

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

TANK MANAGEMENT BRANCH

Statutory Authority: 7 Delaware Code, Chapters 60 and 74 (7 **Del.C.** Ch. 60 & 74)

7 DE Admin. Code 1351

PROPOSED

SAN # 2008-20 and 2008-23

1351 Regulations Governing Underground Storage Tank Systems

PART F: Financial Responsibility Requirements For Underground Storage Tank Systems

1.0 Financial Responsibility Requirements for Underground Storage Tank Systems

1.1 Applicability

- 1.1.1 The Requirements of Part F of these Regulations apply only to Owners and Operators of UST Systems subject to the requirements of Part B and Part D of these Regulations.
- 1.1.2 UST System Owners and Operators are subject to the requirements of this Part if the UST Systems are in operation on or after the date for compliance established in §1.2 of this part.
- 1.1.3 The State and Federal government entities whose debts and liabilities are the debts and liabilities of the State or the United States are exempt from the Financial Responsibility Requirements of this Part for UST Systems owned by a State or Federal government entity.
- 1.1.4 The requirements of this Part do not apply to Owners and Operators of any UST System described in Part A, §1.2.
- 1.1.5 If the Owner and Operator of an UST System are separate Persons, only one Person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance is established in §1.2 of this part.
- 1.1.6 Owners and Operators shall maintain a copy of all documentation as referenced in §§2.2. through 2.12. and ~~Appendices~~ §3, Forms A-R of this Part.
- 1.1.7 Owners and Operators shall maintain evidence of all current and historical financial assurance mechanisms ~~as required in §§2.2 through 2.12 and §3, Appendices~~ Forms A-R of this Part, used to demonstrate financial responsibility under this Part, until released from the requirements under §2.16 of this Part.
- 1.1.8 Records documenting compliance with the Financial Responsibility Requirements of this Part shall be made available upon the request of the Department.
- 1.1.9 The required per Occurrence and Annual Aggregate coverage amounts do not in any way limit the liability of Owners and Operators.

1.1.10 Owners and Operators shall review the amount of financial responsibility required whenever additional UST Systems are installed to ensure compliance with the requirements of this Part.

1.1.11 Owners and Operators shall submit to the Department documentation of the current financial responsibility mechanism within thirty (30) days of confirmation of a Release from the UST System.

1.1.12 No UST Systems shall contain a Regulated Substance without a current and valid financial responsibility mechanism in accordance with the applicable requirements of these Regulations.

1.2 Compliance Dates

1.2.1 Owners and Operators of UST Systems storing Regulated Substance shall comply with the financial responsibility requirements of this Part by the following dates:

1.2.1.1 All Petroleum Marketing Firms owning 1,000 or more UST Systems storing Regulated Substance, and other UST Systems Owners that report a tangible net worth of \$20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration, shall comply by January 24, 1989.

1.2.1.2 All Petroleum Marketing Firms owning 100-999 UST Systems storing Regulated Substance shall comply by October 26, 1989.

1.2.1.3 All Petroleum Marketing Firms owning 13 99 UST Systems storing Regulated Substance shall comply by April 26, 1991.

1.2.1.4 All Hazardous Substance UST System Owners and Operators shall comply by December 31, 2008.

1.2.1.5 All UST System Owners not described in §1.2.1.1, §1.2.1.2, §1.2.1.3 or §1.2.1.4 Of this Part, including all Local Government entities shall comply by December 31, 1993.

1.3 Amount and Scope of Financial Responsibility

1.3.1 Per-Occurrence Financial Responsibility Amounts

1.3.1.1 Owners and Operators of UST Systems shall demonstrate financial responsibility for taking corrective action and for compensating third parties for Bodily Injury and Property Damage caused by Accidental Releases from the operation of UST Systems in at least the following per-occurrence amounts:

1.3.1.1.1 For Owners or Operators of UST Systems that are located at Petroleum Marketing Facilities, or that handle an average of more than 10,000 gallons of Regulated Substance per month based on annual throughput for the previous calendar year, the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of one million dollars (\$1,000,000) per Occurrence.

1.3.1.1.2 For Owners and Operators of Hazardous Substance UST Systems the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of one million dollars (\$1,000,000) per Occurrence.

1.3.1.1.3 For Owners and Operators of UST Systems not described in §1.3.1.1.1. or §1.3.1.1.2 of this part the demonstration of financial responsibility for corrective action and third-

party liability shall be a minimum of five hundred thousand dollars (\$500,000) per Occurrence.

1.3.2 Annual Aggregate Financial Responsibility Amounts

1.3.2.1 Owners and Operators of UST Systems shall demonstrate financial responsibility for taking corrective action and for compensating third parties for Bodily Injury and Property Damage caused by Accidental Releases from the operation of UST Systems in at least the following annual aggregate amounts:

1.3.2.1.1 For Owners and Operators of 1 to 100 UST Systems the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of one million dollars (\$1,000,000) annual aggregate.

1.3.2.1.2 For Owners and Operators of 101 or more UST Systems the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of two million dollars (\$2,000,000) annual aggregate.

1.3.3 For the purposes of §1.3.2 of this part only, "an UST System" means a single containment unit and does not mean a combination of single containment units.

1.3.4 The amount of financial responsibility required excludes legal defense and administrative costs.

2.0 Financial Responsibility Mechanisms

2.1 Allowable Mechanisms and Combinations of Mechanisms

2.1.1 Except as provided by §§2.1.2 and 2.1.3 of this Section:

2.1.1.1 An Owner or Operator, including a Local Government Owner or Operator, may use any one or combination of the mechanisms listed in §§2.2. through 2.7 of this part, inclusive, to demonstrate financial responsibility under this Part for one or more UST Systems, and

2.1.1.2 A Local Government Owner or Operator may use any one or combination of the mechanisms listed in §§2.8. through 2.11 of this part, inclusive, to demonstrate financial responsibility under this Part for one or more UST Systems.

2.1.2 An Owner and Operator may use a guarantee or surety bond to establish financial responsibility only if the State's Attorney General has submitted a written statement to the Department that a guarantee or surety bond executed as described in this Part is a legally valid and enforceable obligation in the State of Delaware.

2.1.3 An Owner and Operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the Owner and Operator are not consolidated with the financial statements of the Guarantor.

2.1.4 Except as provided in §2.1.5. of this Part, if the Owner or Operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for taking corrective action and compensating third parties for Bodily Injury and Property Damage caused by Accidental Releases the amount of financial responsibility provided by the combination of mechanisms shall be in the full amount specified in §1.3 of this part.

2.1.5 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~~ Underground Storage Tanks covered by each such separate mechanism or combination of mechanisms.

- 2.1.6 Where an Owner or Operator uses a combination of separate mechanisms to cumulatively demonstrate financial responsibility, the mechanisms shall clearly and expressly state the order and priority of the mechanisms in paying for corrective action and/or compensation of third parties, and such order and priority shall be consistent with all regulatory requirements for demonstrating financial responsibility.

2.2 Self Insurance

- 2.2.1 To satisfy the requirements of §1.3 of this part by utilizing self insurance, the Owner, Operator, or Guarantor shall:

2.2.1.1 Submit documentation that the requirements of either the financial test in Part F §2.2.2., Alternative I Net Worth Test, or Part F §2.2.3. Alternative II Net Working Capital Test, are met based on year-end financial statements for the latest completed Financial Reporting Year, utilizing a form provided by the Department, as found in ~~Appendix §3.1, Form A of these Regulations~~ this Part, to provide the required documentation; and

2.2.1.2 Submit a letter from the Chief Financial Officer, utilizing a form provided by the Department, as found in ~~Appendix §3.1, Form A of these Regulations~~ this Part, worded exactly as shown, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted; and

2.2.1.3 Submit the documentation required in §§2.2.1.1 and 2.2.1.2 of this Part to the Department, signed by the Chief Financial Officer of the Owner, Operator, or Guarantor, within one hundred twenty (120) days of the close of each fiscal year.

2.2.2 Alternative I Financial Test- Net Worth Test Requirements

2.2.2.1 The Owner, Operator, or Guarantor, shall have a Tangible Net Worth of at least \$10 million; and

2.2.2.2 The Owner, Operator, or Guarantor, shall have a Tangible Net Worth of at least ten times the sum of the following:

2.2.2.2.1 The total of the applicable Annual Aggregate amount required by §1.3 of this part less the amount obtained through another mechanism or combination of mechanisms in accordance with §2.1 of this Part based on the number of UST Systems for which a financial test is used to demonstrate financial responsibility to the Department under this Part; and

2.2.2.2.2 The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, current plugging and abandonment cost estimates and any other liability coverage for the which the Owner or Operator is using a financial test to demonstrate financial responsibility to the State or EPA, (this includes but is not limited to Subtitle C Hazardous Waste facilities, SDWA hazardous waste injection wells and Aboveground Storage Tanks), and

2.2.2.3 The Owner, Operator, or Guarantor, shall either:

2.2.2.3.1 File financial statements annually with the U.S. Securities and Exchange Commission (SEC), the Energy Information Administration (EIA), or the Rural Utilities Service

(RUS), the Board of Governors of the Federal Reserve System, the Comptroller of the Currency or the Federal Deposit Insurance Corporation; or

- 2.2.2.3.2 Annually report the firm's Tangible Net Worth to Dun & Bradstreet, and Dun & Bradstreet shall have assigned the firm a financial strength rating of 4A or 5A; and
- 2.2.2.4 The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a going concern qualification.
- 2.2.3 Alternative II Financial Test - Net Working Capital Test Requirements
 - 2.2.3.1 The Owner, Operator, or Guarantor shall have a Tangible Net Worth of at least \$10 million; and
 - 2.2.3.2 The Owner, Operator, or Guarantor shall have a Tangible Net Worth of six (6) times the sum of the following:
 - 2.2.3.2.1 The applicable Annual Aggregate amount required by §1.3 of this Part less the amount obtained through another mechanism or combination of mechanisms in accordance with §2.1 of this Part, for which a financial test is used to demonstrate financial responsibility to the Department under this Section; and
 - 2.2.3.2.2 The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, current plugging and abandonment cost estimates and any other liability coverage for the which the Owner or Operator is using a financial test to demonstrate financial responsibility to the State or EPA, (this includes but is not limited to Subtitle C Hazardous Waste facilities, SDWA hazardous waste injection wells and Aboveground Storage Tanks), and
 - 2.2.3.3 The Owner, Operator, or Guarantor shall have either:
 - 2.2.3.3.1 At least ninety percent (90%) of assets in the United States; or
 - 2.2.3.3.2 U.S. assets at least six (6) times the sum of the following:
 - 2.2.3.3.2.1 The applicable Annual Aggregate amount required by §1.3 of this Part less the amount obtained through another mechanism or combination of mechanisms in accordance with §2.1 of this Part, for which a financial test is used to demonstrate financial responsibility to the Department under this Section; and
 - 2.2.3.3.2.2 The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, current plugging and abandonment cost estimates and any other liability coverage for the which the Owner or Operator is using a financial test to demonstrate financial responsibility to the State or EPA, (this includes but is not limited to Subtitle C Hazardous Waste facilities, SDWA hazardous waste injection wells and Aboveground Storage Tanks), and
 - 2.2.3.4 The Owner, Operator, or Guarantor shall have either
 - 2.2.3.4.1 Net working capital of at least six (6) times the sum of the following:
 - 2.2.3.4.1.1 The applicable Annual Aggregate amount required by §1.3 of this Part less the amount obtained through another mechanism or combination of mechanisms in

accordance with §2.1 of this Part, for which a financial test is used to demonstrate financial responsibility to the Department under this Section; and

2.2.3.4.1.2 Any other liability coverage for which the Owner or Operator is using the test to demonstrate financial responsibility to the State or EPA, (this includes but is not limited to Subtitle C Hazardous Waste Facilities, SDWA Hazardous Waste Injection Wells, Subtitle I Underground Storage Tank Facilities); or

2.2.3.4.2 A current Standard & Poor's bond rating of AAA, AA, A or BBB, or a current Moody's bond rating of Aaa, Aa, A or Baa for the most recent bond issuance.

2.2.3.5 The fiscal year end financial statements of the Owner, Operator, or Guarantor, shall be independently audited, and cannot include an adverse auditor's opinion, a disclaimer of opinion, or a going concern qualification.

2.2.3.6 If the financial statements of the Owner, Operator, or Guarantor are not submitted annually to the U.S. Securities and Exchange Commission (SEC), the Energy Information Administration (EIA) or the Rural Utilities Service (RUS) the Owner, Operator, or Guarantor using the Alternative II test, shall obtain a special report by an independent certified public accountant which contains the accountant's certification that there are no material differences between the financial data in the submission required under §2.2.1.3 of this Part and the independently audited year-end financial statements and footnotes for the latest completed Financial Reporting Year.

2.2.3.7 If an Owner or Operator finds that he or she no longer meets the Requirements of §2.2.1.1 of this Part, the Owner or Operator shall obtain alternative coverage within one hundred (150) days of the latest completed Financial Reporting Year.

2.2.3.8 The Department may require reports of financial condition at any time from the Owner, Operator, or Guarantor. If the Department finds, on the basis of such reports or other information, that the Owner, Operator, or Guarantor no longer meets the requirements of §2.2.1.1 of this Part, the Owner or Operator shall obtain alternate coverage within thirty (30) days after notification by Verifiable Service of such a finding.

2.2.3.9 If the Owner and Operator fail to obtain alternate financial assurance within one hundred fifty (150) days of finding that he or she no longer meets the Requirements of §2.2.1.1 of this Part, or within thirty (30) days of notification by the Department that he or she no longer meets the Requirements of §2.2.1.1 of this Part, the Owner and Operator shall notify the Secretary of such failure within ten (10) days.

2.3 Guarantee

2.3.1 To satisfy the requirements of §1.3 of this part the Owner or Operator may obtain a guarantee that conforms to the requirements of this Section.

2.3.2 The Guarantor shall be a business entity that:

2.3.2.1 Possesses a Controlling Interest in the Owner or Operator; or

2.3.2.2 Possesses a Controlling Interest in a firm that has a Controlling Interest in the Owner or Operator; or

2.3.2.3 Is an affiliate which is controlled through stock ownership by a common parent firm that possesses a Controlling Interest in the Owner or Operator; or

2.3.2.4 Is engaged in a Substantial Business Relationship with the Owner or Operator and is issuing the guarantee as an act incident to that business relationship.

2.3.3 The Guarantor shall:

2.3.3.1 Comply with the requirements of §2.2 of this part; and

2.3.3.2 Submit a Guarantee utilizing a form provided by the Department, as found in ~~Appendix §3.2, Form B of these Regulations~~ this Part, worded exactly as shown, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; and

2.3.3.3 Submit the completed Guarantee and the required submissions of §2.2 of this Part to the Department; and

2.3.3.4 Provide the Owner or Operator with copies of their submissions under §§2.3.2.1 and 2.3.2.3 of this part.

2.3.4 If the Guarantor fails to meet the requirements of the financial test at the end of any Financial Reporting Year, within one hundred twenty (120) days of the end of that Financial Reporting Year the Guarantor shall send by Verifiable Service, before cancellation or non renewal of the guarantee, notice to the Owner and Operator and to the Department. The guarantee will terminate no less than one hundred twenty (120) days after the date the Owner and Operator receives the notification, as evidenced by Verifiable Service. The Owner or Operator shall obtain alternative coverage as specified in §2.15 of this part.

2.3.5 If the Department notifies the Guarantor that he no longer meets the Requirements of §2.2.1.1 of this Part, the Guarantor shall notify the Owner and Operator by Verifiable Service within ten (10) days of receiving such notification from the Department. The guarantee will terminate no less than one hundred twenty (120) days after the date the Owner and Operator receives the notification, as evidenced by Verifiable Service. The Owner or Operator shall obtain alternative coverage as specified in §2.15 of this part.

2.3.6 The Owner or Operator who uses a guarantee to satisfy the Requirements of §1.3 of this part shall also establish a standby trust fund at the same time that 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 under §2.16 of this part. This standby trust fund shall meet the requirements specified in §2.12 of this part.

2.3.7 An Owner or Operator may use a guarantee to establish financial responsibility only if the State's Attorney General has submitted a written statement to the Department that a guarantee executed as described in this Section is a legally valid and enforceable obligation in the State of Delaware.

2.4 Insurance and Risk Retention Group Coverage

2.4.1 An Owner or Operator may satisfy the requirements of §1.3 of this part by obtaining liability insurance that conforms to the requirements of this Section. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

2.4.2 The Owner or Operator shall submit an amendment to an insurance policy utilizing a form provided by the Department, as found in ~~Appendix §3.3, Form C of these Regulations~~ this Part, worded exactly as shown, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted or shall submit a certificate of insurance utilizing a form

provided by the Department, as found in ~~Appendix §3.4, Form D of these Regulations~~ this Part, worded exactly as shown, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

- 2.4.3 Each insurance policy shall be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more States and has a current Standard & Poor's rating of AAA, AA, A or BBB, or a current Moody's rating of Aaa, Aa, A or Baa.

2.5 Surety Bond

- 2.5.1 An Owner or Operator may satisfy the requirements of §1.3 of this part by obtaining a surety bond that conforms to the requirements of this Section. 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.
- 2.5.2 The Owner or Operator shall submit a surety bond utilizing a form provided by the Department, as found in ~~Appendix §3.5, Form E of these Regulations~~ this Part, worded exactly as shown, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.
- 2.5.3 Under the terms of the bond, the surety will become liable on the bond obligation when the Owner or Operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the levels of financial responsibility required by §1.3 of this part.
- 2.5.4 The Owner or Operator who uses a surety bond to satisfy the requirements of §1.3 of this part shall also establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Secretary under §2.16 of this part. This standby trust fund shall meet the requirements specified in §2.12 of this part.
- 2.5.5 An Owner or Operator may use a surety bond to establish financial responsibility only if the State's Attorney General has submitted a written statement to the Department that a surety bond executed as described in this Section is a legally valid and enforceable obligation in the State of Delaware.
- 2.5.6 The surety(ies) company may cancel the bond by sending notice of cancellation to the Owner and Operator and the Department by Verifiable Service, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by the Owner and Operator as evidenced by Verifiable Service. The Owner or Operator shall obtain alternative coverage as specified in §2.15 of this part.
- 2.5.7 If the Department notifies the Owner or Operator that the surety(ies) company no longer meets the requirements of this Section, the Owner or Operator shall obtain alternative coverage as specified in §2.15 of this part.

2.6 Letter of Credit

- 2.6.1 An Owner or Operator may satisfy the requirements of §1.3 of this part by obtaining an irrevocable standby letter of credit that conforms to the Requirements of this Section and is issued by an institution that has authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or State agency.

- 2.6.2 The Owner or Operator shall submit an irrevocable standby letter of credit utilizing a form provided by the Department, as found in ~~Appendix §3.6, Form F of these Regulations~~ this Part, worded exactly as shown, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.
- 2.6.3 An Owner or Operator who uses a letter of credit to satisfy the Requirements of §1.3 of this part shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department under §2.16 of this part. This standby trust fund shall meet the requirements specified in §2.12 of this part.
- 2.6.4 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 from the same term as the original term, unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies the Owner and Operator by Verifiable Service of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty (120) days will begin on the date when the Owner and Operator receives the notice, as evidenced by the Verifiable Service.

2.7 Trust Fund

- 2.7.1 An Owner or Operator may satisfy the requirements of §1.3 of this part by establishing a trust fund that conforms to the Requirements of this Section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the State in which the fund is established.
- 2.7.2 The Owner or Operator shall submit a trust agreement, utilizing a form provided by the Department, as found in ~~Appendix §3.7, Form G of these Regulations~~ this Part, worded exactly as shown, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted and shall be accompanied by a formal certification of acknowledgment as specified in ~~Appendix §3.7, Form G~~ of this Part.
- 2.7.3 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.
- 2.7.4 If the value of the trust fund is greater than the required amount of coverage, the Owner or Operator may submit a written request by Verifiable Service to the Secretary for release of the excess.
- 2.7.5 If other financial assurance as specified in this Section is substituted for part of the trust fund, the Owner or Operator may submit a written request by Verifiable Service to the Secretary for release of the excess.
- 2.7.6 Within sixty (60) days after receiving a request from the Owner or Operator for release of funds as specified in §§2.7.4 or 2.7.5 of this part, the Department will instruct the trustee to release to the Owner or Operator such funds as the Department specifies in writing by Verifiable Service.

2.8 Local Government Bond Rating Test

- 2.8.1 A general purpose Local Government Owner or Operator or Local Government serving as a Guarantor may satisfy the requirements of §1.3 of this part by having a currently outstanding issue or issues of general obligation bonds of at least the minimum Annual Aggregate amount required

in §1.3 of this part 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 & Poor's, the lowest rating shall be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance shall not be considered in determining the amount of applicable bonds outstanding.

2.8.2 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 satisfy the requirements of §1.3 of this part by:

2.8.2.1 Having a currently outstanding issue or issues of revenue bonds of at least \$1 million dollars (\$1,000,000) excluding refunded issues; and

2.8.2.2 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 shall be used to determine eligibility. Bonds that are backed by credit enhancement shall not be considered in determining the amount of applicable bonds outstanding.

2.8.3 The Local Government Owner or Operator or Guarantor using the Local Government bond rating test shall maintain a copy of its bond rating published within the last twelve (12) months by Moody's or Standard & Poor's.

2.8.4 To demonstrate that it meets the Local Government bond rating test, the Chief Financial Officer of a general purpose Local Government Owner, Operator or Guarantor shall submit a letter signed by the Chief Financial Officer, utilizing a form provided by the Department, as found in Appendix §3.10, Form J of these Regulations this Part, worded exactly as shown, except that instructions in brackets are to be replaced by the relevant information and the brackets deleted.

2.8.5 To demonstrate that it meets the Local Government bond rating test, the Chief Financial Officer of a Local Government Owner, Operator, or Guarantor other than a general purpose government, shall submit a letter signed by the Chief Financial Officer, utilizing a form provided by the Department, as found in Appendix §3.11, Form K of these Regulations this Part, worded exactly as shown, except that instructions in brackets are to be replaced by the relevant information and the brackets deleted.

2.8.6 The Department may require reports of financial condition at any time from the Local Government Owner, Operator, or Local Government Guarantor. If the Department finds, on the basis of such reports or other information, that the Local Government Owner, Operator, or Guarantor, no longer meets the Local Government bond rating test Requirements of this Section, the Local Government Owner or Operator shall obtain alternative coverage within thirty (30) days after notification of such a finding.

2.8.7 If a Local Government Owner or Operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the Local Government Owner and Operator shall obtain alternative coverage within one hundred fifty (150) days of the change in status.

2.9 Local Government Financial Test

2.9.1 A Local Government Owner or Operator may satisfy the requirements of §1.3 of this part by passing the financial test specified in this Section. 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 §2.9.3 and §2.9.4 of this part based on year end financial statements for the latest completed Financial Reporting Year.

2.9.2 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:

2.9.2.1 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.

2.9.2.2 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).

2.9.2.3 Local Revenues: Consists of total revenues (as defined in §2.9.2.1 of this part) minus the sum of all transfers from other governmental entities, including all monies received from Federal, State, or Local Government sources.

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

2.9.2.5 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.

2.9.2.6 Population: Consists of the number of people in the area served by the Local Government.

2.9.3 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.

- 2.9.4 The Local Government Owner or Operator shall have a letter signed by the Chief Financial Officer, utilizing a form provided by the Department, as found in ~~Appendix §3.12, Form L of these Regulations~~ this Part, worded exactly as shown, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.
- 2.9.5 To demonstrate that it meets the financial test under §2.9.2 of this part, within one hundred twenty (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, the Chief Financial Officer of the Local Government Owner or Operator, shall sign and submit a letter, utilizing a form provided by the Department, as found in ~~Appendix §3.12, Form L of these Regulations~~ this Part, worded exactly as shown, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.
- 2.9.6 If a Local Government Owner or Operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year end financial statements, the Owner or Operator shall obtain alternative coverage within one hundred fifty (150) days of the end of the year for which financial statements have been prepared.
- 2.9.7 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 §§2.9.2. through 2.9.5 of this part, the Owner or Operator shall obtain alternate coverage within thirty (30) days after notification of such a finding.
- 2.9.8 If the Local Government Owner and Operator fails to obtain alternate assurance within one hundred fifty (150) days of finding that it no longer meets the requirements of the financial test based on the year end financial statements or within thirty (30) days of notification by the Department that it no longer meets the requirements of the financial test, the Owner and Operator shall notify the Department of such failure within ten (10) days.

2.10 Local Government Guarantee

- 2.10.1 A Local Government Owner or Operator may satisfy the requirements of §1.3 of this part by obtaining a guarantee that conforms to the requirements of this Section. The Guarantor shall be either the State in which the Local Government Owner or Operator is located or a Local Government having a Substantial Business 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:
- 2.10.1.1 Demonstrate that it meets the bond rating test requirement of §2.8 of this part and deliver a copy of the completed Chief Financial Officer's letter as stipulated in §2.8.4 of this part to the Local Government Owner or Operator; or
 - 2.10.1.2 Demonstrate that it meets the worksheet test requirements of §2.9 of this part and deliver a copy of the completed Chief Financial Officer's letter as stipulated in §2.8.5 of this part to the Local Government Owner and Operator; or
 - 2.10.1.3 Demonstrate that it meets the Local Government fund requirements of §§2.11.1.1, 2.11.1.2., or 2.11.1.3 of this part and deliver a copy of the completed Chief Financial Officer's letter as stipulated in §2.11.2 of this part to the Local Government Owner and Operator.
- 2.10.2 If the Local Government Guarantor is unable to demonstrate financial assurance under any of the mechanisms in §2.8, §2.9 or §2.11 of this Part, at the end of the Financial Reporting Year, the

Guarantor shall send by Verifiable Service, before cancellation or non renewal of the guarantee, notice to the Owner and Operator and to the Department. The guarantee will terminate no less than one hundred twenty (120) days after the date the Owner and Operator receives the notification, as evidenced by Verifiable Service. The Owner or Operator shall obtain alternative coverage as specified in §2.15 of this part.

2.10.3 The Owner or Operator shall submit a guarantee agreement, utilizing approved by the Department, as found in Appendix §3.13, Form M, Appendix §3.14, Form N, Appendix §3.15, Form O or Appendix §3.16, Form P of ~~these Regulations~~ this Part, depending on which of the following alternative guarantee arrangements is selected:

2.10.3.1 If, in the default or incapacity of the Owner or Operator, the Guarantor guarantees to fund a standby trust as directed by the Secretary, the guarantee shall be worded exactly as specified in Appendix §3.13, Form M or Appendix §3.14, Form N ~~these Regulations~~ this Part, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

2.10.3.2 If, in the default or incapacity of the Owner or Operator, the Guarantor guarantees to make payments as directed by the Secretary for taking corrective action or compensating third parties for Bodily Injury and Property Damage, the guarantee shall be worded exactly as specified in Appendix §3.15, Form O or Appendix §3.16, Form P of ~~these Regulations~~ this Part except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

2.10.3.3 If the Guarantor is a State, the Local Government guarantee with standby trust shall be worded exactly as specified in Appendix §3.13, Form M of ~~these Regulations~~ this Part, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

2.10.3.4 If the Guarantor is a Local Government, the Local Government guarantee with standby trust shall be worded exactly as specified in Appendix §3.14, Form N of ~~these Regulations~~ this Part, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

2.10.3.5 If the Guarantor is a State, the Local Government guarantee without standby trust shall be worded exactly as specified in Appendix §3.15, Form O of ~~these Regulations~~ this Part, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

2.10.3.6 If the Guarantor is a Local Government, the Local Government guarantee without standby trust shall be worded exactly as specified in Appendix §3.16, Form P of ~~these Regulations~~ this Part, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

2.10.4 A Local Government Owner or Operator using the Local Government guarantee under §2.10 of this part, where the Guarantor's demonstration of financial responsibility relies on the bond rating test under §2.8 of this part shall maintain a copy of the Guarantor's bond rating published within the last twelve months by Moody's or Standard & Poor's.

2.10.5 A Local Government Owner or Operator using the Local Government guarantee supported by the §2.11, Local Government fund, shall maintain a copy of the Guarantor's year end financial statements for the most recent completed Financial Reporting Year showing the amount of the fund.

2.11 Local Government Fund

2.11.1 A Local Government Owner and Operator may satisfy the requirements of §1.3 of this part by establishing a dedicated fund account that conforms to the requirements of this Section. Except as specified in §2.11.1.2 of this part, 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:

2.11.1.1 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 §1.3 of this part, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or

2.11.1.2 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 §1.3 of this part, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under §1.3 of this part, the amount of financial responsibility demonstrated by the fund shall not exceed one-fifth the amount in the fund; or

2.11.1.3 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 shall be determined by this formula: $(TF - CF)/Y$, 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

2.11.1.3.1 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 UST Systems, or

2.11.1.3.2 The Local Government Owner or Operator has a letter signed by the appropriate State Attorney General stating that the use of the bonding authority will not increase the Local Government's debt beyond the legal debt ceilings established by the relevant State laws. The letter shall also State that prior voter approval is not necessary before use of the bonding authority.

2.11.2 To demonstrate that it meets the requirements of the Local Government fund, the Chief Financial Officer of the Local Government Owner or Operator or Guarantor, shall submit a letter to the Department, utilizing a form provided by the Department, found in Appendix §3.17, Form Q of

~~these Regulations this Part~~, worded exactly as shown, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

2.11.3 An Owner or Operator using a Local Government fund under §2.11 of this part shall maintain the following documents:

2.11.3.1 A copy of the State constitutional provision or Local Government statute, charter, ordinance, or order dedicating the fund; and

2.11.3.2 Year end financial statements for the most recent completed Financial Reporting Year showing the amount in the fund. If the fund is established under §2.11.1.3 of this part using incremental funding backed by bonding authority, the financial statements shall show the previous year's balance, the amount of funding during the year, and the closing balance in the fund; and

2.11.3.3 If the fund is established under §2.11.1.3 of this part using incremental funding backed by bonding authority, the Owner or Operator shall also maintain documentation of the required bonding authority, including either the results of voter referendum under §2.11.1.3.1 of this part, or attestation by the State Attorney General as specified under §2.11.1.3.2 of this part.

2.12 Standby Trust Fund

2.12.1 An Owner or Operator using any one of the mechanisms authorized by §§2.3, 2.5, 2.6., and 2.7 of this part shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by an agency of the State in which the fund is established.

2.12.2 The Owner or Operator shall submit a standby trust agreement to the Department, utilizing a form provided by the Department, as found in ~~Appendix §3.8. Form H of these Regulations this Part~~, worded exactly as specified except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

2.12.3 The Secretary will instruct the trustee to refund the balance of the standby trust fund to the Provider of Financial Assurance if the Secretary 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.

2.12.4 An Owner or Operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this Part.

2.13 Substitution of Financial Assurance Mechanisms

2.13.1 An Owner or Operator may substitute any alternate financial assurance mechanisms as specified in this Part, provided that at all times the Owner or Operator maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the Requirements of §1.3 of this part.

2.13.2 After obtaining alternate financial assurance as specified in this Part, an Owner or Operator may cancel a financial assurance mechanism by providing notice as evidenced by Verifiable Service, to the Provider of Financial Assurance and submitting a copy of such notice to the Department.

2.14 Cancellation or Non Renewal, Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance

2.14.1 Cancellation or Non-Renewal:

2.14.1.1 Except as otherwise provided, a Provider of Financial Assurance may cancel or fail to renew an assurance mechanism by sending a notice of Termination by Verifiable Service to the Owner and Operator, subject to the following:

2.14.1.1.1 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 and Operator receives the notice of Termination, as evidenced by Verifiable Service.

2.14.1.1.2 Termination of insurance or risk retention group coverage, except for non payment or misrepresentation by the insured, or State funded assurance may not occur until sixty (60) days after the date on which the Owner and Operator receives the notice of Termination, as evidenced by Verifiable Service.

2.14.1.1.3 Termination for non payment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the Owner and Operator receives the notice of Termination, as evidenced by Verifiable Service.

2.14.1.1.4 The Owner or Operator shall notify the Department within ten (10) days upon receiving notification of cancellation or non-renewal subject to the Requirements of §2.14.1.

2.14.1.2 If a provider of financial assurance cancels or fails to renew for reasons other than the incapability of the provider as specified in §2.14.2 of this part, the Owner or Operator shall obtain alternate coverage within sixty (60) days after receipt of the notice of Termination. If the Owner and Operator fail to obtain alternate coverage within sixty (60) days after receipt of the notice of Termination, the Owner or Operator shall notify the Department of such failure within ten (10) days and submit the following to the Department:

2.14.1.2.1 The name and address of the Provider of Financial Assurance; and

2.14.1.2.2 The effective date of Termination; and

2.14.1.2.3 The evidence of the financial assurance mechanism subject to the Termination maintained in accordance with §1.1.7 of this part.

2.14.2 Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance

2.14.2.1 Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an Owner or Operator as debtor, the Owner or Operator shall notify the Department by Verifiable Service of such commencement and shall submit the appropriate documentation as referenced in §§2.2. through 2.12. and ~~Appendices~~ Forms A-Q of this Part demonstrating current compliance with the financial responsibility requirements of this Part.

2.14.2.2 Within ten (10) 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 and Operator and the Department by Verifiable Service of such commencement.

2.14.2.3 Within ten (10) days after the suspension or revocation of the authority of a Provider of Financial Assurance to issue a financial assurance mechanism, such provider shall notify the Owner and Operator by Verifiable Service of such suspension or revocation.

- 2.14.2.4 Within ten (10) days after the failure of a Guarantor or indemnitor to meet the requirements of the financial test, such Guarantor or indemnitor shall notify the Owner and Operator and the Department by Verifiable Service of such failure.
- 2.14.2.5 Within ten (10) days of receiving notification per §§2.14.2.2., 2.14.2.3.or 2.14.2.4.of this Part, the Owner shall notify the Department by Verifiable Service.
- 2.14.2.6 An Owner or Operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of bankruptcy or incapacity of its Provider of Financial Assurance, or a suspension or revocation of the authority of the Provider of Financial Assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit.
- 2.14.2.7 Except in the case of financial test of self insurance, the Owner and Operator shall obtain alternate financial assurance within thirty (30) days after receiving notice of a bankruptcy or incapacity of its Provider of Financial Assurance per §2.14.2.of this Part. If the Owner or Operator does not obtain alternate coverage within thirty (30) days after such notification, the Owner and Operator shall notify the Department within ten (10) days.
- 2.14.2.8 An Owner or Operator who has a potential or existing claim filed with a Guarantor, indemnitor or other Provider of Financial Assurance who has filed a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code shall in a timely manner file a Proof of Claim and any necessary supporting documentation with the Court of appropriate jurisdiction and provide a copy of the Proof of Claim to the Department.

2.15 Drawing on Financial Assurance Mechanisms

- 2.15.1 Except as specified in §2.15.2.4 of this part, the Department shall 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:
 - 2.15.1.1 The Owner or Operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanisms and the Department determines or suspects that a Release from an UST System covered by the mechanism has occurred and so notifies the Owner or Operator or the Owner and Operator has notified the Department pursuant to requirements established under Part E of these Regulations of a Release from an UST System covered by the mechanism; or
 - 2.15.1.2 The conditions of §2.15.2.1 or §2.15.2.2 of this Part are satisfied.
- 2.15.2 The Department may draw on a standby trust fund when:
 - 2.15.2.1 The Department makes a final determination that a Release has occurred and immediate or long term corrective action for the Release is needed, but the Owner or Operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under Part E of these Regulations; or
 - 2.15.2.2 The Department has received either:
 - 2.15.2.2.1 Certification from the Owner or Operator and the third party liability claimant(s) and from attorneys representing the Owner or Operator and the third party liability claimant(s) that a third party liability claim should be paid. The certification shall be

worded as specified by the Department, as found in ~~Appendix §3.9, Form I of these Regulations~~ this Part except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; or

2.15.2.2.2 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 this Part and the Department determines that the Owner or Operator has not satisfied the judgment.

2.15.3 If the Department determines that the amount of corrective action costs and third party liability claims eligible for payment under §2.15.2 of this Part 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 §2.15.2 of this Part.

2.15.4 A governmental entity acting as Guarantor under §2.10 of this Part, the Local Government guarantee without standby trust, shall make payments as directed by the Secretary under the circumstances described in §§2.15.1, 2.15.2, or 2.15.3 of this part.

2.16 Release From the Requirements of Financial Responsibility

2.16.1 An Owner and Operator is no longer required to maintain financial responsibility under this Part for an UST System after the UST System has been Removed or permanently Closed in Place in accordance with the requirements of these Regulations and the Requirements of Part E of these Regulations have been completed.

2.17 Replenishments of Required Financial Responsibility

2.17.1 If at any time after a standby trust is funded upon the instruction of the Secretary 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:

2.17.1.1 Replenish the value of financial assurance to equal the full amount of coverage required, or

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

2.17.2 For purposes of this Section, the full amount of coverage required is the amount of financial responsibility required by §1.3 of this part. 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.

3.0 Financial Responsibility Forms

3.1 Form A: Financial Test of Self Insurance

FORM A

Financial Test of Self Insurance Letter from Chief Financial Officer

FC: 76

DNREC Facility ID#:

I am the Chief Financial Officer of [*name and address of the Owner or Operator or Guarantor*]

This letter is in support of the use of [*the financial test of self-insurance" and/or "guarantee"*]

to demonstrate financial responsibility for [*"taking corrective action" and/or "compensating*

third parties for Bodily Injury and Property Damage] caused by [*"sudden Accidental Releases"*

and/or "non-sudden Accidental Releases"] in the amount of at least [*dollar amount*] per

occurrence and [*dollar amount*] Annual Aggregate arising from operating (an) Underground

Storage Tank(s) System(s).

UST Systems at the following facilities are assured by this financial test by this [*"Owner or Operator"and/or "Guarantor"*].

Attach ys §3.18, Form R, Underground Storage Tank Schedule, listing each UST System assured by this Financial Test of Self-Insurance

A [*"financial test," and/or "guarantee"*] is also used by [*"Owner" or "Operator" or "Guarantor"*] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or State programs including but not limited to Subtitle C Hazardous Waste Facilities, SDWA Class I Hazardous Waste Injection Wells and AST pollution liability coverage.

Amount

Closure.....

Post-Closure Care

Liability Coverage

Corrective Action

Plugging and Abandonment

Other

TOTAL

This [*"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.

I hereby certify that the wording of this letter is identical to the wording specified in Part F, §2.2. as such Regulations were constituted on the date shown immediately below.

[Signature of CF0]

[Name of Person signing]

[Title of Person signing]

[Date]

[Fill in the information for Alternative I if the criteria of Part F, §2.2.2 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of Part F, §2.2.3 are being used to demonstrate compliance with the financial test requirements.]

Form A: Alternative I - Financial Test of Self Insurance
Net Worth Test

FC: 76

DNREC Facility ID#:

1. Amount of UST Annual Aggregate coverage being assured by a financial test, and/or guarantee:.....\$ _____
2. Amount of other liability coverage covered by a financial test, and/or guarantee:
(This includes but is not limited to Subtitle C Hazardous Waste Facilities, SDWA Class I Hazardous Waste Injection Wells and AST coverage).....\$ _____
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. Is line 6 at least \$10 million?__Yes __No*
(Tangible Net Worth at least \$10million)
8. Is line 6 at least 10 times line 3?__Yes __No*
(Tangible Net Worth 10X's the sum of other environmental obligations)

***If the answer to line 7 or line 8 is "No", this test cannot be used to meet the UST Financial Responsibility requirements.**

Complete Lines 9-11 OR Line 12

9. Have financial statements for the latest fiscal year been filed with the

Securities and Exchange Commission? Yes No

10. Have financial statements for the latest fiscal year been filed with the
Energy Information Administration? Yes No

11. Have financial statements for the latest fiscal year been filed
with the Rural Utilities Service? Yes No

12. Has financial information been provided to Dun & Bradstreet, and
has Dun & Bradstreet provided a financial strength rating of 4A or 5A?
(Answer "Yes" only if both criteria have been met.) Yes No

13. Have year-end financial statements which do not include an adverse
auditor's opinion, a disclaimer of opinion, or a "going concern"
qualification. (Answer "Yes" only if both criteria have been met)..... Yes No

**Form A: Alternative II - Financial Test of Self Insurance
Net Working Capital Test**

FC: 76

DNREC Facility ID#:

CONFIDENTIAL

1. Amount of UST Annual Aggregate coverage being assured by a financial
test, and/or guarantee:\$

2. Amount of other liability coverage covered by a financial test, and/or guarantee:
(This includes but is not limited to Subtitle C Hazardous Waste Facilities,
SDWA Class I Hazardous Waste Injection Wells and aggregate AST coverage)\$

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.):\$

8. Is line 6 at least \$10 million? Yes No*

(Tangible Net Worth at least \$10 million)

9. Is line 6 at least 6 times line 3? ☐ Yes ☐ No*
(Tangible Net Worth 6X's other environmental obligations)

***If the answer to line 8 or line 9 is "No", this test cannot be used to meet the UST Financial Responsibility requirements.**

10. Are at least 90 percent of assets located in the U.S.? ☐ Yes ☐ No**
(If "No," complete line 11)

11. Is line 7 at least 6 times line 3?
(U.S. assets at least six times the required amount of UST coverage
plus other environmental liabilities) ☐ Yes ☐ No

(Complete Lines 12-15 OR Lines 16-18)

12. Current Assets: \$ _____

13. Current Liabilities: \$ _____

14. Net working capital (subtract line 13 from line 12): \$ _____

15. Is line 14 at least 6 times line 3? ☐ Yes ☐ No

-OR-

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
Securities and Exchange Commission (SEC), the Energy Information
Administration (EIA), or the Rural Utilities Service (RUS)? ☐ Yes ☐ No*

*(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).

20. The firm's year-end financial statements have been independently audited
and do not include an adverse auditor's opinion, a disclaimer of opinion,
or a "going concern" qualification..... ☐ Yes ☐ No

3.2 Form B: Guarantee

**FORM B
GUARANTEE**

FC: 76

DNREC Facility ID#:

Guarantee made this [Date] by [Name of guaranteeing entity], a business entity organized under the laws of the State of Delaware, herein referred to as Guarantor, to the Department of Natural Resources and Environmental Control (Department) and to any and all third parties, and obliges, on behalf of [Owner or Operator] of [Business Name and Address]

Recitals

(1) Guarantor meets or exceeds the financial test criteria of §§2.2.2. or 2.2.3. and agrees to comply with the requirements for Guarantors as specified in §2.3.

(2) [Owner or Operator] owns or operates the following Underground Storage Tank Systems covered by this guarantee:

Attach ~~Appendix~~ §3.18, Form R, Tank Schedule, listing each UST System assured by this Guarantee

This guarantee satisfies Part F, §1.3. for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for Bodily Injury and Property Damage"] caused by Accidental Releases; if coverage is different for different UST Systems or locations, indicate the type of coverage applicable to each UST 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) [Insert appropriate phrase: "On behalf of our subsidiary" (if Guarantor is corporate parent of the Owner or Operator); "On behalf of our affiliate" (if Guarantor is a related firm of the Owner or Operator); or "Incident to our business relationship with" (if Guarantor is providing the guarantee as an incident to a Substantial Business Relationship with Owner or Operator)] _____, Guarantor guarantees to the Department and to any and all third parties that:

In the event that [Owner or Operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary has determined or suspects that a Release has occurred at an UST Facility covered by this guarantee, the Guarantor, upon instructions from the Department, shall fund a standby trust fund in accordance with the provisions of Part F, §2.12 in an amount not to exceed the coverage limits specified above.

In the event that the DNREC determines that [Owner or Operator] has failed to perform corrective action for Release arising out of the operation of the above-identified Underground Storage Tank System(s) in accordance with Part E, the Guarantor upon written instructions from the DNREC shall fund a

standby trust fund in accordance with the provisions of Part F, §2.12 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 Accidental Releases arising from the operation of the above-identified UST Systems, 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 fund in accordance with the provisions of Part F, §2.12 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 Part F, §2.2.2 or §2.2.3, Guarantor shall send within 120 days of such failure, by Verifiable Service, notice to [Owner and Operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [Owner and Operator] as evidenced by Verifiable Service.

(5) Guarantor agrees to notify [Owner or Operator] by Verifiable Service 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 these Regulations.

(7) Guarantor agrees to remain bound under this guarantee for so long as [Owner or Operator] shall comply with the applicable financial responsibility requirements of these regulations for the above-identified UST Systems, 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 [Owner or Operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily Injury to an employee of [Owner or Operator] arising from, and in the course of, employment by [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 of, custody, or control of, or occupied by [Owner or Operator] that is not the direct result of a Release from an UST System;

(e) Bodily Injury or Property Damage for which [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 §1.3 of this part.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [Owner or Operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Part F, §2.3. 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:

3.3 Form C: Endorsement

**APPENDIX FORM C
ENDORSEMENT**

FC: 76

DNREC Facility ID#:

Name: _____ *[name of each covered location]*

Address: _____ *[address of each covered location]*

Policy Number: _____

Period of Coverage: _____ *[current policy period]*

Name of *[Insurer or Risk Retention Group]*:

Address of *[Insurer or Risk Retention Group]*:

Name of Insured: _____

Address of Insured: _____

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following Underground Storage Tank Systems:

Attach ~~Appendix~~ §3.18, Form R, Underground Storage Tank Schedule, listing each UST System assured by this Endorsement.

For [insert: "*taking corrective action*" and/or "*compensating third parties for Bodily Injury and Property Damage*"] caused by 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 UST Systems or locations, indicate the type of coverage applicable to each UST System or location] arising from operating the UST(s) System(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 UST Systems or locations, indicate the amount of coverage for each type of coverage and/or for each UST System 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 Section 2 are hereby amended to conform with subsections (a) through (e):

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

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured from 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 Part F, §§2.2. through 2.12. of these Regulations.

c. Whenever requested by the Department, the ["Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other Termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, 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 shall be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

e. Insert for claims-made policies:

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 the 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 ~~Appendix §3.3, Form C~~ and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more States"].

[Date]

[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]

3.4 Form D: Certificate of Insurance

APPENDIX FORM D **CERTIFICATE OF INSURANCE**

FC: 76

DNREC Facility ID#:

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 the Insurer or Risk Retention Group*], the "insurer" or "Group," as identified above, hereby certifies that it has issued liability insurance covering the following Underground Storage Tank Systems:

~~Attach Appendix~~ §3.18, Form R, Underground Storage Tank Schedule, listing each UST System assured by this Insurance Policy.

For [insert: "*taking corrective action*" and/or "*compensating third parties for Bodily Injury and Property Damage*"] caused by 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~~ UST Systems or locations, indicate the type of coverage applicable to each ~~tank~~ UST System or location arising from operating the UST System(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 UST System(s) or locations, indicate the amount of coverage for each type of coverage and/or for each UST System or location*), exclusive of Legal Defense Costs which are subject to separate limits under the policy. This coverage is provided under [*policy number*]. The effective date of said policy is [*date*].

2. The "Insurer" or "Group" further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the "Insurer" or "Group" of its obligations under the policy to which this certificate applies.

b. The "Insurer" or "Group" is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the "Insurer" or "Group." This provision does not apply with respect to that amount of any

deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in Part F, §§2.2. through 2.12.

c. Whenever requested by the Department, the ["Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other Termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured 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 shall be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

e. Insert for claims-made policies:

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 the 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 ~~Appendix~~ §3.4, Form D and that the ["Insurer" or "Group"] is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States."

[Date]

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

[Name of Person signing]

[Title of Person signing]

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

[Address of Representative]

**APPENDIX FORM E
PERFORMANCE BOND**

FC: 76

DNREC Facility ID#:

Date bond executed: _____

Period of Coverage: _____

Principal: *[legal name and business address of Owner or Operator]* _____

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

State of incorporation (if applicable): _____

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

Scope of Coverage:

Attach ~~Appendix~~ §3.18, Form R, Underground Storage Tank Schedule, listing each UST System assured by this Performance Bond.

List the coverage guaranteed by the bond: *["taking corrective action" and/or "compensating third parties for Bodily Injury and Property Damage"]* caused by Accidental Releases arising from operating the UST System(s).

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 Department, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action 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 sums.

Whereas said Principal is required under 7 **Del.C.** Chapter 74, as amended, to provide financial assurance for *[insert: "taking corrective action" and/or "compensating third parties for Bodily Injury and Property Damage"]*

caused by Accidental Releases; (if coverage is different for different ~~tanks~~ UST Systems or locations, indicate the type of coverage applicable to each ~~tank~~ UST Systems or location) arising from operating the UST System(s) 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 Part E of these regulations and the Department's instructions for, compensate injured third parties for Bodily Injury and Property Damage caused by Accidental Releases arising from operating the ~~tank~~ UST System(s) identified above,] or if the Principal shall provide alternate financial assurance, as specified in Part F of these regulations, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

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

(b) Bodily Injury to an employee of [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 [Owner or Operator] that is not the direct result of a release from an UST System;

(e) Bodily Injury or Property Damage for which [insert Owner or Operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the Requirements of Part F §1.3 of these Regulations.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Department that the Principal has failed to [*"take corrective action, in accordance with Part E of these Regulations and the Department's instructions," and/or "compensate injured third parties"*] as guaranteed by this bond, the Surety(ies) shall either perform [*"corrective action in accordance with Part E of these 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 under Part F, §2.12 of these Regulations.

Upon notification by the Department that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Department has determined or suspects that a Release has occurred, the Surety(ies) shall place funds in an amount not exceeding the Annual Aggregate penal sum into the standby trust fund as directed by the Department under Part F, §2.12 of these regulations.

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, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

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

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

The Persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in this ~~Appendix~~ Form as such Regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name] _____

[Address] _____

State of Incorporation: _____

Liability limit: \$ _____

[Signature(s)] 1. _____ 2. _____

[Name(s) and title(s)]1. _____

2. _____

[Corporate seal]

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

Bond Premium: \$ _____

3.6 Form F: Irrevocable Standby Letter of Credit

APPENDIX FORM F

IRREVOCABLE STANDBY LETTER OF CREDIT

FC: 76

DNREC Facility ID#:

[Name and address of issuing institution]

Delaware Department of Natural Resources and Environmental Control

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [Owner or Operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$ [insert dollar amount], available upon presentation [insert, if more than one Director of a State implementing agency is a beneficiary, "by any one of you"] of

(1) your sight draft, bearing reference to this letter of credit, No. _____, and

(2) your signed statement reading as follows:

"I certify that the amount of the draft is payable pursuant to Regulations issued under the authority of 7 **Del.C.** Chapter 74."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for Bodily Injury and Property Damage" caused by Accidental Releases] arising from operating the Underground Storage Tank Systems identified below in the amount of [in words] \$[insert dollar amount] per Occurrence and [in words] \$[insert dollar amount] Annual Aggregate:

Attach ~~Appendix~~ §3.18, Form R, Underground Storage Tank Schedule, listing each UST System assured by this Letter of Credit

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

(a) Any obligation of [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 UST System;

(e) Bodily Injury or Property Damage for [Owner or Operator] which 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 Part F, §1.3 of these Regulations.

This letter of credit is effective as of [date] and shall expire on [date] but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [Owner or Operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [Owner or Operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [Owner or Operator] as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [Owner or Operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in this Appendix §3.6, Form F as such Regulations were constituted on the date shown immediately below.

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

[Date]

[Signature of Official of Issuing Institution]

[Name of Person signing]

[Title of Person signing]

Authorized Representative of [name of Issuing Institution]

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

3.7 Form G: Trust Agreement

**APPENDIX FORM G
TRUST AGREEMENT**

FC: 76

DNREC Facility ID# :

Trust agreement, the "Agreement," entered into as of [date] by and between [Owner or Operator] a [Name of State] ["corporation", "partnership," "association," or "proprietorship"], the "Grantor," and [Name of Corporate Trustee] [insert "Incorporated in the State of _____" or "a national bank"], the "Trustee."

Whereas, the Department of Natural Resources and Environmental Control (Department), an agency of the State of Delaware, has established certain regulations applicable to the Grantor, requiring that an Owner or Operator of an Underground Storage Tank System 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 Accidental Releases arising from the operation of the UST System. The attached ~~Appendix §3.18, Form R, Underground Storage~~ Tank Schedule for Financial Assurance, lists the number of UST System(s) at each Facility and the name(s) and address(es) of the Facility(ies) where the UST System(s) are located that are covered by the standby trust agreement.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee; Now, therefore, the Grantor and the Trustee agree as follows:

SECTION 1. DEFINITIONS

As used in this Agreement:

(a) The term "Grantor" means the Owner or Operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

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 THE FUND

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of [the Department]. The Grantor and the Trustee intend that no third party have access to the fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the Provider of Financial Assurance pursuant to the Secretary'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 as Provider of Financial Assurance, 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 the Secretary shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and Property Damage" caused by Accidental Releases] arising from operating the UST Systems covered by the financial assurance mechanism identified in this Agreement.

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

- (a) Any obligation of [insert Owner or Operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily Injury to any employee of [insert Owner or Operator] arising from, and in the course of employment by [insert Owner or Operator];
- (c) Bodily Injury or Property Damage arising from the Ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property Damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert Owner or Operator] that is not the direct result of a Release from an UST System;
- (e) Bodily Injury or Property Damage for which [insert Owner or Operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of Part F, §1.3 of these Regulations. 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 Secretary 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 beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which Persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

A. Securities or other obligations of the Grantor, or any other Owner or Operator of the UST System(s), or any of their affiliates 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 a State government;

B. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or State government; and

C. The Trustee is authorized to hold cash awaiting investment or distribution un-invested 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. ADVICE OF COUNSEL

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

SECTION 11. TRUSTEE COMPENSATION

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

SECTION 12. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by Verified Service 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in §8.

SECTION 13. INSTRUCTIONS TO THE TRUSTEE

All orders, requests, and instructions by the Grantor to the trustee shall be in writing, signed by such Persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Secretary to the Trustee shall be in writing, signed by the Secretary, 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 14. AMENDMENT OF AGREEMENT

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

SECTION 15. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Agreement as provided in §14 of this ~~Appendix~~ Form above, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the 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 16. IMMUNITY AND INDEMNIFICATION

The Trustee shall not incur Personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the 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 17. CHOICE OF LAW

This Agreement shall be administered, construed, and enforced according to the laws of the State of Delaware, or the Comptroller of the Currency in the case of National Association Banks.

SECTION 18. INTERPRETATION

As used in this Agreement, words in 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 thereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in ~~Appendix~~ §3.7, Form G of Part F as such Regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest: _____

[Signature of Trustee]

[Name of Trustee]

[Title]

[Seal]

Attest: _____

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

The trust agreement shall be accompanied by a formal certification of acknowledgment similar to the following. State requirements may differ on the proper content of this acknowledgment.

State of _____

County of _____

On this _____, before me Personally came _____
[Date] [Owner or Operator]

to me known, who, being by me duly sworn, did depose and say that he/she resides at

_____, and that she/he is [Title] of [Corporation] the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed his/her name thereto by like order.

[Signature of Notary Public] _____

[Name of Notary Public] _____

3.8 Form H: Standby Trust Agreement

**~~APPENDIX~~ FORM H
STANDBY TRUST AGREEMENT**

FC: 76

DNREC Facility ID#:

Standby Trust agreement, the "Agreement," entered into as of [date] by and between [Owner or Operator]a [Name of State] ["corporation", "partnership", "association," or "proprietorship"], the "Grantor," and [Name of Corporate Trustee] [insert "Incorporated in the State of _____" or "a national bank"], the "Trustee."

Whereas, the Department of Natural Resources and Environmental Control (Department), an agency of the State of Delaware, has established certain regulations applicable to the Grantor, requiring that an Owner or Operator of an Underground Storage Tank (UST) System 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 Accidental

Releases arising from the operation of the UST. The attached ~~Appendix~~ §3.18, Form R, Underground Storage Tank Schedule for Financial Assurance lists the number of UST System(s) at each Facility and the name(s) and address(es) of the Facility(ies) where the UST System(s) are located that are covered by the standby trust agreement.

Whereas, the Grantor has elected to establish [*insert either "a guarantee," "surety bond," or "letter of credit"*] to provide all or part of such financial assurance for the UST System(s) identified herein and is required to establish a standby trust fund able to accept payments from the instrument;

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 the Owner or Operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

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 THE FUND

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department. The Grantor and the Trustee intend that no third party have access to the fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the Provider of Financial Assurance pursuant to the Department 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 as Provider of Financial Assurance, 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 the Secretary shall direct, in writing, to provide for the payment of the costs of [*insert: "taking corrective action" and/or "compensating third parties for bodily injury and Property Damage"*] caused by Accidental Releases] arising from operating the ~~tanks~~ UST Systems covered by the financial assurance mechanism identified in this Agreement.

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

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

(b) Bodily Injury to any employee of [insert Owner or Operator] arising from, and in the course of employment by [insert Owner or Operator];

(c) Bodily Injury or Property Damage arising from the Ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property Damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert Owner or Operator] that is not the direct result of a Release from an UST System;

(e) Bodily Injury or Property Damage for which [insert Owner or Operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of Part F, §1.3 of these Regulations. 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 Secretary 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 beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which Persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

A. Securities or other obligations of the Grantor, or any other Owner or Operator of the ~~tank~~ UST Systems, or any of their affiliates 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 a State government;

B. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or State government; and

C. The Trustee is authorized to hold cash awaiting investment or distribution un-invested 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. ADVICE OF COUNSEL

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

SECTION 11. TRUSTEE COMPENSATION

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

SECTION 12. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by Verified Service 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 8.

SECTION 13. INSTRUCTIONS TO THE TRUSTEE

All orders, requests, and instructions by the Grantor to the trustee shall be in writing, signed by such Persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Secretary to the Trustee shall be in writing, signed by the Secretary, 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 14. AMENDMENT OF AGREEMENT

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

SECTION 15. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Agreement as provided in Section 14 of this ~~Appendix~~ Form above, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the 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 16. IMMUNITY AND INDEMNIFICATION

The Trustee shall not incur Personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the 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 17. CHOICE OF LAW

This Agreement shall be administered, construed, and enforced according to the laws of the State of Delaware, or the Comptroller of the Currency in the case of National Association Banks.

SECTION 18. INTERPRETATION

As used in this Agreement, words in 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 thereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in ~~Appendix~~ §3.8, Form H of Part F as such Regulations were constituted on the date written above.

[Signature of Grantor] _____

[Name of the Grantor] _____

[Title] _____

Attest: _____

[Signature of Trustee] _____

[Name of Trustee] _____

[Title] _____

[Seal]

Attest: _____

[Signature of Witness] _____

[Name of Witness] _____

[Title] _____

[Seal]

The standby trust agreement shall be accompanied by a formal certification of acknowledgment similar to the following. State requirements may differ on the proper content of this acknowledgment.

State of _____, County of _____,

On this [Date], before me Personally came [Owner or Operator] to me known, who,

being by me duly sworn, did depose and say that he/she resides at [address], that she/he is [Title] of [Corporation] the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed his/her name thereto by like order.

[Signature of Notary Public] _____

[Name of Notary Public] _____

~~APPENDIX~~ FORM I
CERTIFICATION OF VALID CLAIM

FC: 76

DNREC Facility ID#:

The undersigned, as principals and as legal representatives of [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 or
Operator] underground storage tank should be paid in the amount of \$[_____].

[Signature of Owner or Operator]

[Signature of Attorney for Owner or Operator]

(Notary)_____ Date _____

[Signature of Claimant]

[Signature of Attorney for Claimant]

(Notary)_____ Date _____

APPENDIX FORM J
BOND RATING TEST
GENERAL PURPOSE LOCAL GOVERNMENT

FC: 76

DNREC Facility ID#:

Letter from Chief Financial Officer

I am the Chief Financial Officer of *[insert: name and address of Local Government Owner or Operator, or Guarantor]*. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for *[insert: "taking corrective action" and/or "compensating third parties for Bodily Injury and Property Damage"]* caused by *[insert: "sudden Accidental Releases" and/or "nonsudden Accidental Releases"]* in the amount of at least *[insert: dollar amount]* per Occurrence and *[insert: dollar amount]* Annual Aggregate arising from operating (an) Underground Storage Tank System(s) (USTs).

UST System(s) at the following facilities are assured by this bond rating test:

Attach ~~Appendix~~ §3.18, Form R, Underground Storage Tank Schedule, listing each UST System assured by this Local Government 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]*

<u>Issue Date</u>	<u>Maturity Date</u>	<u>Outstanding Amount</u>	<u>Bond Rating</u>	<u>Rating Agency</u>
				[Moody's or Standard & Poor's]

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

I hereby certify that the wording of this letter is identical to the wording specified in Part F, ~~Appendix~~ §3.10, Form J as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

APPENDIX FORM K
BOND RATING TEST/LOCAL GOVERNMENT OTHER

FC: 76

DNREC FACILITY ID#:

Letter from Chief Financial Officer

I am the Chief Financial Officer of *[insert: name and address of Local Government Owner or Operator, or Guarantor]*. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for *[insert: "taking corrective action" and/or "compensating third parties for Bodily Injury and Property Damage"]* caused by *[insert: "sudden Accidental Releases" and/or "nonsudden Accidental Releases"]* in the amount of at least *[insert: dollar amount]* per Occurrence and *[insert: dollar amount]* Annual Aggregate arising from operating (an) Underground Storage Tank System(s) (USTs). 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 System(s) at the following facilities are assured by this bond rating test:

Attach ~~Appendix~~ §3.18, Form R, Underground Storage Tank Schedule, listing each UST System assured by this Local Government 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]

<u>Issue Date</u>	<u>Maturity Date</u>	<u>Outstanding Amount</u>	<u>Bond Rating</u>	<u>Rating Agency</u>
				[Moody's or Standard & Poor's]

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

I hereby certify that the wording of this letter is identical to the wording specified in Part F, ~~Appendix~~ §3.11, Form K as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

APPENDIX FORM L
LOCAL GOVERNMENT FINANCIAL TEST

FC: 76

DNREC Facility ID#:

Letter from Chief Financial Officer

I am the Chief Financial Officer of *[insert: name and address of the Owner or Operator]*. This letter is in support of the use of the Local Government financial test to demonstrate financial responsibility for *[insert: "taking corrective action" and/or "compensating third parties for Bodily Injury and Property Damage"]* caused by *[insert: "sudden Accidental Releases" and/or "nonsudden Accidental Releases"]* in the amount of at least *[insert: dollar amount]* per Occurrence and *[insert: dollar amount]* Annual Aggregate arising from operating *[an]* Underground Storage Tank System(s) (USTs).

UST System(s) at the following facilities are assured by this financial test:

Attach ~~Appendix~~ §3.18, Form R, Underground Storage Tank Schedule, listing each UST System assured by this Local Government Financial Test.

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 & 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 & 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 4c)
- 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 4c)
- 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 Part F, ~~Appendix~~ §3.12, Form L as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

3.13 Form M: Local Government Guarantee With Standby Trust Made By A State

APPENDIX FORM M

LOCAL GOVERNMENT GUARANTEE WITH STANDBY TRUST MADE BY A STATE

FC: 76

DNREC Facility ID#:

Guarantee made this [date] by [name of State], herein referred to as Guarantor, to [Department of Natural Resources and Environmental Control] and to any and all third parties, and obliges, on behalf of [Local Government Owner or Operator].

Recitals:

(1) Guarantor is a State.

(2) [Local Government Owner or Operator] owns or operates the following Underground Storage Tank System(s) (USTs) covered by this guarantee:

[Attach ~~Appendix~~ §3.18, Form R, Underground Storage Tank Schedule, listing each UST System assured by this Local Government Guarantee with Standby Trust Made by a State.]

If more than one instrument is used to assure different UST System(s) at any one Facility, for each UST System covered by this instrument, list the UST System identification number provided in the notification submitted pursuant to Part A of Delaware's Regulations Governing Underground Storage Tank Systems, and the name and address of the Facility.] This guarantee satisfies Part F, 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 UST Systems or locations, indicate the type of coverage applicable to each UST System or location] arising from operating the above-identified UST System(s) in the amount of [insert dollar amount] per Occurrence and [insert dollar amount] Annual Aggregate.

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

In the event that [Local Government Owner or Operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a Release has occurred at an UST System covered by this guarantee, the Guarantor, upon instructions from the

Department shall fund a standby trust fund in accordance with the provisions of Part F, §2.12. in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [Local Government Owner or Operator] has failed to perform corrective action for Releases arising out of the operation of the above-identified ~~tank~~ UST System(s) in accordance with Part E the Guarantor upon written instructions from the Department shall fund a standby trust fund in accordance with the provisions of Part F, §1.12. 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~~ UST System(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 Part F, §1.12 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

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

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [Owner or Operator] pursuant to the Delaware Regulations Governing Underground Storage Tank Systems.

(6) Guarantor agrees to remain bound under this guarantee for so long as [Local Government Owner or Operator] shall comply with the applicable financial responsibility requirements of Part F for the above identified ~~tank~~ UST System(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.

(7) The Guarantor's obligation does not apply to any of the following:

(a) Any obligation of [Local Government Owner or Operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily Injury to an employee of [insert: Local Government Owner or Operator] arising from, and in the course of, employment by [insert: Local Government Owner or Operator];

(c) Bodily Injury or Property Damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property Damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert: Local Government Owner or Operator] that is not the direct result of a Release from an UST System;

(e) Bodily 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 Part F, §1.3.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [Local Government Owner or Operator],

I hereby certify that the wording of this guarantee is identical to the wording specified in ~~Appendix~~ §3.13, Form M 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:

3.14 Form N: Local Government Guarantee With Standby Trust Made By A Local Government

~~APPENDIX~~ FORM N

LOCAL GOVERNMENT GUARANTEE WITH STANDBY TRUST MADE BY A LOCAL GOVERNMENT

FC: 76

DNREC Facility ID#:

Guarantee made this [date] by [name of guaranteeing entity], a Local Government organized under the laws of [name of State], herein referred to as Guarantor, to DNREC and to any and all third parties, and obliges, on behalf of [Local Government Owner or Operator].

Recitals

(1) Guarantor meets or exceeds [select one: the Local Government bond rating test requirements of Part F, §2.8, the Local Government financial test requirements of Part F, §2.9, or the Local Government fund under Part F, §2.11].

(2) [Local Government Owner or Operator] owns or operates the following Underground Storage Tank System(s) (USTs) covered by this guarantee:

Attach ~~Appendix~~ §3.18, Form R, Underground Storage Tank Schedule, listing each UST System assured by this Local Government Guarantee.

This guarantee satisfies Part F 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 UST Systems or locations, indicate the type of coverage applicable to each UST System or location] arising from operating the above-identified UST System(s) in the amount of [insert dollar amount] per Occurrence and [insert: dollar amount] Annual Aggregate.

(3) Incident to our Substantial Business Relationship with [*Local Government Owner or Operator*], Guarantor guarantees to Department and to any and all third parties that:

In the event that [*Local Government Owner or Operator*] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a Release has occurred at an UST System covered by this guarantee, the Guarantor, upon instructions from the Department shall fund a standby trust fund in accordance with the provisions of Part F, §2.12, in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [*Local Government Owner or Operator*] has failed to perform corrective action for Releases arising out of the operation of the above-identified UST System(s) in accordance with Part E of these Regulations, the Guarantor upon written instructions from the Department shall fund a standby trust fund in accordance with the provisions of Part F, §2.12 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~~ UST System(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 Part F, §1.12 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*], 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 the Regulations.

(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 Part F for the above identified ~~tank~~ UST System(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 [*Local Government Owner or Operator*] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily Injury to an employee of [*insert: Local Government Owner or Operator*] arising from, and in the course of, employment by [*insert: Local Government Owner or Operator*];

(c) Bodily Injury or Property Damage arising from the Ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property Damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [*insert: Local Government Owner or Operator*] that is not the direct result of a Release from a UST System;

(e) Bodily Injury or Property Damage for which [insert: Owner or Operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of Part F, §3.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [Local Government Owner or Operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Part F, ~~Appendix §3.14, Form N~~ 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:

3.15 Form O: Local Government Guarantee Without Standby Trust Made By A State

APPENDIX FORM O

LOCAL GOVERNMENT GUARANTEE WITHOUT STANDBY TRUST MADE BY A STATE

FC: 76

DNREC Facility ID#:

Guarantee made this [date] by [name of State], herein referred to as Guarantor, to DNREC and to any and all third parties, and obliges, on behalf of [Local Government Owner or Operator].

Recitals

(1) Guarantor is a State.

(2) [Local Government Owner or Operator] owns or operates the following Underground Storage Tank System(s) (USTs) covered by this guarantee:

Attach ~~Appendix §3.18, Form R~~, , Underground Storage Tank Schedule, listing each UST System assured by this Local Government Guarantee Without Standby Trust Made by a State

This guarantee satisfies Part F 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 UST

Systems or locations, indicate the type of coverage applicable to each UST System or location] arising from operating the above-identified UST System(s) in the amount of [*insert: dollar amount*] per Occurrence and [*insert: dollar amount*] Annual Aggregate.

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

In the event that [*Local Government Owner or Operator*] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the DNREC has determined or suspects that a Release has occurred at an UST System covered by this guarantee, the Guarantor, upon written instructions from the Department shall make funds available to pay for corrective actions and compensate third parties for Bodily Injury and Property Damage in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [*Local Government Owner or Operator*] has failed to perform corrective action for Releases arising out of the operation of the above-identified ~~tank~~ UST System(s) in accordance with Part E of these 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.

In the event that the Department determines that [*Local Government Owner or Operator*] has failed to perform corrective action for Releases arising out of the operation of the above-identified UST Systems in accordance with Part E of Delaware's Regulations Governing Underground Storage Tanks, the Guarantor upon written instructions from the Department shall make funds available to pay for corrective actions in an amount not to exceed 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~~ UST System(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Department, shall make funds available to compensate third parties for Bodily Injury and Property Damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees to notify [*Owner or Operator*] by Verified Service of a voluntary or involuntary proceeding under Title 11 {Bankruptcy}, U.S. Code naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [*Owner or Operator*] pursuant to the Regulations.

(6) Guarantor agrees to remain bound under this guarantee for so long as [*Local Government Owner or Operator*] shall comply with the applicable financial responsibility requirements of Part F for the above identified UST Systems, except that Guarantor may cancel this guarantee by sending notice by Verified Service 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. If notified of a probable Release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the Release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future Releases.

(7) The Guarantor's obligation does not apply to any of the following:

(a) Any obligation of [*Local Government Owner or Operator*] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily Injury to an employee of [insert Local Government Owner or Operator] arising from, and in the course of, employment by [insert: Local Government Owner or Operator];

(c) Bodily Injury or Property Damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property Damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: Local Government Owner or Operator] that is not the direct result of a Release from an UST System;

(e) Bodily injury or Property Damage for which [insert: Owner or Operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the Requirements of Part F, §1.3

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [Local Government Owner or Operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in ~~Appendix~~ §3.15, Form O 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:

3.16 Form P: Local Government Guarantee Without Standby Trust Made By A Local Government

APPENDIX FORM P

LOCAL GOVERNMENT GUARANTEE WITHOUT STANDBY TRUST MADE BY A LOCAL GOVERNMENT

FC: 76

DNREC Facility ID#:

Guarantee made this [date] by [name of guaranteeing entity], a Local Government organized under the laws of [name of State], herein referred to as Guarantor, to DNREC and to any and all third parties, and obliges, on behalf of [Local Government Owner or Operator].

Recitals

(1) Guarantor meets or exceeds [select one: the Local Government bond rating test requirements of Part F, §2.8, the Local Government financial test requirements of Part F, §2.9, the Local Government fund under Part F, §2.11.]

(2) [Local Government Owner or Operator] owns or operates the following Underground Storage Tank System(s) (USTs) covered by this guarantee:

Attach ~~Appendix~~ §3.18, Form R, Underground Storage Tank Schedule for Financial Assurance listing all UST Systems assured by this Local Government Guarantee.

This guarantee satisfies Part F 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 UST Systems or locations, indicate the type of coverage applicable to each UST System or location] arising from operating the above-identified UST System(s) in the amount of [insert: dollar amount] per Occurrence and [insert: dollar amount] Annual Aggregate.

(3) Incident to our Substantial Business Relationship with [Local Government Owner or Operator], Guarantor guarantees to the Department and to any and all third parties and obliges that:

In the event that [Local Government Owner or Operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a Release has occurred at an UST System covered by this guarantee, the Guarantor, upon written instructions from the Department shall make funds available to pay for corrective actions and compensate third parties for Bodily Injury and Property Damage in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [Local Government Owner or Operator] has failed to perform corrective action for Releases arising out of the operation of the above-identified ~~tank~~ UST System(s) in accordance with Part E, the Guarantor upon written instructions from the Department shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [Owner or Operator] fails to satisfy a judgment or award based on a determination of liability for Bodily Injury or Property Damage to third parties caused by ["sudden" and/or "nonsudden"] Accidental Releases arising from the operation of the above-identified UST Systems, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Department, shall make funds available to compensate third parties for Bodily Injury and Property Damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the Guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), Guarantor shall send within 120 days of such failure, by certified mail, notice to [Local Government Owner or Operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [Owner or Operator] by Verifiable Service 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 the Regulations.

(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 Part F for the above identified UST Systems, except that Guarantor may cancel this guarantee by sending notice by Verifiable Service 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. If notified of a probable Release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the Release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future Releases.

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

(a) Any obligation of [Local Government Owner or Operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily Injury to an employee of [insert: Local Government Owner or Operator] arising from, and in the course of, employment by [insert: Local Government Owner or Operator];

(c) Bodily Injury or Property Damage arising from the Ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property Damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert: Local Government Owner or Operator] that is not the direct result of a Release from an UST System;

(e) Bodily 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 Part .

(9) Guarantor expressly waives notice of acceptance of this guarantee by DNREC, by any or all third parties, or by [Local Government Owner or Operator],

I hereby certify that the wording of this guarantee is identical to the wording specified in Part F, ~~Appendix~~ §3.16, Form P 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:

APPENDIX FORM Q
LOCAL GOVERNMENT FUND MECHANISM

FC: 76

DNREC Facility ID#:

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) Underground Storage Tank System(s) (USTs).

UST Systems at the following facilities are assured by this Local Government fund mechanism:

Attach ~~Appendix~~ §3.18, Form R, Underground Storage Tank Schedule for Financial Assurance listing all ~~tank~~ UST Systems assured by this Local Government Fund.

[Insert: "The Local Government fund is funded for the full amount of coverage required under Part F, §1.3, 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 Part F, §1.3, 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 of close of last fiscal year): _____

[If fund balance is incrementally funded as specified in §24, 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 Part F, ~~Appendix~~ §3.17, Form Q as such Regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

3.18 Form R: Underground Storage Tank Schedule for Financial Assurance

~~APPENDIX FORM R~~
UNDERGROUND STORAGE TANK SCHEDULE FOR FINANCIAL ASSURANCE

FC: 76

DNREC Facility ID#:

DNREC UST Facility ID# _____ - _____

Type of Financial Assurance Mechanism _____

Is this mechanism being used in combination with any other FR mechanism? Yes* No

*If "Yes" note additional FR mechanism _____

Facility Name

Facility Street Address

Facility City

Facility Zip

Owner Name

Owner Street Address

Owner City

Owner State

Owner Zip

Tank ID# _____ (from UST registration form)

Tank capacity _____

Regulated substance stored _____

Tank ID# _____ (from UST registration form)

Tank capacity _____

Regulated substance stored _____
