. c. 21E, 310 CMR 40.0000 and other applicable laws and regulations, 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 ten 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 80.51-80.63 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 80.52.

(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 80.54(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:

(10) Financial test of self-insurance.

- (a) An Owner or Operator, and/or guarantor, may satisfy the requirements of 310 CMR 80.52 by passing a financial test as specified in 310 CMR 80.54(10). To pass the financial test of self-insurance, the Owner or Operator, and/or guarantor shall meet the criteria of 310 CMR 80.54(10)(b) or (c) based on independently audited year-end financial statements for the latest completed fiscal year.
- (b) The Owner or Operator, and/or guarantor shall meet all the following criteria:
  - 1. Have a tangible net worth of at least ten times:
    - a. The total of the applicable aggregate amount required by 310 CMR 80.52, based on the number of UST system tanks for which a financial test is used to demonstrate financial responsibility to the Department.
    - b. The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to the Department under 310 CMR 30.000; and
  - 2. Have a tangible net worth of at least \$10 million.
  - 3. Have a letter signed by the chief financial officer worded as specified 310 CMR 80.54(10)(d).
  - 4. Comply with one of the following:
    - a. File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information

Administration, or the Rural Electrification Administration;  
or

- b. Report annually the firm's tangible net worth to Dun and Bradstreet, and have an assigned Dun and Bradstreet financial strength rating of 4A or 5A.
5. The firm's year-end financial statements, which shall be independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- (c) The Owner or Operator, and/or guarantor shall meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in 310 CMR 80.52(3)(a) and (3)(b) for the "amount of liability coverage" each time specified in that section.
1. The fiscal year-end financial statements of the Owner or Operator, and/or guarantor, shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.
  2. The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
  3. The Owner or Operator, and/or guarantor, shall have a letter signed by the chief financial officer, worded as specified in 310 CMR 80.54(10)(d).
  4. If the financial statements of the Owner or Operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the Owner or Operator, and/or guarantor, shall obtain a special report by an independent certified public accountant stating that:
    - a. S/he has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and
    - b. In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

- (d) To demonstrate that it meets the financial test under paragraph 310 CMR 80.54(10)(b) or (c), the chief financial officer of the Owner or Operator, or guarantor, 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, or guarantor]. This letter is in support of the use of [insert: “the financial test of self-insurance,” and/or “guarantee”] to demonstrate financial responsibility for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” and/or “nonsudden accidental releases”] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank system(s).

Underground storage tank systems at the following facilities are assured by this financial test by this [insert: “owner or operator,” and/or “guarantor”]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. 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 pursuant to 310 CMR 80.23.

A [insert: “financial test,” and/or “guarantee”] is also used by this [insert: “owner or operator,” or “guarantor”] to demonstrate evidence of financial responsibility in the following amounts under 310 CMR 30.000:

<i>DEP Regulations</i>	<i>Amount</i>
Closure (310 CMR 30.904)	\$
Post-Closure Care (310 CMR 30.906)	\$
Liability Coverage (310 CMR 30.908)	\$____
Corrective Action (310 CMR 30.602(9))	\$
Closure	\$
Post-Closure Care	\$
Liability Coverage	\$____
Corrective Action	\$
Total	\$

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

[Fill in the information for Alternative I if the criteria of 310 CMR 80.54(10)(b) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of 310 CMR 80.54(10)(c) are being used to demonstrate compliance with the financial test requirements.]

***ALTERNATIVE I***

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

**ALTERNATIVE II**

1.	Amount of annual UST aggregate coverage being assured by a test, and/or guarantee	\$_____
2.	Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee	\$_____
3.	Sum of lines 1 and 2	\$_____
4.	Total tangible assets	\$_____
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	\$_____
6.	Tangible net worth [subtract line 5 from line 4]	\$_____
7.	Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.]	\$_____
		Yes No
8.	Is line 6 at least \$10 million?	\$__ _
9.	Is line 6 at least 6 times line 3?	__ _
10.	Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11.]	__ _
11.	Is line 7 at least 6 times line 3?	__ _
[Fill in either lines 12-15 or lines 16-18:]		
12.	Current assets	\$_____
13.	Current liabilities	_____
14.	Net working capital [subtract line 13 from line 12]	_____
		Yes No
15.	Is line 14 at least 6 times line 3?	__ _
16.	Current bond rating of most recent bond issue	__ _
17.	Name of rating service	__ _
18.	Date of maturity of bond	__ _
19.	Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration?	__ _

[If “No,” please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify under penalty of law that: (i) the [Owner or Operator, or guarantor] passes [Alternative I or Alternative II] of the Financial Test of Self Insurance; (ii) that the wording of this letter is identical to the wording specified in 310 CMR 80.54(10)(d) as such regulations were constituted on the date shown immediately below; (iii) I have personally examined and am familiar with the information submitted in this document and 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.

[Signature]

[Name]

[Title]

[Date]

- (e) If an Owner or Operator using the test to provide financial assurance finds that he or she 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 Owner or Operator, and/or guarantor. If the Department, on the basis of such reports or other information, determines that the Owner or Operator, and/or guarantor, no longer meets the financial test requirements of 310 CMR 80.54(10)(b) or (c) and 310 CMR 80.54(10)(d), the Owner or Operator shall obtain alternate coverage within 30 days after notification of such a finding.
- (g) If the Owner or Operator fails to obtain alternate assurance within 150 days of finding that he or she 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 he or she no longer meets the requirements of the financial test, the Owner or Operator shall notify the Department of such failure within 10 days.

## (11) Guarantee

- (a) An Owner or Operator may meet the requirements of 310 CMR 80.52 by obtaining a guarantee that conforms to the requirements of 310 CMR 80.54(11).
1. The guarantor shall be:
    - a. A firm that:
      - i. possesses a controlling interest in the Owner or Operator;
      - ii. possesses a controlling interest in a firm described under 310 CMR 80.54(11)(a)1.a.i.; or
      - iii. is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or
    - b. A firm engaged in a substantial business relationship with the Owner or Operator and issuing the guarantee as an act incident to that business relationship.
- (b) Within 120 days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of 310 CMR 80.54(10) based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in 310 CMR 80.54(10)(d) and shall deliver the letter to the Owner or Operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the Owner or Operator. If the Department notifies the guarantor that s/he no longer meets the requirements of the financial test of 310 CMR 80.54(10)(b) or (c) and 310 CMR 80.54(10)(d), the guarantor shall notify the Owner or Operator within 10 days of receiving such notification from the Department. In both cases, the guarantee will terminate no less than 120 days after the date the Owner or Operator receives the notification, as evidenced by the return receipt. The Owner or Operator shall obtain alternative coverage as specified in 310 CMR 80.57.
- (c) The guarantee shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

## GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to the Massachusetts Department of Environmental Protection and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

*Recitals.*

(1) Guarantor meets or exceeds the financial test criteria of 310 CMR 80.54(10)(b) or (c) and 310 CMR 80.54(10)(d) and agrees to comply with the requirements for guarantors as specified in 310 CMR 80.54(11)(b).

(2) [Owner or operator] owns or operates the following underground storage tank systems(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the registration submitted pursuant to 310 CMR 80.23, and the name and address of the facility.] This guarantee satisfies 310 CMR 80.51-80.63 requirements for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”]; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank systems(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

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

In the event that [owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Massachusetts Department of Environmental Protection has determined or suspects that a release has occurred at an underground storage tank system covered by this guarantee, the guarantor, upon instructions from the Massachusetts Department of Environmental Protection, shall fund a standby trust fund in accordance with the provisions of 310 CMR 80.60 in an amount not to exceed the coverage limits specified above.

In the event that the Massachusetts Department of Environmental Protection determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 310 CMR 40.0000, the guarantor upon written instructions from the Massachusetts Department of

Environmental Protection shall fund a standby trust in accordance with the provisions of 310 CMR 80.60 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 Massachusetts Department of Environmental Protection, shall fund a standby trust in accordance with the provisions of 310 CMR 80.60 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 310 CMR 80.54(10)(b) or (c) and 310 CMR 80.54(10)(d), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

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

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

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of 310 CMR 80.51-80.63 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

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

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

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

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

(d) Property damage to any property owned, rented, loaded 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 underground storage tank 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 80.52.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Massachusetts Department of Environmental Protection, by any or all third parties, or by [owner or operator].] by signing the following certification.

I hereby certify that: (i) the wording of this guarantee is identical to the wording specified in 310 CMR 80.54(11)(c) as such regulations were constituted on the effective date shown immediately below; and (ii) I have personally examined and am familiar with the information submitted in this document and 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.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

- (d) An Owner or Operator who uses a guarantee to satisfy the requirements of 310 CMR 80.52 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Department of Environmental Protections under 310 CMR 80.60. This standby trust fund must meet the requirements specified in 310 CMR 80.55.

#### 80.55 Requirements for a Standby Trust

- (1) Any Owner or Operator who establishes one or more of the financial assurance mechanisms at 310 CMR 80.54(3), (4), (9) or (11) shall 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. Schedule A shall list 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” or “as a trust initially consisting of the property, which is acceptable to the Trustee, fully described in Schedule B”.] 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 80.52.

The Trustee shall reimburse the Grantor, or other persons as specified by the Department, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the Department shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

#### *Section 5. Payments Comprising the Fund*

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

#### *Section 6. Trustee Management*

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the 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, any other Owner or Operator of the UST system(s) 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 ten 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 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 80.55(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, shall 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 80.51-80.63.

#### 80.56 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 80.53, 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 80.52.
- (2) After obtaining alternate financial assurance as specified 310 CMR 80.53, an Owner or Operator may cancel a financial assurance mechanism using applicable procedures.

#### 80.57 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 Owner or Operator. 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 seven business days after receiving the notice.
  - (a) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 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.

- (b) Termination of insurance or risk retention coverage, except for non-payment or misrepresentation by the insured, may not occur until 60 days after the date on which the Owner or Operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of ten days after the date on which the Owner or Operator receives the notice of termination, as evidenced by the return receipt.
- (2) If a provider of financial responsibility cancels or does not renew for reasons other than incapacity of the provider as specified in 310 CMR 80.62, the Owner or Operator shall obtain alternate coverage within 60 days after receipt of the notice of termination. If the Owner or Operator fails to obtain alternate coverage within 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 80.57 shall relieve Owners and Operators from their obligation to demonstrate and maintain financial assurance.
- (4) Termination shall not relieve the Owner and Operator of any financial responsibility obligations under 310 CMR 80.51-80.63.

#### 80.58 Requirements for Reporting by Owner or Operator

- (1) An Owner shall submit to the Department a copy of a signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance, 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 business days after received by the Owner or Operator.
  - (a) An Owner shall submit to the Department any amendments to the financial assurance documents in 310 CMR 80.58(1) as soon as received by the Owner or Operator, but in no event later than seven business days after received by the Owner or Operator.

- (2) An Owner shall submit to the Department the following documents 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, if the Owner is using 310 CMR 80.54(10)(b) to meet the requirements of 310 CMR 80.52:
  - (a) Letter from the chief financial officer in accordance with 310 CMR 80.54(10)(d); and
  - (b) Year-end financial statements in accordance with 310 CMR 80.54(10)(b)5.
- (3) An Owner shall submit to the Department the following documents 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, if the Owner is using 310 CMR 80.54(10)(c) to meet the requirements of 310 CMR 80.52:
  - (a) Letter from the chief financial officer in accordance with 310 CMR 80.54(10)(d);
  - (b) Year-end financial statements in accordance with 310 CMR 80.54(10)(c)1.; and
  - (c) A special report from an independent certified public accountant, if applicable in accordance with 310 CMR (10)(c)4.
- (4) An Owner shall submit to the Department the guarantee at 310 CMR 80.54(11)(c) as soon as a fully executed copy is received by the Owner or Operator, but in no event later than seven business days after received by the Owner or Operator if the Owner is using 310 CMR 80.54(11) to meet the requirements of 310 CMR 80.52.
  - (a) An Owner shall submit to the Department the letter from the chief financial officer within 10 days of receiving it from the guarantor.
  - (b) An Owner shall submit a copy of the stand-by trust to the Department in accordance with 310 CMR 80.58(1).
- (5) 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 80.57, within 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; or
  - (c) Other incapacity of a provider of financial assurance.
- (6) If the Owner or Operator fails to obtain alternate coverage within 60 days of cancellation of its financial assurance mechanism, the Owner shall submit information in accordance with 310 CMR 80.57(2).
  - (7) An Owner shall verify compliance with the financial responsibility requirements of 310 CMR 80.51-80.63 on the compliance certification form in accordance with 310 CMR 80.34.
  - (8) The Department may require an Owner to submit evidence of financial assurance as described 310 CMR 80.59 or other information to determine compliance with 310 CMR 80.51-80.63 at any time.

#### 80.59 Requirements for Recordkeeping

- (1) An Owner or Operator shall maintain documentation, in accordance with 310 CMR 80.59, of financial assurance mechanisms used to demonstrate financial responsibility for an UST system until released from the requirements in accordance with 310 CMR 80.61. The Owner or Operator shall keep the documentation in hard copy or electronically in accordance with 310 CMR 80.36(6). 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 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 the Underground Storage Tank Petroleum Cleanup Fund shall maintain a current certificate of compliance.
  - (b) 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.
  - (c) 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.

- (d) 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.
- (e) An Owner or Operator using a trust fund shall maintain a copy of the trust fund and any amendment thereto.
- (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 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 80.54(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 90.54(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 80.54(7)(c)1., or attestation by the State Attorney General as specified under 310 CMR 80.54(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 80.54(8)(c). Such evidence must be on file no later than 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 80.54(8)(c), if the local government guarantee is supported by the local government financial test. Such evidence must be on file no later than 120 days after the close of the financial reporting year.
  - 3. A copy of the guarantor's bond rating published within the last 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 test shall maintain a copy of the chief financial officer's letter and year-end financial statements for the most recent completed financial reporting year on which the financial test is based. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.
- (k) An Owner or Operator using a guarantee shall maintain:
  - 1. A copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.
  - 2. A copy of the signed standby trust fund agreement and copies of any amendments thereto.
- (3) An Owner or Operator using a financial assurance mechanism specified in 310 CMR 80.54(1)-(11) 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 80.51-80.63. The financial assurance mechanism(s) used to demonstrate financial responsibility under 310 CMR 80.51-80.63 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]

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

#### 80.60 Requirements for Drawing on Financial Assurance Mechanisms

- (1) Except as specified in 310 CMR 80.60(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 80.57 within 60 days after receiving notice of termination of the guarantee, 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 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 failed 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 80.60(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 response action; 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 80.51-80.63 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 80.60(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 80.60(2)(b)1., and valid court orders under 310 CMR 80.60(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 80.60(1), (2) and (3).

#### 80.61 Release from Financial Responsibility Requirements

- (1) The Owner and Operator are subject to the financial responsibility requirements in accordance with 310 CMR 80.51-80.63 unless and until the Owner or Operator complies with closure requirements at 310 CMR 80.43, in full.
- (2) Upon the date of sale of a 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.
- (3) Release from the financial responsibility requirements shall not relieve the Owner and Operator from obligations under M.G.L. c. 21O, M.G.L. c. 21E, 310 CMR 80.00, 310 CMR 40.0000 and any other applicable laws and regulations.

#### 80.62 Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance

- (1) Within ten 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 80.59(2) documenting current financial responsibility.
- (2) Within ten 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 80.59(2) documenting current financial responsibility.

- (3) Within ten 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 80.54(9).
- (4) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the Owner or Operator by certified mail of such commencement as required under the terms of the guarantee specified in 310 CMR 80.54(11).
- (5) 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 80.57 within 30 days after receiving notice of such an event. If the Owner or Operator does not obtain alternate coverage within 30 days after such notification, the Owner or Operator shall notify the Department.
- (6) Within 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.

80.63 Requirements for Replenishment of Guarantees, 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 guarantee, 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 80.52. 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.

**B. Proposed Amendments of 310 CMR 30.000, for consistency with 310 CMR 80.00**

## 310 CMR 30.253: Generator Standards Governing Waste Oil and Used Oil Fuel

(1) All generators of waste oil and all generators of used oil fuel:

(a) shall be subject to 310 CMR 30.301(1) and (2).

(b) shall comply with 310 CMR 30.302.

(c) may sell or otherwise transfer custody or possession of such waste oil only to a transporter in compliance with 310 CMR 30.304.

(d) may sell or otherwise transfer custody or possession of off-specification used oil fuel (specification used oil fuel is subject to 310 CMR 30.222) only to a transporter in compliance with 310 CMR 30.304.

(e) may sell or otherwise transfer such waste oil, or contract to sell or otherwise transfer such waste oil, or cause or allow such waste oil to be transported off the site of generation, only to a facility described in 310 CMR 30.305.

(f) may sell or otherwise transfer off-specification used oil fuel (specification used oil fuel is subject to 310 CMR 30.222), or contract to sell or otherwise transfer off-specification used oil fuel, or cause or allow off-specification used oil fuel to be transported off the site of generation, only to either:

1. a facility described in 310 CMR 30.305, or

2. a facility that has a Class B(3) permit pursuant to 310 CMR 30.268, or

3. a marketer authorized pursuant to 310 CMR 30.255.

(g) may accumulate or store waste oil or used oil fuel in an underground tank only if the tank is installed, designed, constructed, operated, and monitored in compliance with the applicable requirements of [310 CMR 80.00](#) ~~527-CMR-9.05 and 9.06~~.

## 310 CMR 30.690: STORAGE AND TREATMENT IN TANKS

## 310 CMR 30.691: Applicability

310 CMR 30.691 through 30.699, cited collectively as 310 CMR 30.690, prescribe requirements which apply to owners and operators of facilities that use tanks to treat or store hazardous waste, except:

(1) Tank systems that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements

in 310 CMR 30.694. To demonstrate the absence or presence of free liquids in the stored/treated waste, EPA method 9095B (Paint Filter Liquids Test) as specified in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, as incorporated by reference at 310 CMR 30.012 shall be used.

(2) Tank systems, including sumps, that serve as part of a secondary containment system to collect or contain releases of hazardous waste are exempted from the requirements of 310 CMR 30.694.

~~Owners and Operators of facilities that use tanks to treat or store hazardous waste shall be in compliance with all applicable requirements of 527-CMR-9.00.~~

## 310 CMR 30.693: Design and Installation of New Tank Systems or Components

(3) The owner or operator of a new tank system shall ensure that proper handling procedures shall be adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, a Massachusetts registered professional engineer who is trained and experienced in the proper installation of tank systems or components shall inspect the system for the presence of weld breaks, punctures, scrapes of protective coatings, cracks, corrosion, or other structural damage or inadequate construction/installation. All discrepancies shall be remedied before the tank system is covered, enclosed, or placed in use. ~~In addition, all tank installations shall be in compliance with the applicable provisions of 527 CMR 9.00.~~

(4) New tank systems or components that are placed underground and that are backfilled must be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported. ~~If the tank contents are, or are intended to be, flammable as defined by 527 CMR 9.00, the backfill materials shall comply with the requirements of 527 CMR 9.10(3).~~

## 310 CMR 30.694: Containment and Detection of Releases

(4) Secondary containment for all underground tanks must consist of ~~either~~:

(a) A double wall that is:

1. Designed as an integral structure (*i.e.* an inner structure completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;
2. Designed to prevent deterioration of the primary tank interior and of the external surface of the outer shell; and
3. Provided with a leak detection system that is designed and operated so that that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system. Leak detection systems must be equipped with a visual or audible alarm to signal such a failure or release; ~~or~~

~~(b) An alternative form of secondary containment that is approved by the State Fire Marshal.~~

## 310 CMR 30.697: Response to Leaks or Spills and Disposition of Leaking Tank Systems

The owner or operator shall remove from service immediately a tank system or secondary containment system from which there has been a leak or spill, or which poses a threat of release to the environment and shall satisfy the following requirements:

(4) Notifications, reports.

(a) The owner or operator shall report to the Department all releases or threats of releases of hazardous wastes to the environment as soon as possible but not more than two hours after obtaining knowledge thereof, and in compliance with 310 CMR 40.0000.

(b) For any hazardous waste not having a reportable quantity pursuant to 310 CMR 40.0000 the owner or operator shall report to the Department releases or threats of release exceeding one pound in compliance with 310 CMR 30.697(4)(a).

(c) The owner or operator shall report to the local fire departments releases from tanks ~~subject to 527 CMR 9.00 in accordance with 527 CMR 9.20.~~

(d) Within seven days of the detection of a release to the environment, the owner or operator shall submit to the Department's Division of Hazardous Waste a written report containing the following information:

1. Likely route of migration of the release;
2. Characteristics of the surrounding soil (soil composition, geology, hydrology, climate);
3. Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within seven days, these data must be submitted to the Department as soon as they become available;
4. Proximity to downgradient drinking water, surface water, and populated areas; and
5. Description of response actions taken or planned.

(5) Provision of secondary containment, repair, or closure.

(a) Unless the requirements of 310 CMR 30.697(5) are met, the owner or operator shall close the tank system in compliance with 310 CMR 30.699.

(b) If the cause of the release was a spill that has not damaged the integrity of the system, the owner or operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

(c) If the cause of the release was a leak from the primary tank system into the secondary containment system, the owner or operator shall repair the primary tank system prior to returning the tank system to service.

(d) If the source of the release was a leak to the environment from a component of the tank system without secondary containment, the owner or operator shall provide the secondary containment for the component of the system from which the leak occurred. Such secondary containment shall meet the requirements of 310 CMR 30.694 before the component of the tank system may be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually.

(e) If the source is an aboveground component that can be inspected visually, the owner or operator shall repair and may return the component to service without secondary containment provided that the requirements of 310 CMR 30.697(6) are met.

(f) If a component is replaced to comply with the requirements of 310 CMR 30.697(5)(d), that component must meet the provisions of 310 CMR 30.693 and 30.694.

(g) If a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection, (*e.g.*, the bottom of an onground tank), the entire component must be provided with secondary containment in accordance with 310 CMR 30.694 prior to being returned to use.

~~(h) Repairs of tanks subject to 527 CMR 9.00 shall be required to obtain a permit from the local fire department in accordance with 527 CMR 9.21.~~

(6) Certification of major repairs. If the owner or operator has repaired a tank system in accordance with 310 CMR 30.697(5), and the repair has been extensive (*e.g.*, repair of a ruptured primary containment or secondary containment vessel), the tank system must

not be returned to service unless the owner or operator has obtained a certification by a Massachusetts registered professional engineer in accordance with 310 CMR 30.009 that the repaired system is capable of handling hazardous waste without release for the intended life of the ~~the~~ system. This certification must be submitted to the Department within seven days after returning the tank system to use.

### **C. Proposed Amendment of 310 CMR 70.00 for consistency with 310 CMR 80.00**

#### 310 CMR 70.00: ENVIRONMENTAL RESULTS PROGRAM CERTIFICATION

##### Section

70.01: Purpose and Authority

70.02: Definitions

70.03: Compliance Certification Requirements

70.04: Violations of 310 CMR 70.00

##### 70.01: Purpose and Authority

(1) The purpose of 310 CMR 70.00 is to provide for the protection of public health, safety, welfare and the environment by requiring Environmental Results Program (ERP) facilities or units to submit a performance based compliance certification to the Department.

(2) 310 CMR 70.00 is promulgated pursuant to the authority of M.G.L. c. 21, §§ 26 through 53 (the Massachusetts Clean Waters Act), M.G.L. c. 21A, §§ 2, 13 and 16, M.G.L. c. 21C (the Hazardous Waste Management Act), M.G.L. c. 21H, §§ 6A through 6N (the Mercury Management Act), [M.G.L. c. 21O §4 \(The Operation and Removal of Underground Storage Tanks\)](#), M.G.L. c. 111, §§ 142A through 142M (the Massachusetts Clean Air Act) and M.G.L. c. 111 § 150A (the Solid Waste Management Act).

##### 70.02: Definitions

The definitions found in 310 CMR 70.02 are for use only in the compliance certification requirements contained in 310 CMR 70.00 and are not intended to replace the definitions of those terms in the underlying standards.

Certification means the certification form as prescribed by the Department pursuant to 310 CMR 70.03(2), which includes the certification statement requirements pursuant to 310 CMR 70.03(2) Department means the Massachusetts Department of Environmental Protection.

Environmental Results Program (ERP) Facility or Unit means one of the following:

- (a) a dry cleaner subject to 310 CMR 7.26(10) through (16);
- (b) a photo processor subject to 310 CMR 71.00;
- (c) a printer as defined in 310 CMR 7.26(22);
- (d) a boiler subject to 310 CMR 7.26(30) through (37);
- (e) an engine or combustion turbine subject to 310 CMR 7.26(40) through (44);
- (f) a dental facility subject to 310 CMR 73.00;
- (g) an industrial user subject to 314 CMR 7.05(2)(g);

- (h) a new sewer extension of less than 1,000 feet in length subject to 314 CMR 7.05(1)(c);
- (i) a new sewer connection or any increase in flow to an existing sewer connection subject to 314 CMR 7.05(1)(h);
- (j) an industrial wastewater holding tank subject to 314 CMR 18.00.
- (k) a scrap recycling facility, vehicle recycler or vehicle manufacturer subject to 310 CMR 74.00;
- (l) a manufacturer of a mercury-added product subject to 310 CMR 75.00; ~~or~~
- (m) a manufacturer of mercury-added lamps subject to 310 CMR 75.00-; or
- (n) an underground storage tank system subject to 310 CMR 80.00.

ERP Sector means all ERP facilities or units of one type.

Operator means the person responsible for the over-all operation of an ERP facility or unit.

Owner means any person who has legal or equitable ownership, alone or with others, of an ERP facility or unit, including, but not limited to, any agent, executor, administrator, trustee, lessee, or guardian of the estate for the holder of legal title.

Person means any individual, partnership, corporation, syndicate, company, firm, association, authority, department, bureau, trust or group including, but not limited to, a city, town, county, the Commonwealth and its agencies, and the federal government.

Responsible Official is one of the following:

- (a) For a corporation: a president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function who has been duly authorized pursuant to a corporate vote, or a representative of the corporation who has been duly authorized pursuant to a corporate vote provided the representative is responsible for the overall operation of the facility or unit; or
- (b) For a partnership: a general partner with the authority to bind the partnership or the proprietor, respectively; or
- (c) For a sole proprietorship; the sole proprietor; or
- (d) For a municipality, state, federal, or other public agency including any legislatively created authority, board, commission, district, *etc.*: either a principal executive officer or ranking elected official who is empowered to enter into contracts on behalf of the municipality or public agency.

Standards means those requirements listed in the certification form referred to in 310 CMR 70.03(2), including but not limited to 310 CMR 7.00, 310 CMR 30.00, 310 CMR 71.00, 310 CMR 72.00, 310 CMR 73.00, 310 CMR 74.00, 310 CMR 75.00, 314 CMR 3.00, 314 CMR 5.00, or 314 CMR 12.00, requirements contained in NESHAP's (40 CFR Part 61 Subparts, and Part 63) or NSPS's (40 CFR Part 60 Subparts) that have been delegated to Massachusetts, and the terms and conditions of any permits issued pursuant to any of those regulations.

70.03: Compliance Certification Requirements

## (1) Schedule for Submission of Compliance Certification.

(a) The owner or operator of each ERP facility or unit shall submit a certification in accordance with 310 CMR 70.03(2) and thereafter shall submit, as applicable, a periodic compliance certification in accordance with the schedule set forth herein for the specific type of ERP facility or unit.

(b) The owner or operator of each ERP facility or unit, [except underground storage tank systems subject to 310 CMR 80.00](#), shall submit a compliance certification in accordance with 310 CMR 70.03(1) and (2) within 60 days of:

1. the commencement of operation of a new ERP facility or unit; except for boiler(s) subject to 310 CMR 7.26(30) that must submit a certification in accordance with the schedule in 310 CMR 7.26(32);

2. the recommencement of operation of an ERP facility or unit for which no certification was submitted during the year prior to recommencement; except for boiler(s) subject to 310 CMR 7.26(30) that must submit a certification in accordance with the schedule in 310 CMR 7.02(3)(m), or

3. acquiring an ERP facility or unit unless exempted from this requirement pursuant to 314 CMR 7.17(1)(b).

(c) If a periodic compliance certification is required, then the owner or operator of the ERP facility or unit shall submit the compliance certification by the end of each certification period unless a statement of non-applicability is submitted to the Department on a form prescribed by the Department.

(d) Notwithstanding 310 CMR 70.03(1)(a) and (b), a photo processor holding a permit from the Massachusetts Water Resources Authority pursuant to 360 CMR 10.000 is deemed to hold the equivalent of an ERP certification and is not required to file a periodic compliance certification pursuant to 310 CMR 70.00 and 71.00, but such a photo processor is required to pay an annual compliance fee to the Department pursuant to 310 CMR 4.00.

(e) A photo processor which is located in the service area of the Massachusetts Water Resources Authority and which hauls or ships photo processing waste off-site is required to file periodic compliance certifications pursuant to 310 CMR 70.00 and 71.00.

(f) Owners or operators of the following types of ERP facilities or units shall submit a periodic compliance certification to the Department by September 15th of each year except as provided in 310 CMR 70.03(h):

1. dry cleaners subject to 310 CMR 7.26(10) through (16);

2. photo processors subject to 310 CMR 71.00; and
3. printers subject to 310 CMR 7.26(20) through (29).

(g) The owner or operator of the following types of ERP facilities or units shall submit a periodic or one-time compliance certification in accordance with the following schedules:

1. The owner or operator of a facility with boilers subject to 310 CMR 7.26(30) shall submit a one-time certification in accordance with the schedule set forth in 310 CMR 7.26(32).
2. The owner or operator of an industrial wastewater holding tank shall submit to the Department a one-time certification in accordance with the schedule and conditions set forth in 314 CMR 18.11.
3. The owner or operator of a dental facility subject to 310 CMR 73.00 shall submit a certification in accordance with the schedule and conditions referenced in 310 CMR 73.07.
4. An industrial user subject to 314 CMR 7.05(2)(g) and discharging to a non-IPP POTW, as defined in 314 CMR 7.00, shall submit a certification in accordance with the schedule and conditions set forth in 314 CMR 7.17(2).
5. The initial owner or operator of a new sewer extension of 1,000 feet or less in length subject to 314 CMR 7.05(1)(c) shall submit a one-time certification in accordance with the schedule and conditions set forth in 314 CMR 7.17(1).
6. An owner or operator of a new sewer connection subject to 314 CMR 7.05(1)(h) shall submit a one-time certification in accordance with the schedule and conditions set forth in 314 CMR 7.17(1).
7. An owner or operator of an existing sewer connection with an increase in flow subject to 314 CMR 7.05(1)(h), shall submit a one-time certification in accordance with the schedule and conditions set forth in 314 CMR 7.17(1).
8. An owner or operator of an engine or combustion turbine subject to 310 CMR 7.26(40) through (44) shall submit a certification in accordance with the schedule and conditions set forth in 310 CMR 7.26.
9. Scrap recycling facilities, vehicle recyclers and vehicle manufacturers subject to 310 CMR 74.00 shall submit certification forms in compliance with the applicable schedules and conditions referenced in 310 CMR 74.09.

10. Manufacturers of mercury-added products and lamps subject to 310 CMR 75.00 shall submit certification forms in compliance with the applicable schedules and conditions referenced in 310 CMR 75.04 and 310 CMR 75.05.

11. An Owner or Operator of an underground storage tank system subject to 310 CMR 80.00 shall submit a certification in accordance with the schedule and conditions set forth in 310 CMR 80.34.

(h) The Department may determine a schedule, less frequently than the schedule in 310 CMR 70.03(1)(f), for submission of periodic compliance certifications, based on the following criteria:

1. the size, composition and activities of the ERP sector;
2. the quantity and types of (toxic) materials used and potential wastes, emissions and discharges of the ERP sector;
3. the degree of compliance with established regulatory requirements by the ERP sector;
4. the degree of control over the environmental and public health aspects of activities by the ERP sector; and
5. any other relevant information regarding the environmental consequences of the periodic compliance certifications and return to compliance response rates and results within the ERP sector.

The Department will notify the public and affected businesses by publishing a notice in the Massachusetts Environmental Policy Act Monitor and may also notify an ERP sector through industry trade associations, the Department's website and other appropriate cost effective methods of changes in the ERP sector's certification schedule.

(2) Certification Statement. The Responsible Official for each ERP facility or unit shall submit a compliance certification. Each compliance certification shall be on a form prescribed by the Department and shall address compliance with standards to which the ERP facility or unit is subject. The certification form may include specialized forms for specific categories of ERP facilities or units, and any owner/operator required to submit a certification pursuant to 310 CMR 70.03 shall submit all applicable forms. The compliance certification shall:

(a) state whether the ERP facility or unit is in compliance with the applicable standards as listed on the certification form;

(b) identify any violations that occurred and the date of such violations within the certification period prior to the due date of the certification statement including, but not limited to, any notifications required pursuant to M.G.L. c. 21E, § 7 and 310 CMR 40.0300 (releases and threats of release of oil and/or hazardous material), and any

reporting of violations required pursuant to 310 CMR 7.02(6) (air pollution control equipment failures), 314 CMR 12.03(8) (emergency bypasses to sewer treatment works), 310 CMR 30.520 (hazardous waste contingency plans) and the terms and conditions of any permits issued by the Department; and

(c) state what the owner/operator will do to return to compliance and the date by which compliance will be achieved; and

(d) include the following statement: "I, [name of responsible official], attest under the pains and penalties of perjury:

1. that I have personally examined and am familiar with the information contained in this submittal, 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;

3. that systems to maintain compliance are in place at the facility or unit and will be maintained even if processes or operating procedures are changed; and

4. that I am fully authorized to make this attestation on behalf of this facility or unit. I am aware that there are significant penalties, including, but not limited to possible fines and imprisonment, for submitting false, inaccurate, or incomplete information."

#### 70.04: Violations of 310 CMR 70.00

(1) It shall be a violation of 310 CMR 70.00 for any person to:

(a) fail to submit a timely certification pursuant to 310 CMR 70.03;

(b) make any false, inaccurate, incomplete, or misleading statements in any certification required pursuant to 310 CMR 70.03;

(c) make any false, inaccurate, incomplete or misleading statements in any record, report, plan, file, log, or register which that person is required to keep pursuant to the applicable standards;

(d) hold themselves out as a responsible official in violation of the requirements contained in 310 CMR 70.03;

(e) fail to comply with the applicable standards; or

(f) violate any other provision of 310 CMR 70.00.

(2) The Department reserves the right to exercise the full extent of its legal authority, pursuant to M.G.L. c. 21 §§ 26 through 53 (Massachusetts Clean Waters Act), M.G.L. c. 21A §§ 2, 8, 13 and 16, M.G.L. c. 21C (Hazardous Waste Management Act), M.G.L. c. 21H, §§ 6A through 6N (the Mercury Management Act), M.G.L. c. 21H, § 8, [M.G.L. c. 21O §4 \(The Operation and Removal of Underground Storage Tanks\)](#), M.G.L. c. 111 §§ 142A through 142M (Massachusetts Clean Air Act), and M.G.L. c. 111, § 150A (Solid Waste Management Act), in order to obtain full compliance with all requirements applicable to ERP facilities and units, including but not limited to, criminal prosecution, fines, civil and administrative penalties, and orders.

#### REGULATORY AUTHORITY

310 CMR 70.00: M.G.L. c. 21, §§ 26 through 53; M.G.L. c. 21A, §§ 2, 13 and 16; M.G.L. c. 21C, M.G.L. c. 21H, §§ 6A through 6N (the Mercury Management Act), [M.G.L. c. 21O §4](#), and M.G.L. c. 111, §§ 142A through 142M and 150A.

**D. Proposed Amendments of 310 CMR 80.01 and 80.02 for consistency with 310 CMR 80.00**

~~OPERATOR TRAINING~~

~~80.01. Applicability and Definitions for Operator Training~~

~~(1) — Applicability. The requirements of 310 CMR 80.02 shall apply to Class A, B and C operators and all Owners and Operators of UST systems, except as provided in 310 CMR 80.01(2)(a)-(1);~~

~~(2) — The following UST systems shall be exempt from 310 CMR 80.02:~~

~~—————(a) — UST systems holding hazardous wastes listed or identified under M.G.L. c. 21C and its implementing regulations at 310 CMR 30.000, except UST systems holding waste oil.~~

~~—————(b) — UST systems that are part of stormwater 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, the state Clean Water Act, including but not limited to industrial wastewater holding tanks and oil water separators.~~

~~—————(c) — Equipment or machinery that contains regulated substances for non-consumptive operational purposes, including, but not limited to hydraulic lift tanks and electrical equipment tanks.~~

~~—————(d) — UST systems that contain a *de minimus* concentration of regulated substances. The Owner or Operator shall keep the documentation of any *de minimus* determinations for at least two (2) years after the substance is no longer stored in the UST system, in hard copy or electronically. Upon request from the Department, the Owner or Operator shall make the documentation available to the requestor as soon as possible, but in no event more than seven (7) business days after the request.~~

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

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

~~(g) — UST systems that are part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under 10 C.F.R. § 50, app. A.~~

~~(h) — Landfill leachate storage tanks at facilities regulated pursuant to 310 CMR 19.00.~~

- ~~(i) — Consumptive use tanks.~~
- ~~(j) — Farm or residential tanks of 1100 gallons or less used exclusively for the storage of motor fuel.~~
- ~~(k) — Emergency spill or overflow containment UST systems that are emptied within forty-eight (48) hours of the introduction of a regulated substance.~~
- ~~(l) — UST systems with a capacity of 110 gallons or less.~~
- ~~(3) — Definitions. As used in 310 CMR 80.01 and 310 CMR 80.02, the following terms shall have the following meanings:~~

~~Business day means a day of the week that is not Saturday, Sunday, a legal state or federal holiday, or any other day in which the offices of the Department are closed.~~

~~Consumptive Use or Consumptive Use Tank means fuel oil used exclusively for area heating and/or the heating of domestic water on the premises where stored.~~

~~Department means the Massachusetts Department of Environmental Protection.~~

~~Emergency spill or overflow containment UST system means a tank used to contain accidental spills which are unanticipated and unpredictable.~~

~~Farm Tank means a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. The term “farm” includes, but is not limited to fish hatcheries, rangeland and nurseries with growing operations.~~

~~Industrial Wastewater Holding Tank means a tank that is used to accumulate or store industrial wastewater as defined in 314 CMR 18.04.~~

~~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 products from the water.~~

~~Operator means (1) in the case of an underground storage tank system in use on November eighth, nineteen hundred and eighty four, or brought into use after that date, any person in control of, or having responsibility for, the daily operation of an underground storage tank system used for the storage, use, or dispensing of regulated substances or (2) in the case of any underground storage tank system in use before November eighth, nineteen hundred and eighty four, 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.~~

~~Owner means (1) in the case of an underground storage tank system in use on November eighth, nineteen hundred and eighty four, or brought into use after that date, any person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances or (2) in the case of any underground storage tank system in use before November eighth, nineteen hundred and eighty four, 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.~~

~~Regulated Substance means (a) any substance defined in section 101(4) of the Comprehensive Environmental Response Compensation and Liability Act, including waste oil but not including any other substance regulated as a hazardous waste under M.G.L. chapter twenty one C, and (b) petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute).~~

~~Tank means an underground structure used to contain an accumulation of a regulated substance. The term shall not include 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 nineteen hundred and sixty eight; or (b) the Hazardous Liquid Pipeline Safety Act of nineteen hundred and seventy nine; or (3) any surface impoundment pit, pond, or lagoon; or (4) any stormwater or wastewater 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.~~

~~Underground Storage Tank (UST) Facility or Facility means the property on which one or more underground storage tank 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, used to contain an accumulation of a regulated substance, 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 nineteen hundred and sixty eight; or (b) the Hazardous Liquid Pipeline Safety Act of nineteen hundred and seventy nine; or (3) any surface impoundment pit, pond, or lagoon; or (4) any stormwater or wastewater 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.~~

~~(4) — Whenever any provision in 310 CMR 80.01 or 80.02 requires an action to be taken by an Owner or Operator, either may take the action but both are responsible for ensuring that the proper action is taken, and both the Owner and Operator are jointly and severally liable.~~

#### 310 CMR 80.3702 Class A, B and C Operator Requirements and Certifications

- (1) Effective August 8, 2012, every Owner or Operator shall ensure that at least one Class A, B and C operator certified in accordance with 310 CMR 80.3702 is designated to each underground storage tank system.
  - (a) An individual may be designated by an Owner or Operator as a Class A, Class B, or Class C operator or any combination of the three (3) Classes.
  - (b) An individual Class A, Class B, or Class C operator may be designated by an Owner or Operator for more than one UST system or UST facility.
- (2) Except as provided in 310 CMR 80.3702(2)(a), the Owner or Operator shall ensure that a Class A, B or C operator is present when the UST system(s) is in operation.
  - (a) At unmanned UST systems, including, but not limited to, emergency generators at telecommunication towers and card lock/card access facilities, there shall be Class A, B and C operators designated as responsible for operation and maintenance activities at such systems and responding to emergencies, and they shall be certified in accordance with 310 CMR 80.3702(7), (8) and (9), respectively.
- (3) If a different Class A, B or C operator needs to be designated for any reason, including, but not limited, to resignation or termination, the Owner or Operator shall designate the appropriate Class A or B operator within thirty (30) days of the position being vacated, or Class C operator within ten (10) days of the position being vacated, and the Owner or Operator shall ensure that said Class A, B or C operator is certified in accordance with 310 CMR 80.3702 (7), (8) or (9).

(4) Class A Operator Requirements

(a) A Class A operator shall have general knowledge and understanding of underground storage tank systems and applicable state regulatory requirements that apply to underground storage tank systems, including, but not limited to:

1. Tanks and piping;
2. Regulated substances stored;
3. Leak detection;
4. Spill prevention;
5. Overfill prevention;
6. Corrosion protection;
7. Emergency response procedures;
8. Product compatibility;
9. Financial responsibility documentation requirements;
10. Registration and other notification requirements;
11. Reporting and record keeping requirements;
12. UST testing requirements;
13. Temporary and permanent closure requirements; and
14. The Class B operator qualifications, training and examination requirements and Class C operator qualifications and training requirements.

(b) A Class A operator shall ensure that appropriate individuals:

1. Properly operate and maintain the underground storage tank system.
2. Maintain required records.
3. Are trained to operate and maintain the underground storage tank system and keep records.

4. Properly respond to emergencies caused by leaks or releases from underground storage tank systems.
5. Make financial responsibility documents available to the Department as required.

(5) Class B Operator Requirements

- (a) A Class B operator shall have in-depth knowledge and understanding of operation and maintenance requirements and applicable state regulatory requirements that apply to underground storage tank systems, including but not limited to:
  1. Tanks and piping;
  2. Regulated substance stored;
  3. Leak detection;
  4. Spill prevention;
  5. Overfill prevention;
  6. Corrosion protection;
  7. Emergency response procedures;
  8. Product compatibility;
  9. Financial responsibility documentation requirements;
  10. Registration and other notification requirements;
  11. Reporting and record keeping requirements;
  12. UST testing requirements;
  13. Temporary and permanent closure requirements; and
  14. The Class C operator qualification and training requirements.
- (b) A Class B operator shall ensure implementation of the day-to-day aspects of operation and maintenance of, and recordkeeping for, underground storage tank systems and shall have general and site specific knowledge of the following:
  1. Components of underground storage tank systems.

2. What material the underground storage tank system components are constructed of.
3. Methods of release detection and release prevention applied to the underground storage tank system.

(6) Class C Operator Requirements

- (a) A Class C operator shall have specific knowledge of the layout of the UST system(s), emergency procedures and how to respond to alarms.
- (b) A Class C operator shall:
  1. Immediately and properly respond to alarms or other indications of emergencies caused by leaks or releases from underground storage tank systems.
  2. Immediately notify a Class A or Class B operator and appropriate emergency responders.
- (c) A Class C operator shall be the Owner or Operator of the underground storage tank facility or an employee of the Owner or Operator, but not all employees of the Owner or Operator are necessarily Class C operators.

(7) Certification Requirements for Class A Operators

- (a) The Owner or Operator shall ensure that Class A operators are certified within thirty (30) days after being designated by the Owner or Operator to assume responsibility for an underground storage tank system.
- (b) Requirements to be certified as a Class A operator:
  1. Obtain training in accordance with 310 CMR 80.~~3702~~(7)(c) and (d) which may include on-the-job training; and
  2. Take and pass an operator examination in accordance with 310 CMR 80.~~0237~~(7)(e)-(g), inclusive.
- (c) The Owner or Operator shall ensure that Class A operators are trained on the type(s) of UST system(s) for which they are designated. Said training shall cover subject matters in 310 CMR 80.~~3702~~(4) and shall include those systems for which the Class A operator is designated. Said training shall include, but not be limited to:
  1. Types of tanks, piping, regulated substances stored, overfill prevention, leak detection and corrosion protection.

2. Operation and maintenance schedules and requirements.
  3. Testing, reporting and recordkeeping requirements.
  4. Financial responsibility requirements and the financial responsibility instruments that are in place for each UST system.
  5. General emergency response procedures and requirements.
- (d) The Owner or Operator shall document that Class A operators have received training that complies with 310 CMR 80.3702(7)(b)1. and (c). The Owner or Operator shall keep the documentation for at least two (2) years after the Class A operator is no longer designated by the Owner or Operator, in hard copy or electronically. Upon request from the Department, the Owner or Operator shall make the documentation available to the requestor as soon as possible, but in no event more than seven (7) business days after the request.
- (e) Class A operators shall demonstrate knowledge of UST systems in general and all applicable state regulations by taking and passing an operator examination, as required by the Department.
- (f) Upon passing the operator examination, the Class A operator shall receive a certificate indicating passage of the operator examination and the Owner or Operator shall keep a copy of the certificate for at least two (2) years after the Class A Operator is no longer designated by the Owner or Operator, in hard copy or electronically. Upon request from the Department, the Owner or Operator shall make the documentation available to the requestor as soon as possible, but in no event more than seven (7) business days after the request.
- (g) Any individual who takes and fails any operator examination three (3) times within six (6) months shall be prohibited from taking any operator examination for six (6) months from the third failure.
- (h) A Class A operator with a current Class A certification from another state may be certified in Massachusetts as a Class A operator if the operator is trained in accordance with 310 CMR 80.3702(7)(c), and the Class A operator passes the Massachusetts-specific portion of the operator examination.
- (8) Certification Requirements for Class B Operators

- (a) The Owner or Operator shall ensure that Class B operators are certified within thirty (30) days after being designated by the Owner or Operator to assume operation and maintenance responsibilities of the underground storage tank system.
- (b) Requirements to be certified as a Class B operator:
  - 1. Obtain training in accordance with 310 CMR 80.~~3702~~(8)(c) and (d) which may include on-the-job training; and
  - 2. Take and pass an operator examination in accordance with 310 CMR 80.~~3702~~(8)(e)-(g), inclusive.
- (c) The Owner or Operator shall ensure that Class B operators are trained on the specific UST system(s) for which they are designated. Said training shall cover subject matters in 310 CMR 80.~~3702~~(5) and shall include those systems for which the Class B operator is designated. Said training shall include, but not be limited to:
  - 1. Types of tanks, piping, regulated substances stored, overflow prevention, leak detection and corrosion protection.
  - 2. Operation and maintenance of the underground storage tank system.
  - 3. Testing, reporting and recordkeeping requirements.
  - 4. Financial responsibility documentation requirements.
  - 5. Emergency response procedures and requirements.
- (d) Owners or Operators shall document that Class B operators have received training that complies with 310 CMR 80.~~3702~~(8)(b)1. and (c). The Owner or Operator shall keep the documentation for at least two (2) years after the Class B Operator is no longer designated by the Owner or Operator, in hard copy or electronically. Upon request from the Department, the Owner or Operator shall make the documentation available to the requestor as soon as possible, but in no event more than seven (7) business days after the request.
- (e) Class B operators shall demonstrate knowledge of UST systems in general and all applicable state regulations by taking and passing an operator examination, as required by the Department.

- (f) Upon passing the operator examination, the Class B operator shall receive a certificate indicating passage of the operator examination and the Owner or Operator shall keep a copy of the certificate for at least two (2) years after the Class B operator is no longer designated by the Owner or Operator, in hard copy or electronically. Upon request from the Department, the Owner or Operator shall make the documentation available to the requestor as soon as possible, but in no event more than seven (7) business days after the request.
  - (g) Any individual who takes and fails any operator examination three (3) times within six (6) months shall be prohibited from taking any operator examination for six (6) months from the third failure.
  - (h) A Class B operator with a current Class B certification from another state may be certified in Massachusetts as a Class B operator if the operator is trained in accordance with 310 CMR 80.~~3702~~(8)(c), and the Class B operator passes the Massachusetts-specific portion of the operator examination.
- (9) Certification Requirements for Class C Operators
- (a) A Class C operator shall be certified before being designated by the Owner or Operator.
  - (b) In order to be certified as a Class C operator, the Owner or Operator shall document that an individual was trained by a Class A or B operator. The training shall be site specific and shall include, at a minimum, the actions to take in response to alarms or other indications of emergencies caused by leaks or releases from an underground storage tank system.
  - (c) When the training is complete, the trainer and the Class C operator shall each sign and date the training log for the UST facility documenting that the training was completed in accordance 310 CMR 80.~~3702~~(9)(b) and (c). The trainer shall also document the underlying reason for the re-training in accordance with 310 CMR 80.~~3702~~(9)(d). The Owner or Operator shall maintain the log for at least two (2) years after the Class C operator is no longer designated, in hard copy or electronically. Upon request from the Department, the Owner or Operator shall make the log available to the requestor as soon as possible, but in no event more than seven (7) business days after the request.

- (d) The Owner or Operator shall ensure that the Class C operator is re-trained and shall document the re-training and the underlying reason for the re-training in accordance with 310 CMR 80.~~3702~~(9)(c) when:
1. Emergency procedures change at a facility;
  2. The type or location of the leak detection alarm system changes; or
  3. The type or location of the emergency shut-off switch changes.
- (10) Temporary Transfers of Class C Operators. Prior to the Class C operator assuming designation at a UST facility to which the Class C operator is temporarily transferred, the Owner or Operator shall ensure that such Class C operator is trained on the site-specific emergency procedures of the UST facility in accordance with 310 CMR 80.~~3702~~(9).
- (11) The Owner or Operator shall maintain a list of the designated Class A, B and C operator(s) for each UST system or facility, in hard copy or electronically. Upon request from the Department, the Owner or Operator shall make the documentation available to the requestor as soon as possible, but in no event more than seven (7) business days after the request. This list shall include, but not be limited to, the hiring date or contract date, the date of the operator's most recent training and, for Class A and B operators, the date of his/her most recent operator examination certification.
- (12) Without limitation, if the Department determines that an UST system is out of compliance with applicable state regulations, the Department may require that the Owner or Operator provide re-training for one or more Class A, B or C operator(s) and/or require that one or more Class A or B operator(s) re-take and pass the operator examination.