

310 CMR 80.00: UNDERGROUND STORAGE TANK (UST) 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:

Abandoned means an UST system that is not in operation for a continuous period of at least one year and is not temporarily out-of-service in accordance with 310 CMR 80.42 and is not in full compliance with the applicable requirements of 310 CMR 80.00.

Airport Hydrant Fuel Distribution System (also called airport hydrant system) means an UST system which supplies fuel to aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail car, or other fuel carrier.

Automatic Line Leak Detector means a mechanical or electronic device, but not a sump sensor, 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. All automatic line leak detectors shall be able to detect a leak of 3 gallons per hour at 1- pounds per square inch line pressure within 1 hour with a 95 percent probability of detection and a 5 percent probability of false alarm. At UST facilities that are staffed 24 hours per day, 7 days per week, 365 days per year, an automatic line leak detector may ~~also~~ be a continuous alarm that alerts staff when there is regulated substance or pressure loss in a pressurized product line of a pressurized pumping 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:

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

CERCLA means the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. section 9601 *et seq.*

Certified UST System 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 that two or more substances maintain their respective physical and chemical properties upon contact with one another under conditions encountered within or around an underground storage tank system for the design life of that system.~~

Consumptive Use Tank means ~~a tank used to storing~~ fuel oil ~~used~~ exclusively for area heating and/or the heating of domestic water on the premises where stored. ~~A tank used to store w~~Waste oil ~~used for heating~~ is not ~~considered 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 ~~International; The Corrosion Society~~ as a Cathodic Protection

Specialist or Corrosion Specialist. The corrosion expert shall follow applicable NACE International 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, ~~liquid~~^{fluid}-tight basin installed beneath a regulated substance dispenser 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 Spill or Overflow Containment UST System means a tank used solely to contain accidental spills of a regulated substance which are unanticipated and unpredictable.

Emergency Engine means any stationary internal combustion engine which operates as an emergency or standby mechanical or electrical power source. A load shaving unit, peaking power production unit or a standby engine in an energy assistance program is not an emergency or standby engine under this definition.

Empty or Emptied 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 and is equipped with only one check valve that is installed immediately below the pump so that the contents of the piping will drain back into the tank if there is a breach in the piping and 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.

Field-constructed Tank means an underground tank primarily fabricated and/or constructed on-site.

Flow-Through Process Tank means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operations of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

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. (Hazardous Substances does not include any substance regulated as a hazardous waste under Subtitle C of RCRA and 40 CFR Part 261).

Hydraulic Lift Tank means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices or equipment.

Intermediate Sump means an impermeable, liquid-tight basin, installed below grade to allow access to fittings and regulated substance piping or 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 contain ~~leak~~ leakage of regulated substance and fluids and prevent a release into the environment. Intermediate sumps do not include sumps that have only a single-walled siphon bars with no connections within the sump or only contain a European suction system, or sumps that do not contain any regulated substance piping connections.

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 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), Steel Tank Institute (STI), Petroleum Engineering Institute (PEI), Underwriters Laboratories, Inc. 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 prescribed by the manufacturer of an UST system or UST component including, but not limited to, manuals, instructions, checklists, testing requirements and maintenance requirements.

Monitoring Device means an instrument that checks and keeps data and issues alerts and alarms.

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:

- (a) 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
- (b) 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:

- (a) 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
- (b) 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.

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

Prior to Commencing Operation means before the UST system or UST component is used for its intended purpose after installation or repair, or after being temporarily out-of-service.

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:

- (a) 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
- (b) Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60° F and 14.7 p.s.i. absolute).

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

Regulated Substance Piping means piping that conveys regulated substance.

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

Repair means any modification to the UST system or an UST component that is not routine maintenance including, but not limited to, modifications to the UST system or a UST component that has failed to function properly or has caused a release or leakage, and that restores the UST system to proper operating condition.

Replace or Replacement means the removal of existing tank or piping or an existing UST component and installation of another tank, piping or 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 or UST component.

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.

Septic Tank means a watertight receptacle to receive sewage from a building sewer which is designed and constructed to allow for the separation of scum and sludge and the partial digestion of organic matter before discharge of the liquid portion to a soil absorption system or other intermediate structure in the treatment sequence.

Shear, Crash or Impact 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 or exposure to fire.

Siphon Line means regulated substance piping that connects two tanks and is used to draw regulated substance from one tank into the other to maintain equal levels of regulated substance in each tank.

Spill Bucket means a containment device at the fill port used to catch, accumulate and prevent the release of regulated substance to the environment.

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 ~~5130-B-1-004, May 2019/UST 90/007~~ or equivalent.

Storm Water or Wastewater Collection System means tank, piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

Surface Impoundment means a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

Tank means an underground structure that contains regulated substance. The term shall not include any of the following:

- (a) Any septic tank; or
- (b) 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
- (c) Any surface impoundment, pit, pond, or lagoon; or
- (d) Any storm water or waste--water collection system; or
- (e) Any flow through process tank; or
- (f) Any liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
- (g) 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 of the tank 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).

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, ~~liquid-tight~~ liquid-tight basin that contains a submersible pump, installed below grade to allow access to piping, pumps, fittings and valves ~~or~~ and to collect leakage of regulated substance to prevent its introduction into the environment.

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

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

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) System means any one or combination of tanks, including, without limitation, underground pipes connected thereto, and any containment system that is or was used to that contains regulated substance, or is temporarily out-of-service, and the volume of which, including the volume of underground pipes connected thereto, is ten percent or more beneath the surface of the ground. Underground Storage Tank (UST) System shall not include any of the following tanks or any pipes connected to any of the following:

- (a) Any septic tank; or
- (b) Any pipeline facility, including gathering lines, which is regulated under 49 U.S.C. chapter 601; (a) the Natural Gas Pipeline Safety Act of 1968; or (b) the Hazardous Liquid Pipeline Safety Act of 1979; or
- (c) Any surface impoundment, pit, pond, or lagoon; or
- (d) Any storm water or waste-water collection system; or
- (e) Any flow through process tank; or
- (f) Any liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
- (g) 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 of the tank are accessible and visible.

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

~~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.~~

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 under 310 CMR 30.000: *Hazardous Waste*.

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) through (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 a crash, shear or impact valve, the regulations apply to Owners and Operators of the UST system below the crash, shear or impact valve, except as provided in 310 CMR 80.04(5) through (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 and UST Component Upgrade Requirements. Owners and Operators of the following UST systems shall comply with the Schedule of Upgrades in Table A:
 - (a) Pressurized piping installed before May 28, 1999, ~~and~~
 - (b) UST systems using a submersible pump that do not have a turbine sump.
 - (c) UST systems used to supply regulated substance to emergency engines installed before January 2, 2015.
 - ~~(d) Airport hydrant systems.~~

Table A: Schedule of Upgrades

Type of UST System	Section(s)	Effective Date
Pressurized piping installed before May 28, 1999	Leak Detection Requirements for Automatic Line Leak Detectors at 310 CMR 80.19(4)(b)2.	January 2, 2016

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.
<u>UST systems used to supply fuel to emergency engines installed before January 2, 2015</u>	<u>Leak detection requirements at 310 CMR 80.26(3), (4), (5) or (6).</u>	<u>No later than October 13, 2024</u>
<u>Airport hydrant systems</u>	<u>310 CMR 80.64</u>	<u>See 310 CMR 80.64 for effective dates</u>

(4) Financial Responsibility. The financial responsibility requirements at 310 CMR 80.51 through 80.63 shall apply to all Owners and Operators of UST systems except:

- (a) As provided in 310 CMR 80.04(5) through (123); and
- (b) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States government. Owners and Operators shall have the burden of proof to demonstrate that they are not subject to 310 CMR 80.51 through 80.63.

(5) Owners and Operators 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: *Hazardous Waste*, 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 minimis* 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: *Massachusetts Oil and Hazardous Waste Material List*. If a regulated substance is not listed at 310 CMR 40.1600: *Massachusetts Oil and Hazardous Waste Material List*, the Owner and Operator shall demonstrate *de minimis* 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. The Owner and Operator shall keep records of said demonstration in accordance with 310 CMR 80.36(7) until the Owner and Operator no longer claim the exemption.
- (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 through 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 ~~licensed~~regulated by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including, but not limited to ~~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 ~~system~~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 through 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 UST systems with consumptive use tanks having a capacity 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 requirements at 310 CMR 80.38.
- (9) Owners and Operators of UST systems with 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, except 310 CMR 80.16(8);
 - (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(3)(a) 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)~~ (g) Corrosion Protection Requirements, if applicable, at 310 CMR 80.22 and 80.29;

~~(g)(h)~~ (h) General Requirements at 310 CMR 80.24, except 310 CMR 80.24(4);

~~(h)(i)~~ (i) Emergency Response Requirements at 310 CMR 80.25;

~~(i)(j)~~ (j) Compatibility Requirements at 310 CMR 80.30;

~~(j)(k)~~ (k) Repair and Replacement Requirements at 310 CMR 80.33;

~~(k)(l)~~ (l) Leakage and Release: Response, Reporting and Remediation requirements at 310 CMR 80.38 through 80.40; and

~~(l)(m)~~ (m) Closure Requirements at 310 CMR 80.41 through 80.47.

(10) Owners and Operators of UST systems with consumptive use tanks having a capacity of more than 1100 gallons installed before January 1, 1989 are subject only to the following requirements:

~~(a)~~ (a) Installation Requirements at 310 CMR 80.16;

~~(b)~~ (b) Tank Specifications at 310 CMR 80.17(1);

~~(c)(a)~~ (a) Specifications for Regulated Substance Piping at 310 CMR 80.18(1);

~~(c)(b)~~ (b) Sump Requirements at 310 CMR 80.20 and 80.27;

~~(c)~~ (c) Spill Bucket and Overfill Prevention Requirements at 310 CMR 80.21 and 80.28;

~~(c)(d)~~ (d) General Requirements at 310 CMR 80.24, except 310 CMR 80.24(4);

~~(d)(e)~~ (e) Emergency Response Requirements at 310 CMR 80.25;

~~(d)(f)~~ (f) Compatibility Requirements at 310 CMR 80.30;

~~(d)(g)~~ (g) Repair and Replacement Requirements at 310 CMR 80.33;

~~(d)(h)~~ (h) Leakage and Release: Response, Reporting and Remediation requirements at 310 CMR 80.38 through 80.40; and

~~(d)(i)~~ (i) Closure Requirements at 310 CMR 80.41 through 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 requirements at 310 CMR 80.38.

(12) Owners and Operators of UST systems used solely for emergency spill or overflow containment 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);

(c) Response to a Release requirements at 310 CMR 80.38; and

(d) Remove all regulated substance within seventy-two (72) hours of the introduction of a regulated substance.

~~(d)(e)~~ If the substance contained in the emergency spill or overflow containment UST system is determined to be hazardous waste, the substance shall be subject to 310 CMR 30.000.

(13) Owners and Operators of UST systems ~~specifically~~ used to supply ~~regulated substance~~ fuel to emergency ~~generators or to emergency engines-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 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. 210, 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. 210, 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. 210, 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. 210 or 310 CMR 80.00. Any monitoring which any person is required to perform shall be promptly, fully and accurately performed and shall otherwise be in compliance with M.G.L. c. 210, 310 CMR 80.00, or any permit, order, certification or approval issued by the Department.

80.10: Duty to Provide Information

For any of the purposes set forth in M.G.L. c. 210 or 310 CMR 80.00, any Owner or Operator of an UST system shall upon reasonable request of the Department furnish information relating to UST systems and UST components, conduct monitoring or testing, and permit the Department to have access to, and to copy all records relating to, such UST systems and UST components 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:
 - 1. to enter into contracts regarding the trust property;
 - 2. to bind the trust; or
 - 3. 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. 210 and 310 CMR 80.00, personnel and/or representatives of the Department may, upon presentation of credentials, enter property containing or suspected of containing UST systems in order to:
 - 1. Inspect or obtain samples from any UST system;

2. Conduct monitoring or testing of the tanks, associated equipment, contents of the tank or surrounding soils, air, surface water or ground water; and
 3. Have access to, and copy all records, relating to such tanks.
- (b) Said inspections shall be conducted during normal business hours or at other reasonable times, with or without prior notice, ~~except provided~~ that personnel or authorized representatives of the Department may enter an UST facility, at any time, if emergency conditions require immediate entry or to protect public health, safety or the environment.
- (c) For announced inspections, the Department will notify the UST facility no less than forty-eight hours before the announced inspection.
- (2) Duty to Comply.
- (a) The Owner and Operator shall cooperate and assist Department personnel or authorized representative and 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.
- (b) For announced inspections, the Owner or Operator shall provide the necessary personnel in order to provide access to UST records, systems and facilities including, but not limited to, the following:
1. Regulated substance fill port/spill bucket;
 2. Automatic tank gauge port and console;
 3. Turbine and intermediate sumps;
 4. Underground piping/other access ports;
 5. Dispenser cabinet/dispenser sump;
 6. Audible and visual alarm equipment;
 7. Overfill prevention equipment; and
 8. 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, and excludes any UST system or UST component that would only be visible for inspection if they were excavated.
- (3) Warrants. If the Department is denied full and complete access to the UST facility or requested information, or if after reasonable efforts, the Department cannot locate the Owner or Operator, 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 UST facility or property. 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 through 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 has 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(s).
- (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 installation checklist(s).
 - (b) The Owner or Operator shall ~~maintain~~keep a copy of the certifications in 310 CMR 80.16(1) and 80.16(1)(a), manufacturer's specifications and completed checklist(s) in accordance with 310 CMR 80.36~~(5)~~.
 - (c) The Owner shall submit the installer certification(s) from the manufacturer(s) and the installer's certification in 310 CMR 80.16(1)(a), in accordance with 310 CMR 80.23(1)(b).
 - (d) A new double-walled tank may be installed inside an existing tank, if the new double-walled tank meets the requirements of 310 CMR 80.17 and does not rely on the existing tank to provide structural integrity or as a tank wall and:
 - 1. Prior to installing the new double-walled tank, the Owner or Operator shall have all the solid and liquid material removed from the existing UST system, in accordance with 310 CMR

80.47, have the existing UST system rendered inert and shall secure all openings. The Owner or Operator shall manage all solid and liquid material removed from the UST system in accordance with all applicable federal, state and local laws and regulations.

2. Conduct an assessment in accordance with 310 CMR 80.43(4) before the new double-walled tank is installed. If the assessment finds contamination requiring notification pursuant to 310 CMR 40.0000, *Massachusetts Contingency Plan*, the installation of the new tank shall not commence until the Owner or Operator has complied with the notification requirements contained in 310 CMR 40.0300: *Notification of Releases and Threats of Release of Oil and Hazardous Materials; Identification and Listing of Oil and Hazardous Materials*, as applicable, and any required response actions under 310 CMR 40.0000, *Massachusetts Contingency Plan*.

3. Notify the Department that a new double-walled tank is being installed inside an existing tank, in a format specified by the Department, within 30 days of the new tank being installed. A copy of the assessment in 310 CMR 80.43(4) shall be submitted with said form.

(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 through 80.22. In lieu of the requirements at 310 CMR 80.16(9) through (16), Owners and Operators may use military construction criteria, such as Unified Facilities Criteria (UFC) 3-460-01, Petroleum Fuel Facilities, when designing, constructing, and installing UST systems with field-constructed tanks over 50,000 gallons capacity.

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

(4) The tank and piping shall pass the following tests prior to burial.
(a) The tank and the interstitial space shall be tested by air pressure not less than three pounds and not more than five pounds per square inch. If the interstitial space contains liquid, testing shall comply with the manufacturer's specifications.
(b) The piping shall be hydrostatically tested (or by air pressure) to 150% of the maximum anticipated pressure of the piping system, but not less than 50 pounds per square inch gauge of the highest point of the piping system. After installation, backfilling and surfacing to grade, but prior to putting regulated substance into the tank, each tank shall pass a tightness test pursuant to 310 CMR 80.32.
(c) The Owner shall provide the test results to the professional engineer conducting the inspection in accordance with 310 CMR 80.16(6).

(5) After installation, backfilling and surfacing to grade, ~~but prior to putting regulated substance into the tank, the tank and~~ piping shall pass a tightness test in accordance with ~~pursuant to~~ 310 CMR 80.32.

(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), or their designated representative, prior to being backfilled, to ensure the UST system is installed in accordance with 310 CMR 80.14 through 80.22. If the person who prepares the drawing or as-built plans, or their designated representative, determines the UST system is not installed in accordance with 310 CMR 80.14 through 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 through 80.22.

(7) The Owner or Operator shall maintain a scaled drawing or a set of as-built plans ~~prepared by the installer who installed the UST system or a registered professional engineer,~~ until the UST system is removed or permanently closed in accordance with 310 CMR 80.43(2) or (3) and shall submit a copy of the as-built plans to the Department in accordance with 310 CMR 80.23(1). 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 global positioning system (GPS) ~~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. All drinking water wells 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, a list of UST components (including manufacturer and model number), 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/licensed professional engineer who ~~signed and sealed/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 submit a registration to ~~notify~~ the Department within 30 days of the initial introduction of regulated substance into ~~an~~ UST system on a form specified by the Department, in accordance with 310 CMR 80.23(1), except Owners of UST systems used solely for emergency spill or overflow containment shall submit a registration to the Department within 30 days of installation.

- (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, 6th Edition, April 2011, *Installation of Underground Petroleum Storage Systems*; or
 - (b) PEI Recommended Practice 100-147, 20174, *Recommended Practices for Installation of Underground Liquid Storage Systems*.
- (10) 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.
- (11) ~~Piping shall be installed in a trench between the tank area and the pump island.~~ Underground piping and underground vent lines shall be installed in a trench. If the manufacturer's specifications specify a different standard for installing piping and vent lines, the Owner and Operator may comply with the manufacturer's specification in *lieu* of this standard. The Owner or Operator shall keep records of the standard in accordance with 310 CMR 80.36(5).
- (12) 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, unless otherwise directed by the manufacturer's specifications. All trenches shall be wide and deep enough to permit at least six inches of noncorrosive backfill material surrounding all lines, unless otherwise directed by the manufacturer's specifications. The Owner or Operator shall keep records of the manufacturer's specification in accordance with 310 CMR 80.36(5).
- (13) 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.
- (14) 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. Siphon lines shall be exempt from 310 CMR 80.16(14).
- (15) 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. If the manufacturer's specifications specify a different standard, the Owner and Operator may comply with the manufacturer's specification in lieu of this standard. The Owner or

Operator shall keep records of the standard in accordance with 310 CMR 80.36~~(5)~~.

(16) 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.

(17) 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, at a minimum, to the bottom of the tank pad, and in no event less than one foot 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.

(18) The Owner or Operator shall keep a copy of the installer's certifications, manufacturer's specifications and ~~completed~~ checklist(s), records of all testing

results and inspections conducted during the installation 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 having a capacity 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) through (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) through (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) through (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.

(f) Listed “tank-within-a-tank” systems that are double-walled and do not rely on the existing tank to provide structural integrity or as a tank wall.

(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 having a capacity 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, or a combination 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 January 2, 2015~~, 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 European suction systems and siphon lines between tanks, shall be installed with secondary containment which may include, but is not limited to, impervious liners if installed prior to January 2, 2015 or double-walled piping.
- (3) All regulated substance piping installed after January 2, 2015 shall be:
- (a) double-walled, except European suction systems and siphon lines between tanks;
 - (b) product compatible; and
 - (c) 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.

80.19: Leak Detection

- (1) Owners and Operators shall equip UST systems with leak detection equipment.
- (2) The Owner or Operator shall install, calibrate, operate and maintain all leak detection equipment in accordance with 310 CMR 80.19 and 80.26, and the manufacturer's specifications.
- (3) Requirements for Tanks.
- (a) Tanks (except tanks used to supply regulated substance~~fuel~~ to emergency ~~generator~~ engines ~~and emergency engine driven pumps~~) installed on or after January 1, 1989, and tanks used to supply regulated substance to emergency ~~generator tanks and emergency engines driven pumps~~ installed on or after January 2, 2015, shall be equipped with a system that continuously monitors interstitial space.

1. The interstitial monitors shall be installed and operated 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 (including brine systems) of interstitial monitoring, the method shall be capable of detecting a breach in the inner and outer walls of the tank.

(b) ~~Tanks (except tanks used to supply fuel to 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:~~ Tanks, except tanks used to supply regulated substance to emergency engines, installed before January 1, 1989, shall be equipped with at least one of the leak detection methods listed 310 CMR 80.19(3)(b)1. through 4. No later than October 13, 2021, tanks used to supply regulated substance to emergency engines that were installed before January 2, 2015, shall be equipped with at least one of the leak detection methods listed at 310 CMR 80.19(3)(b)1. through 4.

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 used to test the tank 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 ~~510-B-002 May 2019~~510-B-002 May 2019 ~~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 510-B-

~~19-002, May 2019/530/UST-90/006~~) or other equivalent test procedures and complies with 310 CMR 80.26(5).

4. An in-tank monitoring system installed, operated 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 ~~510-B-19-002, May 2019~~) 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 ~~510-B-19-004, May 2019/530/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 January 2, 2017, 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(3)(b)1., 2., 3. or 4.~~

(c) Until October 13, 2022, tanks used to supply fuel to emergency engines installed before January 2, 2015 shall comply with at least one of the following leak detection methods:

- 1. Leak detection requirements at 310 CMR 80.19(3)(b)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.

(d) Owners and Operators of field-constructed tanks with a capacity greater than 50,000 gallons ~~capacity~~ 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.
4. Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual; or equivalent procedures) at least every 30 days that can detect a release or leakage equal to or less than 0.5 percent of flow-through; and perform a tank tightness test that can detect a release or leakage of 0.5 gallon per hour at least every two years.
5. Maintain records of the testing conducted according to 310

CMR

80.19(3)(d) in accordance with 310 CMR 80.36.

~~(d) Tanks used to supply fuel to emergency generator engines or emergency engine driven pumps installed before January 2, 2015 shall comply with at least one of the following leak detection methods:~~

- ~~1. Leak detection requirements at 310 CMR 80.19(3)(b)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.~~

(4) Requirements for Piping.

(a) UST systems installed on or after May 28, 1999 shall have the following requirements for regulated substance piping, except European suction systems and single-walled siphon lines between tanks:

1. All regulated substance piping shall have a system that continuously monitors interstitial space as follow:-
 - a. ~~The s~~Sensors shall be installed in the sump in accordance with the manufacturers' specification. If there is no manufacturer's specification, the sensors shall be placed at the lowest point in the sump.

- b. The system shall comply with 310 CMR 80.26(3).
 - c. The ~~systemsampling or testing method~~ shall detect regulated substance in a sump that leaked through the inner wall in any portion of the piping that routinely contains ~~regulated substanceproduct~~.
2. In addition to complying with 310 CMR 80.19(4)(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. At UST facilities that are staffed 24 hours per day, 7 days per week, 365 days per year, an automatic line leak detector may also be a continuous alarm that alerts staff when there is regulated substance or pressure loss in a pressurized product line of a pressurized pumping system.
 3. European suction systems and siphon lines between tanks are not required to have leak detection.
- (b) UST Systems installed between January 1, 1989 and May 28, 1999 shall have the following requirements for regulated substance piping, except European suction systems and single-walled siphon lines between tanks:
1. Owners or Operators of all regulated substance piping shall implement one of the following methods of leak detection:
 - a. A system that continuously monitors interstitial space in accordance with 310 CMR 80.19(4)(a)1.; or
 - b. Quarterly visual inspections of secondary containment ports and conduct of an annual tightness test of the product piping line in accordance with 310 CMR 80.32; or
 - c. An in-tank monitoring system that is maintained by a qualified person with inventory data analysis conducted by a qualified statistical inventory reconciliation (SIR) vendor. The SIR testing or monitoring methods shall:
 - 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 510-B-19-002, May 2019/530/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 [510-B-19-004](#), [May 2019/530/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(4)(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. At UST facilities that are staffed 24 hours per day, 7 days per week, 365 days per year, an automatic line leak detector may also be a continuous alarm that alerts staff when there is regulated substance or pressure loss in a pressurized product line of a pressurized pumping system.
 3. European suction systems are not required to have leak detection.
- (c) UST Systems installed before January 1, 1989 shall have the following requirements for regulated substance piping, except European suction systems and single-walled siphon lines between tanks:
1. Owners or Operators of all regulated substance piping shall implement one of the following methods of leak detection:
 - a. A system that continuously monitors interstitial space in accordance with 310 CMR 80.19(4)(a)1.; or
 - b. Quarterly visual inspections of secondary containment ports and conduct an annual tightness test of the product piping line in accordance with 310 CMR 80.32; or
 - c. An in-tank monitoring system that is 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:
 - 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 [510-B-002](#), [May 2019/530/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 [510-B-19-004](#), [May](#)

- ~~2019/530/UST-90/007~~) or other equivalent test procedures and with 310 CMR 80.26(6).
- d. For single-walled pressurized piping systems and single-walled gravity piping systems, conduct an annual tightness test in accordance with 310 CMR 80.32; or
- e. For Non-European suction systems that do not have secondary containment, conduct an annual tightness test ~~every three years~~ in accordance with 310 CMR 80.32.
2. In addition to complying with 310 CMR 80.19(4)(~~cb~~)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. At UST facilities that are staffed 24 hours per day, 7 days per week, 365 days per year, an automatic line leak detector may also be a continuous alarm that alerts staff when there is regulated substance or pressure loss in a pressurized product line of a pressurized pumping system.
3. European suction systems are not required to have leak detection.

80.20: Requirements for Turbine, Intermediate and Dispenser Sumps

- (1) Dispenser Sumps
- (a) Regulated substance dispensers installed, repaired or replaced on and after October 1, 2021, shall be equipped with a dispenser sump that shall be continuously monitored for liquids utilizing a dispenser sump sensor(s). 310 CMR 80.20(1)(a) shall not apply in situations where only the product dispenser is repaired or replaced due to damage or malfunction, but shall apply to any replacement of both the product dispenser and dispenser components attaching the dispenser to the UST piping system at the dispenser.
- (b) Regulated substance dispensers installed, repaired or replaced on or after March 21, 2008 and before October 1, 2021 shall be equipped with a dispenser sump that shall be continuously monitored for liquids utilizing a dispenser sump sensor(s). 310 CMR 80.20(1)(b) shall not apply in situations where only the product dispenser is repaired or replaced due to damage or malfunction, but shall apply to any replacement of both the product dispenser and the piping used to connect the product dispenser to the tank.
- (2) Tanks utilizing a submersible pump, when the pump was installed on or after March 21, 2008, shall be equipped with a turbine sump.
- (3) All turbine sumps, ~~including~~ intermediate sumps and dispenser sumps, installed on or after March 21, 2008, except sumps that only contain a single-

walled siphon line with no connections within the sump or only contain a European suction system or sumps that do not contain any regulated substance piping connections, shall be continuously monitored for liquids utilizing a sump sensor(s).

~~(34)~~ 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-place in accordance with 310 CMR 80.43(2) or (3).

~~(54)~~ Turbine, intermediate and dispenser sumps, except sumps listed at 310 CMR 80.27(8), shall pass an tightness integrity test at installation to ensure the sump is liquid tight by using a vacuum, pressure, or hydrostatic liquid testing in accordance with PEI RP1200-19. 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~~(4)~~.

~~(65)~~ Turbine sump manhole covers installed on and after the January 2, 2015 shall be designed and installed with a final grade that channels storm water away from the turbine sump cover and turbine sump manhole covers installed on and after October 1, 2021 shall also be installed so that the paved surface is crowned as to protect the sump and equipment within from damage due to traffic.

~~(76)~~ 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) All fill ports used to introduce regulated substance to an UST systems shall be equipped with a spill bucket.

(a) Spill buckets, including replacement spill buckets, installed on or after January 2, 2015 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 that 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 January 2, 2015 shall have a minimum capacity of three gallons.
- (c) All spill buckets shall pass an tightness integrity test at installation to ensure the spill bucket is liquid tight by using a vacuum, ~~pressure~~, or hydrostatic liquid testing in accordance with PEI RP1200-19. ~~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).
- (d) Spill bucket covers installed on and after October 1, 2021 shall be designed and installed with a final grade that channels storm water away from the spill bucket and the paved surface is crowned as to protect the spill bucket and fill port from damage due to traffic.

- (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 or after January 2, 2015, new or replacement ball float valves are prohibited from being used as the primary overfill prevention device. Owners and Operators may continue to use ball float valves as a secondary overfill prevention device, unless the ball float valve interferes with the operation of the primary overfill prevention device. Ball float valves installed prior to January 2, 2015 may be used as the primary overfill prevention 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 ~~device 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 regulated substance 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 January 2, 2015 shall be visible and audible to the regulated substance deliverer.
 - b. All high-level alarms shall be clearly labeled as a tank overfill alarm.
 3. A ball float valve which shall alert the regulated substance deliverer by restricting the flow into the tank 30 minutes prior to overfilling, in accordance with 310 CMR 80.21(2)(a).

80.22: Requirements for Corrosion Protection

- (1) All UST systems shall be protected from corrosion.

- (2) Metal components of an UST system and UST components, excluding manhole covers, that are subject to corrosion and are in contact with the ground shall have continuous cathodic protection. Riser and fill pipes may be coated, taped or clad with non-corrosive materials, such as fiberglass to comply with 310 CMR 80.22(2).
- (3) If a tank or regulated substance piping is manufactured with cathodic protection, it shall comply with a listed standard.
- (4) 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 field-constructed cathodic protection systems installed on and after January 2, 2015, 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).
- (5) 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 or UST component 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 TM0497-2010~~2~~, *Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems*.
- (6) The cathodic protection system shall pass the applicable test(s) at 310 CMR 80.22(5). The Owner or Operator shall keep a record of the passed test(s) in accordance with 310 CMR 80.36(4). 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, except Owners of UST systems used solely for emergency spill or overflow containment shall submit a registration to the Department within 30 days of installation or for existing emergency spill or overflow tanks on or before October 1, 2021. The Owner shall retain a copy of the current registration in accordance with 310 CMR 80.36~~(3)~~ until the UST system is removed or permanently closed in-place 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 UST components including, but not limited to, 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) The Owner shall submit with the registration for the installation of a new or replacement UST system, the following, in a format specified by the Department:
1. A copy of the certification from the UST system installer that:
 - a. S/he was certified by the manufacturer of the UST system that was installed;
 - b. The UST system was installed in accordance with the manufacture's specifications; and
 - c. The installer complied with all items on the manufacturer's installation checklist(s).
 2. A copy of the as-built plans pursuant to 310 CMR 80.16(7).
- (c) Owners, or Operators if authorized by the Owner, 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, or Operators if authorized by the Owner, 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. 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, except as provided in 310 CMR 80.23(2)(a)3.
 3. At least 30 days prior to the change if the change is from a regulated substance to a regulated substance containing greater than 10% ethanol or greater than 20% biodiesel, in accordance with 310 CMR 80.30(3).
 - (b) Any UST system taken temporarily out-of-service in accordance with 310 CMR 80.42, 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 in accordance with 310 CMR 80.42, within 30 days after 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)~~(e).~~
 - (e) UST systems closed-in-place within 30 days of UST system being filled; in accordance with 310 CMR 80.43(3)(c).
 - (f) UST systems closed because a new tank is installed inside an existing tank, in accordance with 310 CMR 80.44.
- (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~~(3)~~ and (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 installer certifications, as-built plans of UST systems, cathodic protection systems plans and specifications, and manufacturer's specifications, if they were required to be kept by the Owner, to the new Owner.
- ~~(5) Any person who sells an UST system intended to be used as an UST system shall notify the purchaser of such UST system of the registration obligations under 310 CMR 80.23.~~
- (5) A UST facility Owner, upon the sale or transfer of a UST facility shall provide the Department with the following information, in a format specified by the Department:
- (a) Facility identification number;
 - (b) New Owner entity name and address; and

(c) New Owner entity contact's name, phone number and email address.

80.24: General Requirements

(1) Owners and Operators shall comply with all general and specific operating requirements in 310 CMR 80.23 through 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 and UST components.

(3) The Owner or Operator shall respond to every UST system alarm that may indicate the presence of leakage or a release, and document the response to each of those alarms in a report or log which shall include the date, the cause and any corrective action taken. The Owner or Operator shall keep records of such alarms in accordance with 310 CMR 80.36~~(4)~~.

(4) The Owner or Operator shall ensure that fill pipe covers of tanks are painted and maintained in accordance API Recommended Practice 1637, ~~3rd Edition, 2006, Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals~~, 4th Edition, 2020, Using the API Color-Symbol System to Identify Equipment, Vehicles, and Transfer Points for Petroleum Fuels and Related Products at Dispensing and Storage Facilities and Distribution Terminals if applicable.

(5) ~~When~~ 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 remove or permanently close ~~it in-place the UST system~~ in accordance with 310 CMR 80.43. ~~When~~ any regulated substance remains in an UST system, unless the concentration of regulated substance in the UST system meets the de minimis standard in 310 CMR 80.04(5)(c), ~~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 minimis standard in 310 CMR 80.04(5)(c).~~

(6) After January 2, 2015, an Owner or Operator shall not line or reline any tank to extend the operating life of the UST system.

(a) Tanks that were internally lined on or before January 2, 2015 shall be internally inspected on or before October 1, 2022 and every five years thereafter, in accordance with a code of practice developed by a nationally recognized association to determine whether the tank is structurally sound and the lining still performing in accordance with the original design specifications.

(b) If the lining is determined to be no longer performing in accordance with original design specifications and cannot be repaired in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory or the tank is found to not be structurally sound, the tank shall be immediately taken temporarily out-of-service in accordance with 310 CMR 80.42 and removed or permanently closed in-place in accordance with 310 CMR 80.43 within ninety days of the determination.

80.25: Requirements for an UST system or UST Component 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 UST system or UST ~~c~~Component 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 written in large print so that employees can clearly see it from at least 10 feet away, in languages that are commonly spoken at the UST facility and be prominently displayed at various locations ~~so all employees (at a minimum) can see it.~~
- (b) The ~~UST system or UST Component~~ emergency signage shall be updated when any information on the sign changes.
- (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 UST system or UST component 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 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 for tanks and piping 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. As applicable, the Owner or Operator shall inspect and test leak detection systems annually, as follows:
- (a) For in-tank monitors and other controllers:
1. Test alarms;

- 2. Verify system configuration; and
- 3. Test battery backup.
- (b) For probes and sensors:
 - 1. Inspect for residual buildup and remove buildup as necessary;
 - 2. Ensure floats move freely;
 - 3. Ensure shaft is not damaged;
 - 4. Ensure cables are free of kinks or breaks; and
 - 5. Test alarm operability and communication with controller.
- (c) For automatic line leak detector: test operation to meet criteria in 310 CMR 80.19(4)(a)2., 310 CMR 80.80.19(4)(b)2., and 310 CMR 80.19(4)(c)2., by simulating a leak.
- (d) For vacuum pumps and pressure gauges: ensure proper communication with sensors and controller.
- (e) Repair and replace leak detection systems and components, as necessary.
- ~~(f)~~ Keep records of inspection results, repairs and replacements in accordance with 310 CMR 80.36(4).

(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. 'Water' in 310 CMR 80.26(3)(b) does not include brine or condensation that occurs in a properly operating UST system.
- (c) If a release or leakage is indicated by alarm or otherwise, the Owner or Operator shall immediately commence an investigation to determine whether there may be a release or leakage. ~~+~~The Owner or Operator shall conclude the investigation within 72 hours of the indication of release or leakage.
- (d) If the Owner or Operator is unable to determine that there is not a release or leakage within 72 hours of the indication of release or leakage, s/he shall:
 - ~~a.~~ C conduct a tightness test of the suspected tank or piping in accordance with 310 CMR 80.32 within 72 hours after the conclusion of the investigation.
 - 1. If the tank or piping fails a tightness test pursuant to 310 CMR 80.32, the Owner or Operator shall comply with the requirements at 310 CMR 80.32(3)40.0300: Notification of Releases and Threats of Release of Oil and Hazardous Material; Identification and Listing of Oil and Hazardous Materials, as applicable.

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.

23. If the investigation or the tightness test indicates leakage, the Owner or Operator shall comply with 310 CMR 80.39.

(ed) ~~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 all investigations and monthly liquid status reports in hard copy or electronically (but not electronically in the leak detection system), 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 whether there is 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 six hours. 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, the Owner or Operator shall conduct a tightness test of the suspected tank ~~or~~ and 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 ~~80.32(3)~~ 40.0300: Notification of Releases and Threats of Release of Oil and Hazardous Material; Identification and Listing of Oil and Hazardous Materials, as applicable.

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 all investigations and passing monthly of such tests in hard copy or electronically (but not electronically in the leak detection system), in accordance with 310 CMR 80.36(1).

(5) Requirements for those UST systems that use a continuous in-tank detection 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 ~~80.32(3)40.0300: Notification of Releases and Threats of Release of Oil and Hazardous Material; Identification and Listing of Oil and Hazardous Materials~~, as applicable.
 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 all investigations and passing monthly of such tests in hard copy or electronically (but not electronically in the leak detection system), in accordance with 310 CMR 80.36(4).
- (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 qualified 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 ~~80.32(3)40.0300: Notification of Releases and Threats of Release of Oil and Hazardous Material; Identification and Listing of Oil and Hazardous Materials~~, as applicable.

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. 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: ~~C~~conduct a tightness test pursuant to 310 CMR 80.32 within 72 hours of the conclusion of the investigation.

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 ~~8.032(3)40.0300: Notification of Releases and Threats of Release of Oil and Hazardous Material; Identification and Listing of Oil and Hazardous Materials~~, as applicable.

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.

(e) If the SIR analysis is conclusive and does not identify a release or leakage of regulated substance, the tank is considered tight.

(f) ~~An in-tank monitoring system or 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 all investigations and SIR analyses of such tests~~ in accordance with 310 CMR 80.36~~(4)~~.

(7) ~~Until October 13, 2021, Requirements-UST systems having a capacity of 1000 gallons or less, installed before January 2, 2015, that supply regulated substance to for emergency generators tanks and emergency engine-driven pumps having a capacity of 1000 gallons or less, installed before January 2, 2015, may that~~ conduct weekly tank gauging as its primary leak detection system are as follows:

- (a) Manual tank gauging shall be conducted every seven 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 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 in 310 CMR 80.26(7)(b)4.: *Table D*:

Table D

Nominal Tank Capacity	Weekly Standard (One Test)	Monthly Standard (Average of Four Tests)
500 gallons or less	10 gallons	5 gallons
501-1,000 gallons	13 gallons	7 gallons

(c) In the event of a suspected release or leakage, the Owner or Operator shall comply with 310 CMR 80.31(1)(e), ~~(f) and (g), through (g)~~ (d) The Owner or Operator shall keep records of the results of weekly tank gauging accordance with 310 CMR 80.36(1).

(8) ~~Until October 13, 2024~~ 2. Requirements for UST systems having a capacity of more than 1000 gallons, installed before January 2, 2015 that supply regulated substance to emergency generator tanks or emergency engine driven pumps having a capacity of more than 1000 gallons, installed before January 2, 2015 ~~may that~~ conduct monthly tank gauging as its primary leak detection system are as follows: (These ~~UST system 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 of an inch;

4. A release or leakage shall be suspected if the variation between beginning and ending measurements exceeds the monthly standard in 310 CMR 80.26(8)(b)4.: *Table E*:

Table E

Nominal Tank Capacity	Monthly Standard
More than 1000 gallons	7 gallons plus 2 gallons for every additional 1000 gallons capacity

(c) In the event of a suspected release or leakage, the Owner or Operator shall comply with 310 CMR 80.31(1)(e), (f) and (g).

~~(d) The Owner or Operator shall keep records of the results of weekly tank gauging in accordance with 310 CMR 80.36(4).~~

(9) ~~For piping installed before May 28, 1999, the Owner or Operator may conduct quarterly visual inspections of secondary containment ports and conduct an annual tightness test of the piping in accordance with 310 CMR 80.32. The Owner or Operator shall keep records of the visual inspections and the tightness tests in accordance with 310 CMR 80.36(4).~~

~~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) ~~Options~~Requirements for Owners and Operators of regulated substance piping installed before January 1, 1989:

(a) Non-European suction piping, if it does not have secondary containment and continuous monitoring of interstitial space, ~~shall~~may ~~comply with 310 CMR 80.19(4)(c)1.b., c. or e.~~ The Owner and Operator shall maintain records of the tightness testing in accordance with 310 CMR 80.36(4).

(b) Single-walled pressurized piping systems and single-walled gravity piping systems shall~~may~~ comply with 310 CMR 80.19(4)(c)1.b., c. or d. ~~conduct an annual tightness test in accordance with 310 CMR 80.32.~~ The Owner and Operator shall maintain records of the tightness testing in accordance with 310 CMR 80.36(4).

(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(4)(a)1. ~~or~~ 310 CMR 80.19(4)(b)1. or 310 CMR 80.19(4)(c)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(4).

(13) All leak detection records required in 310 CMR 80.26(1) through (12) shall be kept in accordance with 310 CMR 80.36~~(4)~~.

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.

(b) 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.

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

(3) All sump sensors shall be placed in accordance with the manufacturer's specifications, or, if no such specifications exist, the sensors shall be placed at the lowest possible location in the sump, where it can feasibly be installed.

(4) All manhole covers shall impede water infiltration to the sump. All sump covers shall be free of cracks and holes.

(54) 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 visually inspect the area around the submersible pump as follows:

1. Visually inspect the submersible pump for release of 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~~(54)~~ in accordance with 310 CMR 80.36~~(4) and (5)~~.

(65) The Owner or Operator shall inspect turbine, intermediate and dispenser sumps, except sumps that only contain a single-walled siphon line with no connections within the sump or sumps that only contain a European suction system or sumps that do not contain any regulated substance piping connections.

in accordance with the following and in accordance with 310 CMR 80.~~3527(36)~~ or (4), as applicable 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 correctly installed and operating continuous monitoring sensors in the sump shall be inspected annually, ~~if:~~
 - ~~1. The sensors are placed in accordance with the manufacturer's specifications, or, if no such specifications exist, the sensors are placed 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 every 90 days in accordance with the schedule at 310 CMR 80.(3)27(5) and as follows:~~
 - ~~(a) The Owner or Operator shall:~~
 - ~~(b) The Owner or Operator shall remove and manage solid and liquid material from the sump in accordance with all applicable 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 conduct an integrity test of turbine, intermediate and dispenser sumps, except sumps listed in 310 CMR 80.27(8), on or before January 2, 2017, on or before October 13, 2021, and once every three (3) years thereafter as follows: ~~in accordance with 310 CMR 80.27(8).~~
 - (a) Sumps with properly operating and installed sensors that are not used for interstitial monitoring of piping may shall be tested hydrostatically to the level that will activate the sensors ~~or by vacuum testing. The sump passes the integrity test if the sensors are activated when they come in contact with the liquid.~~
 - (b) Dispenser sumps with properly operating and installed sensors used for interstitial monitoring of piping and that shuts off the dispenser

when activated may be tested hydrostatically to the level that will activate the sensor, if the UST facility is always staffed when the pumps are operational. The sump passes the integrity test if the sensors are activated when they come in contact with the liquid and shut off the dispenser.

(c) Turbine sumps with properly operating and installed sensors that are used for interstitial monitoring of piping and that shuts off the submersible pump when activated may be tested hydrostatically to the level that will activate the sensor. The sump passes the integrity test if the sensors are activated when they come in contact with the liquid and shut off the submersible pump.

(d) Sumps that do not meet the requirements of 310 CMR 80.27(7)(a), (b) or (c) or do not have a sensor shall be integrity tested hydrostatically to the top of the sump or by vacuum or hydrostatic testing in accordance with PEI RP1200-19.

(8) The following sumps are not subject to the testing requirements in 310 CMR 80.27(7), 80.27(9) or 80.20(54):

(a) Sumps that only contain a single-walled siphon line with no connections within the sump or sumps that do not contain any regulated substance piping connections;

(b) Sumps that only contain a European suction system; and

(c) Double-walled sumps, if the integrity of both walls is monitored every 90 days or annually, as applicable under 310 CMR 80.27(6), by checking vacuum, pressure or liquid interstitial integrity indicators.

1. A sensor in a dry interstice does not meet the requirements of monitoring the integrity of both walls.

2. In order to claim the exemption from testing, the Owner or Operator shall keep documentation showing that the sump is double-walled and that the integrity of both walls is monitored every 90 days or annually, as applicable under 310 CMR 80.27(6), in accordance with 310 CMR 80.36.

(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).

(a9) 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.

(a) The Owner or Operator shall keep records of the test and any repairs to demonstrate compliance with 310 CMR 80.27(7) and (8) and 80.33, including but not limited to the date of the test and the results, in accordance with 310 CMR 80.36(4).

(b9) Turbine, intermediate and dispenser sumps that are repaired, except sumps listed in 310 CMR 80.27(8), shall pass an integrity test in

accordance with 310 CMR 80.27(78) ~~prior to commencing operation to determine that they hold liquid, vacuum or pressure which may be conducted by hydrostatic, vacuum or pressure tests.~~ The Owner or Operator shall keep records of such tests in accordance with 310 CMR 80.36(4).

(c) Repairs which do not affect the integrity of a sump to retain liquid, including, but not limited to a sump lid and gasket, do not require an integrity test prior to commencing service.

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) and (3).

(2) Requirements for the proper operation and maintenance of spill buckets and covers 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 maintain the spill bucket and cover so that they are 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 no less frequently than once every 30 days in accordance with 310 CMR 80.35. monthly in accordance with the following:
 - ~~1. Visually inspect to determine if there is solid or liquid material in the spill bucket.~~
 - ~~2. Visually inspect spill buckets and covers for signs of corrosion.~~
 - ~~3. Verify that sensors are set in accordance with, or, if no such specifications exist, the sensors shall be placed at the lowest possible location in the ump.~~
- (f) The Owner or Operator shall test spill buckets in accordance with 310 CMR 80.28(2)(g) on or before January 2, 2017, on or before October 13, 2024 and once every three ~~five~~ (5) years thereafter.
 1. Double-walled spill buckets, if the integrity of both walls is monitored every 30 days by checking vacuum, pressure or liquid interstitial integrity indicators are exempt from the testing requirement in 310 CMR 80.28(2)(f).
 2. A sensor in a dry interstice does not meet the requirements of monitoring the integrity of both walls.

3. In order to claim the exemption from testing, the Owner or Operator shall keep documentation showing that the spill bucket is double-walled and that the integrity of both walls is monitored at least every 30 days, in accordance with 310 CMR 80.36.

(g) The Owner or Operator shall conduct an integrity test on spill buckets in accordance with the schedule at 310 CMR 80.28(2)(f) and after repairs, 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 in accordance with PEI RP1200-19.
- ~~2. The standard for declaring a failure is ¼ 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. Prior to commencing operation, the repaired spill bucket shall be retested in accordance with 310 CMR 80.28(2)(g)1.~~
3. Repairs which do not affect the integrity of a spill bucket to retain liquid or disturb the seal between the spill bucket and the riser do not require an integrity test prior to commencing operation.

(h) The Owner or Operator shall repair or replace spill buckets as necessary in accordance with 310 CMR 80.33. Prior to commencing operation the repaired spill bucket shall be retested in accordance with 310 CMR 80.28(2)(g)1.

(i) If a spill bucket is equipped with sensors, the sensors shall be placed in accordance with the manufacturer's specifications, or, if no such specifications exist, the sensors shall be placed at the lowest possible location in the spill bucket.

~~(j)~~ The Owner or Operator shall keep the following spill bucket records in accordance with 310 CMR 80.36~~(+)~~.

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 operational. If no manufacturer's specifications exist, the Owner or Operator shall inspect and test the overfill prevention equipment annually to ensure that it is operational and will activate at the correct level in accordance with 310 CMR 80.21(2)(b).~~

1. Inspection and testing shall be conducted in accordance with requirements in the manufacturer's specifications, if the manufacturer has developed requirements for inspection and testing; or

+2. Inspection and testing shall be conducted in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory.

(b) The Owner or Operator shall repair or replace components as necessary in accordance with 310 CMR 80.33. Prior to commencing operation, the overflow prevention equipment shall be tested to ensure that it will activate at the correct level in accordance with 310 CMR 80.21(2)(b).

~~(c) Overfill prevention equipment that is repaired shall be tested to determine that it is operational.~~

~~(cd)~~ The Owner or Operator shall keep records of the following in accordance with 310 CMR 80.36~~(+)~~:

1. Records of inspections and testing in accordance as required by with the manufacturer's specifications, including, but not limited to a copy of the manufacturer's specifications ~~or, if no manufacturer's specifications exist, an annual inspections to demonstrate compliance with~~ to demonstrate compliance with 310 CMR 80.28(3)(a) 1; or

2. Records of inspection and testing- including, but not limited to the code of practice developed by a nationally recognized association or independent testing laboratory to demonstrate compliance with 310 CMR 80.28(3)~~(ae)~~2.

(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 and that the transfer operation is monitored constantly to prevent overfilling and spilling.

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 Standard 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(5).
- (3) Sacrificial or galvanic anode cathodic protection systems shall be tested by a cathodic protection tester at the recurring 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 TM0497-2012, *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 after January 2, 2015.
- (5) The Owner or Operator shall determine the cause of the failed cathodic protection test by retaining a corrosion expert within ~~five~~ten business days of obtaining knowledge of the failed test, ~~unless~~ If within ten business days of the failed test, the cathodic protection tester can make repairs, re-test and the result is a passing test, the Owner or Operator is not required to retain a corrosion expert. 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 remove or permanently close in-place 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 a repair to the cathodic protection system or an excavation at the UST system.
- (7) The Owner or Operator shall keep the following records in accordance with 310 CMR 80.36(4):
 - (a) Documentation of corrosion expert’s determination in 310 CMR 80.29(5)(b).
 - (b) Records of testing of cathodic protection system(s).
 - (c) Repairs of the cathodic protection system.

80.30: Requirements for Compatibility

- (1) The Owner and Operator shall not introduce, or allow to be introduced, any regulated substance 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 installed, including, but not limited to, soil and groundwater.
- (3) The Owner or Operator storing regulated substance containing greater than 10% ethanol or greater than 20% biofuel shall demonstrate compatibility of the tank, piping, sumps, pumping equipment, leak detection equipment, spill buckets and overfill prevention equipment with the regulated substance by complying with one of the following options:
 - (a) Certification or listing of UST system and UST components listed in 310 CMR 80.30(3) by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or
 - (~~a~~) (b) Manufacturer’s approval, in writing, indicating an affirmative statement of compatibility, specifying the range of biofuel blends are compatible with the UST system and UST components.
- (4) The Owner or Operator shall keep records of regulated substance compatibility as required by 310 CMR 80.30(3) and in accordance with 80.36.

80.31: Requirements for Inventory Monitoring

- (1) Daily Inventory Monitoring.

- (a) The Owner or Operator of a tank that is ~~single~~~~not double~~-walled ~~in accordance with 310 CMR 80.17~~ and does not have continuous monitoring in accordance with ~~310 CMR 80.19(3)(a), or 80.19(3)(b)1, or 80.19(3)(b)3.~~ shall conduct inventory monitoring for abnormal regulated substance loss.
- (b) The Owner or Operator of UST systems with tanks having a capacity of 111 to 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 $\frac{1}{8}$ 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 within 72 hours of the completion of 310 CMR 80.31(1)(e) 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 ~~32(3)40.0300: Notification of Releases and Threats of Release of Oil and Hazardous Material; Identification and Listing of Oil and Hazardous Material, as applicable.~~

(h) 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) Owners and Operators may use weekly manual tank gauging on tanks that have a capacity of 1000 gallons or less, in accordance with 310 CMR 80.31(2)(b) and (c), to satisfy the inventory monitoring requirements in 310 CMR 80.31(1)(a).

(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 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 in 310 CMR 80.31(2)(b)4.: *Table F*:

Table F

Nominal Tank Capacity	Weekly Standard (One Test)	Monthly standard (Average of Four Tests)
500 gallons or less	10 gallons	5 gallons
501-1,000 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) Owners and Operators that are subject to the requirements of 310 CMR 80.31 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) through (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 ~~80.32(3)40.0300: Notification of Releases and Threats of Release of Oil and Hazardous Material; Identification and Listing of Oil and Hazardous Materials~~, as applicable.
 - 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(+).

(5) Waste Oil Tanks. Waste oil tanks that are subject to 310 CMR 80.31 and are 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:~~
~~Until January 1, 2018, t~~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% and the probability of a false alarm shall be no more than 5%.

~~(b) — On and after January 1, 2018, 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% and the probability of a false alarm shall be no more than 5%.~~

- (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 UST system 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 or log 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 UST system 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 UST system tightness tester attesting to the accuracy of the information of the test result in accordance with 310 CMR 80.11(2).
 - (c) The report or log prepared pursuant to 310 CMR 80.32(2)(b) shall be kept in accordance with 310 CMR 80.36~~(+)~~.
- (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 UST system tightness tester shall immediately, but in no event later than 24 hours after obtaining knowledge of the failed test notify the Owner and

Operator and the fire department in the city or town in which the UST system is located.

(c) The Owner or Operator shall comply with 310 CMR 80.33, 310 CMR 80.38, 80.39 and 310 CMR 40.0300: *Notification of Releases and Threats of Release of Oil and Hazardous Material; Identification and Listing of Oil and Hazardous Materials*, as applicable.

80.33: Requirements for Repairs and Replacements

(1) A tank that has released regulated substance shall immediately be emptied, but in no event shall be emptied later than 24 hours of obtaining knowledge of the release.

(a) The tank shall be permanently closed in-place 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 prior to commencing operation.

(b) The Owner and Operator shall comply with 310 CMR 40.0000: *Massachusetts Contingency Plan*, if applicable.

(2) A tank that has leakage of regulated substance shall be immediately emptied, but in no event shall be emptied later than 72 hours of obtaining knowledge of the leakage.

(a) The tank shall be permanently closed in-place 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 prior to commencing operation.

(b) The Owner and Operator shall comply with 310 CMR 40.0000: *Massachusetts Contingency Plan*, if applicable.

(3) Any piping or portion of piping that is the source of leakage or a release shall be immediately isolated and emptied of regulated substance. The piping shall remain empty until said piping or portion of piping is repaired or replaced or the UST system is permanently closed in-place or removed in accordance with 310 CMR 80.43(2) or (3).

(a) Metal piping, portions of metal piping, and fittings that have had leakage or a release as a result of corrosion or other damage shall be replaced.

(b) The Owner and Operator shall comply with 310 CMR 40.0000: *Massachusetts Contingency Plan*, if applicable.

(4) The Owner or Operator shall repair or replace UST systems and UST 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-place, 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 need for repair or replacement. This documentation shall be retained in accordance with 310 CMR 80.36~~(4)~~.

(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 the need for ~~of~~ said repair or replacement, the Owner or Operator shall notify the Department, in writing, 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.

(5) The Owner or Operator shall ensure that any repair of an UST system or UST component is performed by a qualified individual, in accordance with the manufacturer's specifications, 310 CMR 80.00 and applicable codes and standards.

(6) 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.

(7) The Owner or Operator shall maintain records of every UST system or UST component repair, including, but not limited to, a description of the repair or replacement 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: *Environmental Results Program Certification*, 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 through 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), as applicable;
 - (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 overflow 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 and UST components have not changed. If the UST system or UST component 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. At the time of submission, 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, in a format specified by the Department, when the deficiencies are corrected.
- (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 January 2, 2015, 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 ~~Periodic~~Monthly Inspections

(1) Owners and Operators are responsible for ensuring that periodic monthly visual inspections meeting the requirements in 310 CMR 80.35(2) ~~through (4)~~ are conducted at all underground storage tank systems. ~~The A Owner, Operator or certified Class A or B operator, or an individual under the direction of the Owner, Operator or certified Class A or B Operator shall conduct the periodic monthly visual inspections, or the monthly visual inspections shall be conducted under the direction of a Class A or B operator.~~

(2) ~~Every 30 days~~The monthly visual inspection of underground storage tank systems and UST components shall include, but not be limited to:

- (a) Inspect leak detection equipment and records as follows:
1. Verifying that leak detection the electronic monitoring equipment is currently on and properly operating is operating with no alarms or other unusual operating conditions present;-
 2. Verify all indications of leakage or releases were responded to in accordance with 310 CMR 80.26, including, but not limited to, printing a report from the electronic system if applicable; and
 3. Verify leak detection records are complete, accurate and current.
- (b) Inspecting each spill bucket and cover as follows:-in accordance with 310 CMR 80.28(2)(e).
1. Visually inspect to determine if there is solid or liquid material in the spill buckets, and remove and manage solid and liquid material in accordance with applicable federal, state and local laws and regulations;
 2. Visually inspect spill buckets and covers for signs of corrosion, deterioration, cracks and holes and repair and replace as necessary;
 3. Verify that sensors are set in accordance with the manufacturer's specifications, if applicable, or, if no such specifications exist, the sensors shall be placed at the lowest possible location in the spill bucket;
 4. Check for and remove obstructions in the fill pipes;
 5. Check the fill pipe caps to verify they are securely on the fill pipes; and
 6. For double-walled spill buckets with interstitial monitoring, check for leakage in the interstitial area.

- (c) ~~Verify~~ing that grade level fill covers are properly color-coded to correctly reflect the regulated substance in the UST system in accordance with 310 CMR 80.24(4).
- (3) Every 90 days inspect each turbine, intermediate and dispenser sump without continuous monitoring sensors, except sumps that only contain a single-walled siphon line with no connections within the sump and sumps that only contain European Suction Systems or sumps that do not contain any regulated substance piping connections, as follows:
- (a) Visually inspect sumps, sump covers and manhole covers for damage, corrosion, breakage and wear, leaks to the containment areas and releases to the environment, and repair and replace as necessary;
 - (b) Remove solid and liquid material from the sumps in accordance with applicable federal, state and local laws and regulations; and
 - (c) For double-walled sumps, check for leakage in the interstitial area.
- (4) Annually:
- (a) Inspect each turbine, intermediate and dispenser sump with continuous monitoring sensors, except sumps that only contain a single-walled siphon line with no connections within the sump and sumps that only contain European Suction Systems or sumps that do not contain any regulated substance piping connections, as follows:
 - 1. Visually inspect sumps for damage, corrosion, breakage and wear, leaks to the containment areas and releases to the environment, and repair and replace as necessary;
 - 2. Remove solid and liquid material from the sumps in accordance with applicable federal, state and local laws and regulations;
 - 3. Verify that all sumps sensors are operating in accordance with the manufacturer's specifications and are placed in accordance with the manufacturer's specifications, or, if no such specifications exist, the sensors are placed at the lowest possible location in the sump; and
 - 4. For double-walled sumps with interstitial monitoring, check for leakage in the interstitial area.
 - (b) For hand-held release detection equipment, check devices such as tank gauge sticks for operability and serviceability.
- ~~(4)(5)~~ 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.

~~(64)~~ Every requirement under 310 CMR 80.35(2) ~~through (4)~~ shall be recorded on an ~~monthly~~ inspection report or log that contains at a minimum the following information:

- (a) A list of each area and UST component inspected;
- ~~(b)~~ Whether the UST component is properly operating and being maintained;
- ~~(c)~~ Any repairs conducted on UST 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.

~~(75)~~ The results of each inspection shall be recorded and retained in accordance with 310 CMR 80.36~~(4)~~.

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) Results of all turbine, intermediate and dispenser sump ~~inspections and~~ integrity tests in accordance with 310 CMR 80.20~~(54)~~, ~~80.27(4)(e)~~, 80.27~~(67)(d)~~ ~~80.27(8)(b)~~ and 80.27(9)~~(a)~~.
- ~~(b)~~ ~~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.~~
- ~~(b)~~ Results of all spill bucket ~~inspections and~~ integrity tests in accordance with 310 CMR 80.21(1)(c) and 80.28(2)~~(4)~~.
- ~~(c)~~ Results of all cathodic protection ~~inspections and~~ tests in accordance with 310 CMR 80.22~~(56)~~ and 80.29~~(27)~~, ~~(4) and (6)~~.
- ~~(d)~~ Records to demonstrate the Owner or Operator responded to alarms in accordance with 310 CMR 80.24(3).
- ~~(e)~~ Results of all leak detection ~~inspection tests~~ in accordance with 310 CMR 80.26~~(24) through (44)~~, as applicable and tests in accordance with 310 CMR 80.26(12).
- ~~(f)~~ Leak detection monitoring records and investigations as required by 310 CMR 80.26(3)(e), (4)(c), (5)(f), (6)(f), (7)(d), (8)(d), (9) and (10), and 310 CMR 80.19(3)(d), in accordance with 310 CMR 80.26(6), (7) and (8), as applicable.
- ~~(g)~~ Results of inspections and testing of overfill prevention equipment in accordance with 310 CMR 80.28(3)~~(4)~~.
- ~~(h)~~ 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.
- ~~(i)~~ ~~Reports of tightness tests conducted, excluding tests conducted at installation, in accordance with 310 CMR 80.32(2)(e).~~

~~(ik)~~ Documentation of the date the need for the repair or replacement was discovered in accordance with 310 CMR 80.33(4)(b).

~~(jl)~~ Records to demonstrate compliance with change-in-product requirements at 310 CMR 80.41(6).

~~(km)~~ ~~Periodic~~Monthly inspection reports or logs in accordance with 310 CMR 80.35~~(6)~~ and (7).

(2) ~~For at least two years after the operator is no longer designated, t~~The Owner or Operator shall maintain ~~records~~ in hard copy or electronically, the list of the current Class A, Class B and Class C operators of each UST system in accordance with 310 CMR 80.37(11) and records that demonstrate each designated Class A, Class B and Class C operators is~~was~~ certified in accordance with 310 CMR 80.37(7) through (9). The Owner or Operator ~~and~~ shall make the records 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-place in accordance with 310 CMR 80.43(2) or (3), the Owner or Operator shall maintain the most ~~current~~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~~(2)~~(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).~~

~~(cd)~~ 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.~~

~~(df)~~ Emergency procedures in accordance with 310 CMR 80.25~~(2)~~.

~~(eg)~~ Compatibility records in accordance with 310 CMR 80.30.

(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(4)(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 after the request.

(5) Until the UST system is removed or permanently closed in-place 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~~(7)~~.
 - (b) A copy of installation information including, but not limited to, the installer's certification and completed checklist(s), and manufacturers' specifications; testing results; inspections; and a copy of the sealed 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.
- (7) An Owner or Operator shall maintain documentation that an UST system holds a *de minimis* concentration of regulated substance, until the Owner and Operator no longer claim the exemption, in accordance with 310 CMR 80.04(5)(c). 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.
- (8) The current Owner or Operator shall:
- (a) Maintain documentation that demonstrates compliance with closure requirements in accordance with 310 CMR 80.43 for at least four years after removal of an UST system or closure in-place of an UST system; or
 - (b) Submit the documentation to the Department within 30 days of the UST system removal or closure-in-place.
- (9) The Owner or Operator shall maintain documentation that a sump is double-walled and monitored in accordance with 310 CMR 80.27(6) as applicable, until the Owner and Operator no longer claims the exemption from testing, in accordance with 310 CMR 80.27(8)(c)2. 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.
- (10) The Owner or Operator shall maintain documentation that a spill bucket is double-walled and is monitored in accordance with 310 CMR 80.28(2)(e), until

the Owner and Operator no longer claim the exemption from testing, in accordance with 310 CMR 80.28(2)(f)3. 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.

(11) The Owner or Operator shall maintain tightness test results and reports, conducted in accordance with 310 CMR 80.32) until the next tightness test is conducted. 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.

OPERATOR TRAINING

80.37: 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 80.37 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 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 80.37(2)(~~a~~), the Owner or Operator shall ensure that a designated Class A, B or C operator is present when the UST system(s) is in operation. 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.~~0237~~(7) through (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 30 days of the position being vacated, or Class C operator within ten 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 80.37 (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 alarms and 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 in accordance with the emergency procedures 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 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 80.37(7)(c) and (d) which may include on-the-job training; and

2. Take and pass an operator examination in accordance with 310 CMR 80.37(7)(e) through (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 80.37(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 80.37(7)(b)1. and (c). The Owner or Operator shall keep the documentation, in hard copy or electronically, in accordance with 310 CMR 80.36, ~~for at least two 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 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, in hard copy or electronically, in accordance with 310 CMR 80.36, ~~for at least two 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 business days after the request.
- (g) Any individual who takes and fails any operator examination three times within six months of the first examination shall be prohibited from taking any operator examination for six months from the date of 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 80.37(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 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 80.37(8)(c) and (d) which may include on-the-job training; and
2. Take and pass an operator examination in accordance with 310 CMR 80.37(8)(e) through (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 80.37(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, overfill 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 80.37(8)(b)1. and (c). The Owner or Operator shall keep the documentation, in hard copy or electronically, in accordance with 310 CMR 80.36 ~~for at least two 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 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, ~~in hard copy or electronically, in accordance with 310 CMR 80.36 for at least two 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 business days after the request.
- (g) Any individual who takes and fails any operator examination three times within six months of the first examination shall be prohibited from taking any operator examination for six months from the date of 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 80.37(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 80.37(9)(b) and (c). The trainer shall also document the underlying reason for the re-training in accordance with 310 CMR 80.37(9)(d). The Owner or Operator shall maintain the log for at least two 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 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 80.37(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 80.37(9).

(11) The Owner or Operator shall maintain a current 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 business days after the request. This list shall include, but not be limited to, the name of the operator, operator classification, operator certificate number, as if applicable, the hiring date or contract date, the date of the operator's most recent training and, the date of designation 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 the applicable requirements of 310 CMR 80.00 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.

LEAKAGE AND RELEASE: RESPONSE, REPORTING AND REMEDIATION

80.38: Response to a Release

(1) Nothing in 310 CMR 80.00 shall affect the Owner or Operator notification obligations under 310 CMR 40.0000: *Massachusetts Contingency Plan*.

(2) In the event of a release from a tank, the Owner or Operator shall empty the tank immediately, but in no event later than 24 hours of obtaining knowledge of the release and comply with 310 CMR 80.33, 80.42 or 80.43, as applicable.

- (3) In the event of a release from piping, the Owner or Operator shall immediately empty and isolate the section of pipe determined to have had the release and comply with 310 CMR 80.33, 80.42 or 80.43, as applicable.

80.39: Response to Leakage

- (1) In the event of leakage, whether determined by testing, visual inspection or otherwise, the following steps shall be taken:
- (a) If testing, visual inspection or other information has confirmed that the source of the leakage is the piping, the Owner or Operator shall immediately:
1. Isolate and empty the section of the pipe determined to have leakage until the section is repaired or replaced; or
 2. Take that UST system temporarily out-of-service in accordance with 310 CMR 80.42; or
 3. Remove or permanently close in-place 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 immediately, but in no event later than 72 hours of obtaining the test results, empty the UST system and:
1. Repair the tank in accordance with 310 CMR 80.33(2); 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

For each reportable release pursuant to 310 CMR 40.0000: *Massachusetts Contingency Plan*, the Owner or Operator shall provide the following information to the Department, in a format provided by the Department, in accordance with 310 CMR 80.23(3)(c):

- (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, in a format specified by the Department, of a change-in-product 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; except if the different regulated substance contains greater than 10% ethanol or greater than 20% biofuel, then at least 30 days prior to executing the change, in accordance with 310 CMR 80.30(3).

(b) If the change-in-product is from a regulated substance to a non-regulated substance, prior to 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 all applicable 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 notifying the Department of the change-in-product, but before the change-in-product is executed.

(c) Records of the change-in-product shall be kept in accordance with 310 CMR 80.36.

(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 and dispose of the solid and liquid material removed from the UST system in accordance with all applicable 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~~(+8)~~.

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 after an UST system is 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 ~~remove or permanently close~~ ~~in-place~~ the UST system in accordance with 310 CMR 80.43, ~~unless 310 CMR 80.45 applies.~~
- (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.†
The Owner or Operator shall manage the solid and liquid material removed from the UST system in accordance with all applicable 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 through 80.63.
- (5) Prior to ~~commencing operation~~~~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 after 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. The Owner or Operator shall manage and dispose of all solid and liquid material removed from the UST system in accordance with all applicable 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 ~~3090~~ days of removal in accordance with 310 CMR 80.23(2)(d). A copy of the assessment in 310 CMR 80.43(4) shall be submitted with said form.
- (3) Requirements for Permanent Closure-in-place.
- (a) No Owner or Operator shall permanently close an UST system in-place unless it is determined to be 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 licensed registered professional civil or structural engineer, and shall be signed, sealed and submitted to the Department with supporting documentation prior to the UST system Owner or Operator commencing UST system closure activities. The determination shall include, at a minimum, sketches, photos, -a scaled site plan, and a scope of work for the environmental assessment to be conducted pursuant to 310 CMR 80.43(4), a detailed, written descriptiondetermination of why the UST system should be closed in place instead of cannot be removed, and a schedule for completion.
 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. The Owner or Operator shall manage the solid and liquid material removed from the tank in accordance with all applicable federal, state and local laws and regulations.

- (b) Before permanent closure-in-place ~~commencement~~, the Owner or Operator shall conduct an assessment in accordance with 310 CMR 80.43(4). If the assessment finds contamination requiring notification pursuant to 310 CMR 40.0000, Massachusetts Contingency Plan, the filling of the UST system for permanent closure-in-place shall not commence until the Owner or Operator has complied with the notification requirements contained in 310 CMR 40.0300: Notification of Releases and Threats of Release of Oil and Hazardous Materials; Identification and Listing of Oil and Hazardous Materials, as applicable, and any required response actions under 310 CMR 40.0000, Massachusetts Contingency Plan.
- (c) The Owner shall notify the Department in accordance with 310 CMR 80.23(2)(e), in a format specified by the Department that the UST system was closed-in-place, within ~~30~~90 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 the notification requirements contained in 310 CMR 40.0300: *Notification of Releases and Threats of Release of Oil and Hazardous Materials; Identification and Listing of Oil and Hazardous Materials*, as applicable, and any required response actions under 310 CMR 40.0000, Massachusetts Contingency Plan.

(5) The Department may require removal or permanent closure-in-place of an UST system at any time that it determines the UST system is abandoned or poses a threat to public health, safety or the environment.

(6) Owners and Operators shall demonstrate compliance with the requirement for permanent closure by 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~~Requirements for a Tank Within a Tank

If a new tank is installed inside an existing tank, the Owner shall:

(1) Prior to installing the new tank, the Owner or Operator shall have all the solid and liquid material removed from the existing UST system, in accordance with 310 CMR 80.47, have the existing UST system rendered inert and shall secure all openings. The Owner or Operator shall manage and dispose of all solid and liquid material removed from the UST system in accordance with all applicable federal, state and local laws and regulations.

(2) Conduct an assessment in accordance with 310 CMR 80.43(4) before the new tank is installed. If the assessment finds contamination requiring notification pursuant to 310 CMR 40.0000, *Massachusetts Contingency Plan*, the installation of the new tank shall not commence until the Owner or Operator has complied with the notification requirements contained in 310 CMR 40.0300: *Notification of Releases and Threats of Release of Oil and Hazardous Materials; Identification and Listing of Oil and Hazardous Materials*, as applicable, and any required response actions under 310 CMR 40.0000, *Massachusetts Contingency Plan*.

(3) Notify the Department that a new tank is being installed inside an existing tank, in a format specified by the Department, within 30 days of the new tank being installed. A copy of the assessment in 310 CMR 80.43(4) shall be submitted with said form.

~~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~~ Temporarily Out-of-service for Over Five YearsBack Into Service

(1) A new Owner that acquires an UST system ~~that has been temporarily out-of-service for more than five years~~~~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 and UST components comply with the most current 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 and all UST 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~~(76)~~; 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 site assessment 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, 3rd Edition, March 1996 *Closure of Underground Petroleum Storage Tanks*, Sections 1, 3, and 4.1 through 4.54; 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)(a) through (d), the Owner or Operator shall immediately, but in no event more than 24 hours after learning of the conditions in 310 CMR 80.48(1)(a) through (d), 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) Spill prevention is not operating in accordance with 310 CMR 80.28(1) and (2);
 - (b) Overfill protection is not operating in accordance with 310 CMR 80.28(1) and (3);
 - (c) Leak detection equipment is not operating in accordance with 310 CMR 80.26;
 - (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 through 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 ~~effective~~ 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 or UST component, 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 ~~terminate~~~~revoke~~ 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~~~~after~~ 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. 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, or for compliance testing purposes, 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, except as determined in 310 CMR 80.49(2)(e) and (g).

(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 more than 30 days before the UST facility compliance date 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 January 2, 2015, the Department will assign the UST facility an UST facility compliance date. 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~~ who seek to become third-party inspectors and who meets the requirements of 310 CMR 80.49(4)(b) ~~and through (c)~~ shall submit an application ~~and accompanying documentation~~ to the Department, in a format specified by the Department, ~~for consideration to demonstrate the individual's eligibility to be a certified third-party inspector.~~

1. If the Department determines the individual meets the certification eligibility requirements in 310 CMR 80.49(4)(b) ~~and through (c)~~, the individual shall be issued a third-party inspector ~~ion~~ number and shall be certified as a third-party inspector.

- a. All certifications shall be for a fixed term of ~~three~~five years from the date the Department issued the third-party inspector~~ion~~ number and certification, unless suspended or revoked.
 - b. In order to renew a certification, the third-party inspector shall re-apply in a format specified by the Department 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)(~~de~~).
 - ii. Any certification which is scheduled to expire shall be automatically extended if the third-party inspector files an application for renewal ~~new certification~~ at least 90 days before the scheduled expiration date. This automatic extension shall remain in effect until:
 - (i) The Department issues a new certification to the third-party inspector; or
 - (ii) The Department denies the application for renewal ~~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
 - (iii) 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) ~~and through (cd), 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. ~~Take and pass Department required~~ The examination(s) that shall test eligible individuals on their knowledge of 310 CMR 80.00, and installation, operation and maintenance, and closure and temporary closure of UST systems and UST components, which may include a field component.

~~The examination may have a field component.~~

~~(c) In order to be eligible to take the third-party inspector examination, an individual shall:~~

~~2. Demonstrate experience by one of the following:~~

~~a. Possess at least three years of field experience in the areas of UST system 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; or~~

~~2. Meet one of the following additional criteria:~~

~~b. 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~~

~~c. Hold a current UST third-party inspector certification from another state, and have performed a minimum of ten UST third-party inspections in that state within the past three years.~~

~~(c) A third-party inspector who is registered with the Department under 527 CMR 9.00 as of January 2, 2015 and is not certified by January 1, 2018, does not have to meet the requirements of 310 CMR~~

~~80.49(4)(b)2. to become a certified third-party inspector may take the examination in accordance with 310 CMR 80.49(4)(b) without meeting the requirements of 310 CMR 80.49(4)(e), provided that:~~

1. The third-party inspector has conducted at least ten third-party inspections since August 8, 2007; and
2. ~~On or before January 1, 2019, the third-party inspector takes and passes 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)1.

~~(de)~~ In order to maintain and renew certification, the third-party inspector shall:

1. ~~C~~ complete annual training as required provided by the Department, which may include a field component.
2. Complete at least six third-party inspections within the three-year certification period.

~~(f) — A third party inspector shall maintain records, in hard copy or electronically, demonstrating compliance with 310 CMR 80.49(4)(b) through (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), 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, but in no event later than 24 hours after obtaining knowledge of the condition, 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 ~~Owner or Operator 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 that 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 and UST components:

1. Whether the Owner or Operator submitted required documentation to the Department in accordance with 310 CMR 80.23.

2. Whether leak detection equipment 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 and sump sensors 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 overflow 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 periodic inspections have been conducted and recorded in accordance with 310 CMR 80.35.
- ~~12.~~ Whether the emergency response postings and written procedures are in compliance ~~in accordance~~ with 310 CMR 80.25.
- ~~13.~~ Whether alarms have been responded to and the responses documented in accordance with 310 CMR 80.24(3).
- ~~14.~~ Whether visual and/or olfactory observations indicate the presence of leakage or release related to the UST system or UST components.
- ~~15.~~ Whether UST systems that changed product in the UST system complied with 310 CMR 80.41.
- ~~16.~~ Whether financial responsibility is current, valid and documented in accordance with 310 CMR 80.51 through 80.63.
- ~~17.~~ Whether UST systems that are temporarily out-of-service are being maintained~~serviced~~ and documented in accordance with 310 CMR 80.42.
- ~~18.~~ Whether UST systems that were removed or permanently closed in-place were properly documented in accordance with 310 CMR 80.43.

198. Whether documentation for Class A, B and C operators is current ~~and maintained and documented~~ in accordance with 310 CMR 80.37.

~~2049.~~ 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 ~~third-party inspection~~ 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, ~~if possible noted in the report~~, in accordance with 310 CMR 80.00, sign and date ~~such the third-party inspection~~ 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 ~~third-party inspection~~ 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 to the Department, in a format specified by 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 ~~correct 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 an 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. If the RTC plan documents a reasonable basis for a proposed alternative completion due 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 due date.
- c. If, upon review, the Department determines that the proposed alternative completion due 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 due 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 UST 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 take enforcement against the third-party inspector in accordance with 310 CMR 80.50 ~~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, if~~ 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(5). 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. 210, 310 CMR 80.00, or the terms and conditions of any order, permit, authorization, determination, certification, prohibition or approval issued under 310 CMR 80.00 shall constitute a violation of M.G.L. c. 210 and 310 CMR 80.00. Nothing in 310 CMR 80.00, or in any order issued pursuant thereto, shall be construed to limit any right of the Department to take enforcement action pursuant to any other authority.

(2) Action by the Department. Whenever the Department has cause to believe that a violation has occurred, it may:

- (a) Order the Owner and Operator of the UST system or facility, or any other person responsible for the violation, to cease immediately or at a specified date, all illegal activity and to comply with the provisions of M.G.L. c. 210, 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: *Administrative Penalty*;

(d) Issue a penalty assessment notice pursuant to M.G.L. c. 21A, § 16 and 310 CMR 5.00: *Administrative Penalty*, which is subject to the right to request an adjudicatory hearing in accordance with the terms of 310 CMR 5.00: *Administrative Penalty*; 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. 210 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: *Adjudicatory Proceedings*:

(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: *Administrative Penalty*.
- (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: *Administrative Penalty*.
- (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): *Filing* and that is filed in accordance with the methods and procedures set forth in 310 CMR 1.01(3)(a): *Timely Filing*.
- (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 through- 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, Bodily Injury 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% 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:

- (a) a 10-K report submitted to the SEC;
- (b) an annual report of tangible net worth submitted to Dun and Bradstreet; or
- (c) 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.

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.

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.

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

- (a) By the Environmental Protection Agency (EPA) or the Commonwealth to require corrective action or to recover the costs of corrective action;
- (b) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or
- (c) By any person to enforce the terms of a financial assurance mechanism.

Local government means:

- (a) 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
- (b) 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. Property Damage 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) through (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 or acquiring 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) through (5) and 80.54(10) and (11) to demonstrate financial responsibility for one or more UST systems.
- (2) In addition to the mechanisms listed at 310 CMR 80.54(2) through (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) through (5) and 80.54(10) and (11), a local government Owner or Operator may use any one or combination of the mechanisms listed at 310 CMR 80.54(6) through (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: *Underground Storage Tank Petroleum Product Cleanup Fund Regulations Implementing M.G.L. c. 21J.*
- (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 **italicized** 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 ~~in~~ 310 CMR 80.54.

c. The Owner and Operator agree~~s~~ 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 the following paragraph 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 choose applicable language “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 the following paragraph 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 [choose applicable language]: “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 *italicized* 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,” or “joint venture,” or “partnership,” or “corporation” or “limited liability company” or “limited liability partnership” or “trust”]*

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”¹ “arising from operating the tank”².*

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 through 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: *Massachusetts Contingency Plan*, 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 accidental releases” *or* “nonsudden accidental releases” *or* “~~sudden and nonsudden~~”] “accidental releases”] arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance in accordance with 310 CMR 80.57, 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:

1. Any obligation of [*insert “owner” or “operator”*] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
2. Bodily injury to an employee of [*insert “owner” or “operator”*] arising from, and in the course of, employment by [*insert “owner” or “operator”*];
3. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
4. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [*insert “owner” or “operator”*] that is not the direct result of a release from a petroleum UST;
5. Bodily injury or property damage for which [*insert “owner” or “operator”*] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a

contract or agreement entered into to meet the requirements of 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 insert: “take corrective action, in accordance with M.G.L. c. 21E, 310 CMR 40.0000: *Massachusetts Contingency Plan*, 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 insert: “corrective action in accordance with M.G.L. c. 21E, 310 CMR 40.0000: *Massachusetts Contingency Plan*, 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 *[insert if a corporation: “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 if a corporation]

Corporate Surety(ies)

[Name and address]

State of Incorporation: _____

Liability limit: \$_____

[Signature(s)]

[Names(s) and title(s)]

[Corporate seal if a corporation]

[For every co-surety, provide signature(s), corporate seal (if applicable), 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 name 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 name 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 name 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 *name* 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 *name* 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
				[<i>insert: "Moody's" or "Standard & Poor's"</i>]

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
				[<i>insert: “Moody's” or “Standard & Poor's”</i>]

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 301 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 guarantor 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 [name of local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [name of local government owner or operator] [~~“owns”~~ and/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 *[name of 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 *[name of 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: *Massachusetts Contingency Plan* 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 *[name of local government 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 *[name of local government 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 *[name of local government owner or operator]* pursuant to 310 CMR 80.00.

(6) Guarantor agrees to remain bound under this guarantee for so long as *[name of 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 *[name of local government owner or operator]* and the Department, such cancellation to become effective no earlier than 120 days after receipt of such notice by *[name of local government 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 *[name 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 name of local government owner or operator]*~~ arising from, and in the course of, employment by ~~*[insert name of 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 name of 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 name of local government 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 *[name of 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 [name 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)” ~~or~~ “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) [name of ~~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 through 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 [name of local government owner or operator], guarantor guarantees to the Department and to any and all third parties and obliges that:

In the event that [name of 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 [*name of 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: *Massachusetts Contingency Plan* 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 [*name of local government 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 [*name of local government 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 [*name of local government owner or operator*] pursuant to 310 CMR 80.00.

(7) Guarantor agrees to remain bound under this guarantee for so long as [*name of local government owner or operator*] shall comply with the applicable financial responsibility requirements of 310 CMR 80.51 through 80.63 for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [*name of local government owner or operator*] and the Department, such cancellation to become effective no earlier than 120 days after receipt of such notice by [*name of local government 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 *[name 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 name of local government owner or operator]*~~ arising from, and in the course of, employment by ~~*[insert name of 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 name of 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 name of local government 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 *[name of 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]*~~

(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 [*name of local government owner or operator*].

Recitals

(1) Guarantor is a state.

(2) [*name of 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 [*name of 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 [*name of 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: *Massachusetts Contingency Plan* 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 [*name of local government 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 [*name of local government 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 [*name of local government owner or operator*] pursuant to 310 CMR 80.00.

(6) Guarantor agrees to remain bound under this guarantee for so long as [*name of local government owner or operator*] shall comply with the applicable financial responsibility requirements of 310 CMR 80.51 through 80.63 for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [*name of local government owner or operator*] and the Department, such cancellation to become effective no earlier than 120 days after receipt of such notice by [*name of local government 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 [*name 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~~*name of local government owner or operator*] arising from, and in the course of, employment by [~~insert~~*name of 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~~*name of 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: name of local government~~ 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 [~~name of 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 [~~name 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)” or “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) [*name of 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 through 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 [*name of local government owner or operator*], guarantor guarantees to the Department and to any and all third parties and obliges that:

In the event that [*name of 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 [*name of 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: *Massachusetts Contingency Plan* 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 [*name of local government 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 [name of local government owner or operator] and the Department, as evidenced by the return receipt.

(5) Guarantor agrees to notify [name of local government 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 [name of local government 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 through 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 [name of local government 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 [name 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: name of local government owner or operator~~] arising from, and in the course of, employment by [~~insert: name of 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: name of 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: name of local government 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 [*name of 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. The financial test of self-insurance cannot be combined with a corporate guarantee where the financial statements of the owner or operator and guarantor are consolidated.*]

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 40 CFR parts 271 and 145310-CMR-30.000: Hazardous Waste.

<i>EPA/DEP Regulations</i>	<i>Amount</i>
Closure (§§264.143 and 265.143 310-CMR-30.904: <i>Financial Assurance for Closure</i>)	\$
Post-Closure Care (§§264.145 and 265.145 310-CMR-30.906: <i>Financial Assurance for Post-closure Care</i>)	\$
Liability Coverage (§§264.147 and 265.147 310-CMR-30.908: <i>Liability Requirements (Effective July 1, 1987)</i>)	\$
Corrective Action (§264.101(b) 310-CMR-30.602(9))	\$
<u>Plugging and Abandonment (§144.63)</u>	<u>\$</u>
Closure	\$
Post-Closure Care	\$
Liability Coverage	\$
Corrective Action	\$
<u>Plugging and Abandonment</u>	<u>\$</u>

Total	\$
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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. through 15. or lines 16. through 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.]* ~~*The guarantee cannot be combined with a financial test of self-insurance where the financial statements of the owner or operator and guarantor are consolidated.*~~ This guarantee satisfies 310 CMR 80.51 through 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); or “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 ~~the Massachusetts Department of Environmental Protection 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: *Massachusetts Contingency Plan*, 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 through 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,” “limited liability company,” “limited liability partnership” 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 [*insert either*] “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 [*insert: “taking corrective action” and/or compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”*] arising from operating the tanks covered by 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 [~~name 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~~*name of owner or operator*] arising from, and in the course of employment by [~~insert~~*name of 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~~*name of 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~~*name of 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” or “members” or “partners” or applicable title] duly authorized [if a corporation] 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 if a corporation]

[Signature of Witness]

[Name of the Witness]

[Title]

[Seal if a corporation]

(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 [name of owner or operator] to me known, who, being by me duly sworn, did depose and say that [“she” or “he” ~~“she” or “he”~~] resides at [address], that [“she” or “he” ~~“she” or “he”~~] is [title] of [“corporation,” “partnership,” “association,” “trust,” “limited liability company,” “limited liability partnership” or “individual”], the [“corporation,” “partnership,” “association,” “trust,” “limited liability company,” “limited liability partnership” or “individual”] described in and which executed the above instrument; [insert if a corporation: that [“she” or “he” ~~“she” or “he”~~] knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation;] and that [“she” or “he” ~~“she” or “he”~~] signed [“her” or “his” ~~“her” or “his”~~] name thereto duly authorized 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 through 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 through 80.63.

80.58 Requirements for Reporting by Owner or Operator

- (1) Within 150 days of the close of the financial reporting year of the Owner or Operator, if such Owner or Operator is using 310 CMR 80.54(10)(b) to meet the requirements of 310 CMR 80.52, the Owner or Operator shall submit to the Department the following documents with an updated registration pursuant to 310 CMR 80.23(1)(b):
- (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.
- (2) Within 150 days of the close of the financial reporting year of the Owner or Operator, if such Owner or Operator is using 310 CMR 80.54(10)(c) to meet the requirements 310 CMR 80.52, the Owner or Operator shall submit to the Department the following documents, with an updated registration pursuant to 310 CMR 80.23(1)(b):
- (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 80.54(10)(c)4.
- (3) Within 150 days of the close of the financial reporting year of the Owner or Operator, if such Owner or Operator is using 310 CMR 80.54(11) to meet the requirements of 310 CMR 80.52, the Owner or Operator shall submit to the Department the following documents with an updated registration pursuant to 310 CMR 80.23(1)(b).
- (a) Letter from the chief financial officer in accordance with 310 CMR 80.54(11)(b); and
 - (b) A copy of the fully executed guarantee, if the guarantee has been amended from the previous year;
 - (c) A copy of the stand-by trust in accordance with 310 CMR 80.58(1), if the stand-by trust has been amended from the previous year.

(4) An Owner or Operator 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.

(5) If the Owner or Operator fails to obtain alternate coverage within 60 days of cancellation of its financial assurance mechanism, the Owner or Operator shall submit information in accordance with 310 CMR 80.57(2).

~~(6) — An Owner or Operator shall verify compliance with the financial responsibility requirements of 310 CMR 80.51 through 80.63 on the compliance certification form in accordance with 310 CMR 80.34.~~

- ~~(76)~~ The Department may require an Owner or Operator to submit evidence of financial assurance as described 310 CMR 80.59 or other information to determine compliance with 310 CMR 80.51 through 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) through (11) shall maintain an updated copy of a certification of financial responsibility worded as follows, except that *italicized* 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 through 80.63.

The financial assurance mechanism(s) used to demonstrate financial responsibility under 310 CMR 80.51 through 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 through 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 through 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: *Massachusetts Contingency Plan* and any other applicable laws and regulations pertaining to UST systems.

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.

80.64 Requirements for Airport Hydrant Fuel Distribution Systems

(1) Owners and Operators of airport hydrant systems shall comply with the requirements of 310 CMR 80.00 as follows:

- (a) For airport hydrant systems installed on or before October 1, 2021 the requirements are effective according to the following schedule:

<u>Requirements</u>	<u>Effective Dates</u>
<u>Spill bucket requirements, if applicable at 310 CMR 80.21 and 80.28; overfill prevention equipment requirements at 310 CMR 80.21 and 80.28; corrosion protection requirements at 310 CMR 80.22, 80.29 and 80.64(7); compatibility</u>	<u>No later than October 13, 2024</u>

<u>requirements at 310 CMR 80.30; walkthrough requirements at 310 CMR 80.35 and 80.64(8); and operator training at 310 CMR 80.37</u>	
<u>Recordkeeping requirements at 310 CMR 80.36 associated with regulatory requirements effective October 13, 2024</u>	<u>No later than October 13, 2024</u>
<u>Leak detection at 310 CMR 80.19, 80.26 and 80.64(9)</u>	<u>No later than October 13, 2024</u>
<u>Registration and reporting requirements at 310 CMR 80.23 (except as provided in 310 CMR 80.64(2)); repair requirements at 310 CMR 80.33; -release reporting, response, and investigation at 310 CMR 80.38 through 80.40; closure requirements at 310 CMR 80.41 through 80.47; financial responsibility at 310 CMR 80.51 through 80.63 except as provided in 310 CMR 80.64(3))</u>	<u>October 1, 2021</u>
<u>Recordkeeping requirements at 310 CMR 80.36 associated with the requirements effective October 1, 2021</u>	<u>October 1, 2021</u>

(b) For airport hydrant systems installed after October 1, 2021, the requirements of 310 CMR 80.00 apply at installation.

(2) Owners shall submit a registration to the Department on or before November 1, 2021 in accordance with 310 CMR 80.23(1) and 310 CMR 80.34, respectively.

(3) Owners and Operators of airport hydrant systems in use as of October 1, 2021 shall demonstrate financial responsibility in accordance with 310 CMR 80.51 through 80.63 at the time of submission of the registration.

(4) Except as provided in 310 CMR 80.64 and except for the requirements in 310 CMR 80.31, Owners and Operators shall comply with all the applicable regulatory requirements of 310 CMR 80.00.

(5) Installation. In lieu of the installation requirements at 310 CMR 80.16(9) through (16), Owners and Operators may use military construction criteria, such as Unified Facilities Criteria (UFC) 3-460-01, Petroleum Fuel Facilities, when designing, constructing, and installing airport hydrant systems.

(6) Piping. As an exception to the double-walled piping requirement at 310 CMR 80.18(3)(a), Owners and Operators may use single walled piping when installing or replacing piping associated with airport hydrant systems.

(7) Corrosion Protection.

(a) In addition to the corrosion protection requirements in 310 CMR 80.22 and 80.29, Owners and Operators shall assess metal tanks greater than 10 years old without cathodic protection to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment shall be by internal inspection.

(b) If the tank is not found to be structurally sound or free of corrosion holes, it shall be removed or closed in-place in accordance with 310 CMR 80.43.

(8) Periodic inspections. In addition to the periodic inspection requirements in 310 CMR 80.35, Owners and Operators shall inspect the following additional areas of airport hydrant systems at least once every 30 days if confined space entry according to the Occupational Safety and Health Administration (see 29 CFR part 1910) is not required or at least annually if confined space entry is required and keep documentation of the inspection according to 310 CMR 80.35(4).

(a) Hydrant fuel pits – visually check for any damage; remove any liquid or debris; manage the solid and liquid material removed from the tank in accordance with all applicable federal, state and local laws and regulations.; and check for any leaks; and

(b) Hydrant piping vaults – check for any hydrant piping leaks.

(9) Leak detection for Piping.

(a) Methods of leak detection for underground piping associated with airport hydrant systems shall follow either the requirements in 310 CMR 80.19 and 80.26 or use one or a combination of the following alternative methods of leak detection:

1. Perform a semiannual or annual line tightness test at or above the piping operating pressure in accordance with the table below.

<u>Maximum Leak Detection Rate Per Test Section Volume</u>		
<u>Test Section Volume (Gallons)</u>	<u>Semiannual Test - Leak Detection Rate Not To Exceed (Gallons Per Hour)</u>	<u>Annual Test - Leak Detection Rate Not To Exceed (Gallons Per Hour)</u>
<u>< 50,000</u>	<u>1.0</u>	<u>0.5</u>
<u>≥ 50,000 to < 75,000</u>	<u>1.5</u>	<u>0.75</u>
<u>≥ 75,000 to < 100,000</u>	<u>2.0</u>	<u>1.0</u>

<u>≥ 100,000</u>	<u>3.0</u>	<u>1.5</u>
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Piping segment volumes ≥ 100,000 gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test may be tested at a leak rate of up to 6.0 gallons per hour according to the following schedule:

<u>Phase In For Piping Segments ≥ 100,000 Gallons In Volume</u>	
<u>First test</u>	<u>No later than October 13, 2024², may use up to 6.0 gph leak rate</u>
<u>Second test</u>	<u>Between October 14, 2024² and October 13, 2027, may use up to 6.0 gph leak rate</u>
<u>Third test</u>	<u>Between October 14, 2027 and October 13, 2028, shall use 3.0 gph for leak rate</u>
<u>Subsequent tests</u>	<u>After October 14, 2028, begin using semiannual or annual line testing according to the Maximum Leak Detection Rate Per Test Section Volume Table C above</u>

2. Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through and perform a line tightness test (conducted in accordance with 310 CMR 80.65(3)(b)1. using the leak rates for the semiannual test) at least every two years.

(b) If a release or leakage is indicated by alarm other 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.

2. If the Owner or Operator is unable to determine that there is not a release or leakage, the Owner or Operator shall conduct a tightness test on the piping in accordance with 310 CMR 80.64(9)(a)1.

3. If the piping fails a tightness test pursuant to 310 CMR 80.32, the Owner or Operator shall comply with 310 CMR 40.0300, as applicable.

4. If the piping passes a tightness test pursuant to 310 CMR 80.32, the piping is considered tight, and the requirements for tightness testing are satisfied.

5. If the investigation or the tightness test indicates a release or leakage, the Owner or Operator shall comply with 310 CMR 80.38 and 80.39.

(c) Owners and Operators shall maintain leak detection records in accordance with 310 CMR 80.36.

(10) Spill buckets.

(a) If a delivery hose is used to fill the tank, then a spill bucket shall be installed in accordance with 310 CMR 80.21(1).

(b) If the tank is filled by a directly-connected pipeline, a spill bucket is not required to be installed.

REGULATORY AUTHORITY

310 CMR 80.00: M.G.L. c. 21O, § 5, c. 21C, c. 21E, § 6 and c. 21A, § 16.