

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 74A and Section 7401A (7 Del.C. Ch. 74A & §7401A)
7 DE Admin. Code 1352

FINAL

Secretary's Order No.: 2023-WH-0033

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1352:
Aboveground Storage Tanks**

Date of Issuance: December 11, 2023

Effective Date of the Amendment: January 11, 2024

1352 Aboveground Storage Tanks

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 Del.C. §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments ("Amendments") to 7 DE Admin. Code 1352: *Aboveground Storage Tanks* ("Regulation"). Pursuant to 7 Del.C. Chapter 74A, the Department is amending the Regulation to improve clarity for owners/operators of aboveground storage tanks ("AST") and incorporate by reference three documents: the Delaware Risk-Based Corrective Action Protocol ("DERBCAP"), Volume 2; the Hydrogeologic Investigation Guide ("HIG"), Volume 2; and the Vapor Intrusion Guidance ("VIG").

The existing Regulation outlines corrective action protocols for the regulated community in the event of an AST leak, referred to as a "Release." A "Release" is overfilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance into groundwater, surface water, air, or soil. When a Release occurs, the Department refers to the DERBCAP as guidance.

The Department established the DERBCAP Volume 1 in January 2000 as guidance for owners and operators of ASTs for soil screening, cleanup measures, and corrective actions at petroleum tank Release sites. In January 2023, the Department updated DERBCAP in Volume 2. The latest version modifies definitions and references, as well as updates the risk-based screening levels to the standards established in the American Society for Testing and Materials' *E 1739-95 (2015) Standard Guide for Risk-Based Corrective Action at Petroleum Release Sites*. While the DERBCAP is used for guidance by the Department, it is not enforceable by regulatory authority.

The Department recognized the necessity to strengthen and establish regulatory standards for the identification and remediation of AST Releases outlined in the DERBCAP and is incorporating by reference, the *DERBCAP Volume 2* into the Regulation. Additionally, the DERBCAP references the *HIG, Volume 2*; and *VIG*. To ensure a comprehensive inclusion through cross-referencing, the Department is also incorporating by reference the *HIG, Volume 2*, and the *VIG* into the Regulation.

The *HIG Volume 2* serves as a document to assist consultants, responsible parties, and the public with the requirements established in Part E §5.0 of the Regulation- *Leak Reporting And Corrective Action Requirements For Aboveground Storage Tanks*. The HIG outlines the steps for effectively fulfilling the hydrogeologic investigation which includes determining the nature of the Release, the extent of the Release, the physical characteristics of the site where the Release occurred, and the potential risks posed by the Release in accordance with the DERBCAP.

The *VIG* serves as a document to ensure consistency in assessing vapor intrusion risk from the investigative phase, through remediation. The guidance identifies vapor intrusion as a pathway for human exposure to dangerous levels of toxic vapors. It outlines a structured approach to assessing vapor intrusion risk for substances like petroleum and chlorinated solvents, along with other vapors, using screening levels. Additionally, it explains the circumstances that require a vapor intrusion investigation, outlines procedures for evaluating the associated risks, assessing remedial alternatives, and provides direction for developing Long-Term Stewardship Plans.

In addition to incorporating by reference the three documents, the Department is revising language throughout the Regulation. In alignment with Delaware's regulatory style manual, the Department is converting numbers written as a word to numerical digits. The Department also added provisions under "Tier 0 Investigative Exemption". While the DERCAP outlines Tier 0 sampling requirements, the Department has incorporated specific criteria for owners and operators of ASTs

to request exemptions of Tier 0 sampling and analysis.

The Department has also modified and added terms for clarity purposes. The definition of "Aboveground Storage Tank" has been revised to mean each compartment will be considered an individual AST. Currently, regardless of the number compartments, an AST is considered a single entity. Additional terms have also been defined for clarity, such as Best Management Practices, DERBCAP, Fiduciary, Foreclosure, HIG, Imminent threat of a release, Lender, Repair, Responsible Party, Security interest, and Tier 0.

The Department is also removing Part B, Section 14.0, *Site Assessment Requirement* and consolidating the language within the Regulation. More specifically, the sampling language from Section 14.0 has been added to appropriate sections throughout the Regulation and other language requirements of this section are included in the *DERBCAP, Volume 2*.

The Amendments allow the Department to enforce the measures outlined in the DERBCAP with the goal to prevent and detect a Release in ASTs, and execute protocols specified in the HIG and the VIG. Moreover, the Amendments enhance clarity of the Regulation for the regulated community and ultimately protect human health, safety and the environment.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these Amendments, pursuant to 7 *Del.C.* §§6010(a) and 7 *Del.C.* Chapter 74A. The Department published its initial proposed regulation Amendments in the August 1, 2023, *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on August 30, 2023. All notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

It should be noted that after publication in the August 1, 2023, *Delaware Register of Regulations*, the Department made additional non-substantive revisions to the initial proposed Amendments (Department's Exhibit 7). The revisions, as set forth in the proposed *revised* Amendments, were properly vetted by the Department at the time of the virtual hearing and do not constitute a significant alteration to what was initially proposed. Therefore, no further public notification or commentary is required by the Department.

There were eighteen (18) members of the public in attendance at the virtual public hearing. Pursuant to 29 *Del.C.* §10118(a), the hearing record remained open for receipt of additional written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on September 14, 2023, with one (1) written comment having been received by the Department.

Following the close of the Record with regard to public comment, and at the request of the Hearing Officer, a Technical Response Memorandum ("TRM") was provided by the Department's staff in the Division of Waste and Hazardous Substances and details the comment and response, in the same. Hearing Officer Theresa Smith prepared her report dated December 1, 2023 ("Report"), which expressly incorporated the Department's proposed *revised* Amendments into the hearing record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed *revised* Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the record developed by the Department's experts in the Division of Waste and Hazardous Substances, and established by the Hearing Officer's Report, I find that the regulatory Amendments to 7 DE Admin. Code 1352, *Above Storage Tanks*, are well-supported. I further find that the Department's Waste and Hazardous Substances experts fully developed the record to support adoption of these proposed revised Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §§6010(a) 7 *Del.C.* Chapter 74A;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch.60, to issue an Order adopting these proposed *revised* Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on August 30, 2023, and during the 15 days subsequent to the hearing (through September 14, 2023), before making any final decision;
4. Promulgation of the proposed revised amendments to 7 DE Admin. Code 1352: Aboveground Storage Tanks will enable the Department to amend regulatory requirements for owners/operators of aboveground storage tanks to (1) improve clarity for the regulated community, and (2) incorporate by reference three documents (Delaware Risk-Based Corrective Action Protocol, Volume 2; Hydrogeologic Investigation Guide, Volume 2; and Vapor Intrusion Guidance;
5. The Department has reviewed the proposed *revised* Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Chapter 104, and believes the same to be lawful, feasible, and desirable. It was determined that the proposed amendment to the term "tank," defined as "each compartment considered as a

tank," will impose additional annual fees for 1% of the current regulated community that owns and operates aboveground storage tanks that have compartmentalized tanks. It was also determined that the proposed amendment will not establish reporting requirements, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;

6. The Department's Hearing Officer's Report, including its established record and the recommended proposed *revised* Amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed regulatory Amendments, as initially published in the August 1, 2023, *Delaware Register of Regulations*, and then subsequently *revised*, as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and
8. The Department shall submit this Order approving the proposed revised Amendments as final regulations to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require, and the Department determines is appropriate.
9. The Department shall serve and publish its Order on its internet site.

Lisa Borin Ogden
For Shawn M. Garvin
 Secretary

1352 Aboveground Storage Tanks

PART A GENERAL REQUIREMENTS FOR ~~ASTS~~ ASTs

1.0 General Provisions

1.1 Statement of Authority and Purpose

1.1.1 These Regulations are enacted in accordance with Title 7 **Del.C.** Ch. 60, *Environmental Control*, and Title 7 **Del.C.** Ch. 74A, *The Jeffrey Davis Aboveground Storage Tank Act*.

1.1.2 The Delaware Department of Natural Resources and Environmental Control is responsible for protecting, ~~preserving~~ preserving, and enhancing the environmental quality of water, air and land of the State. In addition, the General Assembly of the State of Delaware has found "that it is therefore necessary to provide for more stringent control of the installation, operation, retrofitting, maintenance, repair, abandonment, and/or removal of aboveground storage tanks to prevent releases and where releases occur, to detect and remediate them at the earliest possible stage, thus minimizing further degradation of soil, air, surface water, and groundwater and promoting public safety."

The Regulations Governing Aboveground Storage Tanks are intended to address existing and potential sources of pollution that may result from ASTs. To ensure the prevention and early detection of a release of a regulated substance should one occur, new ASTs are required to meet acceptable design and installation criteria and existing ASTs are required to retrofit by a schedule set forth to comparable standards. AST design criteria promulgated under these Regulations will minimize the risk of regulated substances impacting the environment. Release confirmation and remediation standards are set forth to require the clean-up of any release that does occur.

1.2 Applicability

1.2.1 The requirements of these Regulations shall apply to all Owners and Operators of an AST as defined in these Regulations unless specifically exempted in these Regulations.

1.2.2 The following ASTs shall only be subject to the requirements of Part A, Section 1.0; Part A, Section 2.0; Part A Section 6.0; and Part A Section 8.0; and Part E of these Regulations:

1.2.2.1 ASTs of 1,100 gallons or less in capacity, located on a farm, and used solely to facilitate the production of crops, livestock, or livestock products on the farm;

1.2.2.2 ASTs used solely to store propane gas;

1.2.2.3 ASTs of 1,100 gallons or less in capacity used solely to store heating fuel for consumptive use on the premises where stored;

1.2.2.4 ASTs of 1,100 gallons or less in capacity used solely to store motor fuel or motor oil for Noncommercial purposes;

1.2.2.5 ASTs installed on a temporary basis, not to exceed six months;

1.2.2.6 ASTs regulated pursuant to Title 7 **Del.C.** Ch. 74B, *Boiler Safety Program*.

- 1.2.2.7 ASTs and associated equipment regulated as a part of a process regulated pursuant to Title 7 **Del.C.** Ch. 77, *Extremely Hazardous Substances Risk Management Act*.
- 1.2.3 The following ASTs shall only be subject to the requirements of Part A, subsection 1.3; PART A, subsection 1.4; PART A, subsection 1.5; PART A, subsection 1.6; Part A, subsection 2.0; Part A, subsection 4.1.1; PART A subsection 4.1.3, PART A, subsection 4.1.4; PART A, subsection 4.1.5; PART A, subsection 4.1.6; PART A, subsection 4.1.7; PART A, subsection 4.1.8, PART A subsection 4.1.9, Part A, subsection 4.2; Part A, subsection 4.3; Part A, subsection 4.4; Part A, Section 6.0; Part A, Section 8.0; Part A, Section 9.0; and Part E of these Regulations:
- 1.2.3.1 ASTs used to store regulated substance other than diesel, kerosene or heating fuel with a capacity greater than 250 gallons and less than 12,499 gallons.
- 1.2.3.2 ASTs used solely to store diesel, kerosene or heating fuel with a capacity greater than 250 gallons and less than 40,000 gallons.
- 1.2.4 ASTs regulated pursuant to 7 **Del.C.** Ch. 63 and the Delaware *Regulations Governing Hazardous Waste* shall be exempted from Part E of these Regulations.
- 1.2.5 The following types of aboveground storage tanks shall not be subject to these Regulations:
- 1.2.5.1 septic tank;
- 1.2.5.2 pipeline facility (including gathering lines) regulated under:
- 1.2.5.2.1 *The Natural Gas Pipeline Safety Act of 1968* as amended [49 U.S.C. §1671 et seq.]; or
- 1.2.5.2.2 *The Hazardous Liquid Pipeline Safety Act of 1979* as amended [49 U.S.C. §2001 et seq.]; or
- 1.2.5.2.3 Pipelines regulated pursuant to 33 U.S.C. and 49 CFR 195 *Transportation of Hazardous Liquids by Pipeline*; or
- 1.2.5.2.4 Pipelines regulated pursuant to 46 U.S.C. and 33 CFR 154 *Facilities transferring oil or hazardous material in bulk* and 33 CFR 156 *Oil and hazardous material transfer operations*.
- 1.2.5.3 surface impoundment, pit, pond, or lagoon;
- 1.2.5.4 liquid trap or associated gathering lines directly related to oil or gas production or gathering operations;
- 1.2.5.5 Flow Through Process Tank that contains a regulated substance or substances and that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of material during the operation of the process. Flow Through Process Tanks include, but are not limited to seal tanks, surge tanks, bleed tanks, check and delay tanks, phase separator tanks, or tanks in which physical or chemical change of a material is accomplished. A Flow Through Process Tanks does not include:
- 1.2.5.5.1 a tank that is used for the storage of material before its introduction into a production process; or
- 1.2.5.5.2 a tank that is used for storage of products or by-products from the production process; or
- 1.2.5.5.3 a tank that is used only to recirculate materials; or
- 1.2.5.5.4 a tank that stores fuel for combustion subsequently used to provide heat for a process.
- 1.2.5.6 transformers, regulators and breakers used for the sole purpose of electrical power distribution and transmission;
- 1.2.5.7 containment vessels operated as part of a publicly owned treatment works as defined pursuant to Title 7 **Del.C.** Ch. 60, *Environmental Controls*, §6002 and regulated pursuant to Title 7 **Del.C.** Ch. 60, *Environmental Controls*, §6003 or used for the storage and conveyance of wastewater to a treatment plant regulated in accordance with the requirements of the *Clean Water Act*.
- 1.2.6 Agricultural/Farm ASTs, shall only be subject to the requirements of Part A and Part E of these Regulations, provided that the Owner or Operator shall comply with a written best management practice for the Agricultural/Farm AST, that has been submitted in writing and has received written approval from the Department. The approved plan must be updated and re-submitted for approval if there are **substantial** changes to conditions described in the plan. Failure to comply with the best management practice shall constitute a violation of this subsection subject to all appropriate enforcement sanctions including ~~but not limited to~~ daily penalties.
- 1.3 Enforcement
- 1.3.1 Any person who violates these Regulations shall be subject to all appropriate legal sanctions including ~~but not limited to~~ the provisions set forth in Title 7 **Del.C.** Ch. 74A, *The Jeffrey Davis Aboveground Storage Tank Act*, §7410A.
- 1.4 Severability

1.4.1 If any provisions of these Regulations are adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of these Regulations shall not be affected thereby.

1.5 Right of Appeals

1.5.1 Any person whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board in accordance with Title 7 **Del.C.** Ch. 60, *Environmental Controls*, §6008.

1.5.2 Any person or party to an appeal before the Environmental Appeals Board who is substantially affected by a decision of the Environmental Appeals Board may appeal to the Superior Court in accordance with Title 7 **Del.C.** Ch. 60, *Environmental Controls*, §6009.

1.6 Joint and Several Liability

1.6.1 Throughout these Regulations, Owners and Operators are jointly and severally liable for all duties and requirements. When used in these Regulations, "Owners or Operators" shall mean that the Owners and Operators are jointly and severally liable for the applicable duties and requirements.

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

2.0 Definitions

The following words, terms and phrases have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

"Aboveground Storage Tank" or "AST" means a single aboveground containment vessel having a capacity of greater than 250 gallons and currently or previously having contained a single regulated substance on or after January 1, 1992. The term includes all ancillary aboveground pipes and dispensing systems up to the first permanently installed point of isolation and all ancillary underground pipes and dispensing systems. Within this definition, the word "vessel" includes any container that can be partially visually inspected, from the exterior, in an underground area. The term AST does not include any of the following:

- septic tank;
- pipeline facility (including gathering lines) regulated under:
 - the *Natural Gas Pipeline Safety Act of 1968* as amended [49 U.S.C. §1671 et seq.], or
 - the *Hazardous Liquid Pipeline Safety Act of 1979* as amended [49 U.S.C. §2001 et seq.]; or
 - Pipelines regulated pursuant to 33 U.S.C. and 49 CFR 195 *Transportation of Hazardous Liquids by Pipeline*; or
 - Pipelines regulated pursuant to 46 U.S.C. and 33 CFR 154 *Facilities transferring oil or hazardous material in bulk* and 33 CFR 156 *Oil and hazardous material transfer operations*.
- surface impoundment, pit, pond, or lagoon;
- liquid trap or associated gathering lines directly related to oil or gas production or gathering operations;
- Flow Through Process Tank that contains a regulated substance or substances and that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of material during the operation of the process. Flow Through Process Tanks include, but are not limited to, seal tanks, surge tanks, bleed tanks, check and delay tanks, phase separator tanks, or tanks in which physical or chemical change of a material is accomplished. A Flow Through Process Tank does not include: 1) a tank that is used for the storage of material before its introduction into a production process; 2) a tank that is used for storage of products or by-products from the production process; 3) a tank that is used only to recirculate material; or 4) a tank that stores fuels for combustion subsequently used to provide heat for a process;
- transformers, regulators and breakers used for the sole purpose of electrical power distribution and transmission;
- containment vessels operated as part of a publicly owned treatment works as defined pursuant to Title 7 **Del.C.** Ch. 60, *Environmental Controls*, §6002 and regulated pursuant to Title 7 **Del.C.** Ch. 60, *Environmental Controls*, §6003 or used for the storage and conveyance of wastewater to a treatment plant regulated in accordance with the requirements of the Clean Water Act.
- An AST that has met the requirements of permanent closure in accordance with these Regulations.

"Accidental Release" as it relates to financial responsibility requirements of Part D, means any sudden or nonsudden release of a regulated substance from an AST that is deemed at the Department's discretion to represent an unacceptable risk to human health, safety or the environment based on accepted principles of risk assessment.

"Agricultural/Farm AST" means an AST less than 40,000 gallons containing a regulated substance, the contents of which are applied to the soil, crops, or livestock or ingested by livestock and used solely to directly

facilitate the production of crops, livestock, livestock products or golf course turf. Crops include fish hatcheries, rangeland, cropland and nurseries including turf grass growing operations. Agricultural/Farm ASTs do not include ASTs used to store substances used in a manufacturing process. A manufacturing process does not include Agricultural/Farm ASTs used to store and blend regulated substances for retail sales.

"Ancillary Piping" means all piping, including valves, elbows, joints, flanges, and flexible connectors, attached to an AST through which regulated substance may flow.

"Annual Aggregate" means the total amount of financial responsibility available to cover all obligations that might occur in one year.

"API" means American Petroleum Institute.

"ASTM" means American Society for Testing and Materials.

"Blanketing" means the technique of maintaining the Ullage volume in a regulated AST below the Limiting Oxidant Concentration (LOC) by the use of an inert gas.

"Best Management Practices" means site specific systems of practices, schedules of activities, prohibitions, maintenance procedures, and management measures that prevent or minimize adverse impacts to the environment.

"Bodily Injury" shall have the meaning given to this term by State law; however this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury;

"Bulk Storage" as it is used in Part B, Section 12.0 of these Regulations, means an AST which is used to store a Flammable Regulated Substance and has the Flammable Regulated Substance added to or withdrawn from the AST by a vessel, tanker truck, rail car or pipeline.

"Cathodic Protection System" means a method to prevent corrosion to metal objects by forcing protective current from an external source onto the structure to be protected to counter or overcome any corrosion activity on its surface.

"CERCLA" means the *Comprehensive Environmental Response, Compensation, and Liability Act of 1980* [42 USC, § 9601(14)] and any amendments thereto.

"Certified API 570 Inspector" means an individual who is certified by the American Petroleum Institute under the terms of the API 570 certification program to perform piping inspections.

"Certified API 653 Inspector" means an individual who is certified by the American Petroleum Institute under the terms of the API 653 certification program to perform AST inspections.

"Certified STI-SP001 Inspector" means an individual who is certified by the Steel Tank Institute (STI) under the terms of the STI certification program to perform shop-fabricated AST inspections.

"Change In Service" means any change to a registered AST to include but not be limited to removal, permanent change in contents, relocation, permanent closure in place, change in status from either In Service Tank or Out of Service Tank, conversion to storage of other than regulated substances or conversion to a use other than as an AST, or when the AST is emptied.

"Chief Financial Officer" in the case of Local Government Owners and Operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the Local Government.

"Combustible" means capable of undergoing combustion.

"Combustion" means the chemical process of oxidation that occurs at a fast enough rate to produce heat and usually light in the form of either a glow or flame.

"Compartmentalized AST" means a single walled compartmentalized AST bearing one Underwriter's Laboratory (UL) label or a double walled compartmentalized AST sharing the same interstice. A compartmentalized AST is a single tank for the purposes of compliance with all applicable requirements of these Regulations. The total capacity of a compartmentalized AST is the sum of all the compartment volumes.

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of an AST under conditions likely to be encountered at an AST facility.

"Consumptive Use" with respect to heating fuel means consumed on the premises where ~~stored~~, stored and is used solely for the operation of equipment used for the generation of heat and is connected directly or via a day tank to the heat generating equipment.

"Continuous Leak Detection" means the uninterrupted measurement of the contents or other characteristics or parameters of an AST which immediately notifies the Operator of the failure of an AST to contain a regulated substance.

"Controlling Interest" means direct ownership of at least 50 percent of the voting stock of another entity;

"Corrective Action" means the sequence of actions, or process that includes confirming a release, site assessment, interim remedial action, remedial action, monitoring, and termination of the remedial action.

"Day" means a calendar day; however, when used to determine when a document is due, or an action is required, and the day falls on the weekend or a holiday, the document may be submitted, or the action started, on the first working day after the weekend or holiday.

"Deflagration" means the propagation of a combustion zone at a velocity which is less than the speed of sound in the unreacted medium.

"Deflagration Pressure Containment" means the technique of specifying the design pressure of a regulated AST and its appurtenances so they are capable of withstanding the maximum pressures resulting from an internal deflagration.

"Deflagration Suppression" means the technique of detecting and arresting combustion in the Ullage volume of a regulated AST while the combustion is still in its incipient stage, thus preventing the development of pressures that could result in a rupture of the AST.

"Department" means the Delaware Department of Natural Resources and Environmental Control.

"DERBCAP" means Delaware Risk Based Corrective Action Protocol.

"Dispensing" as it is used in Part B, Section 12.0 of these Regulations, means an AST which stores a Flammable Regulated Substance, which is transferred directly from the AST into a portable container, or into the fuel tank of a motor, a motor ~~vehicle~~ vehicle, or a boat to be used as a motor fuel.

"Dispensing System" means any device including, ~~but not limited to,~~ hoses (rigid or flexible), piping, fittings, fixtures, gauges, alarms, rupture disks, pressure release valves, flanges, or valves and pumps that are used to distribute, ~~meter~~ meter, or control the flow of regulated substance to and from an AST.

"Domestic Well" means a well that may serve no more than three dwellings and is used for potable nonpublic water supply purposes and may be used for non-potable household purposes.

"Effective Date" means the most recent date of promulgation of these Regulations.

"Electrically Isolated" means the electrical separation of the AST from the piping, and from other metallic structures and the environment by means of a nonconductive fitting or bushing.

"Empty" or **"Emptying"** means to thoroughly clean the interior of the AST and all ancillary piping of all residual regulated substances including ~~but not limited to~~ all sludge, solids, liquids, vapors, and gases.

"EPA" means the United States Environmental Protection Agency.

"Existing AST" means an AST for which substantial physical installation began prior to June 11, 2004. The term substantial physical installation includes, but is not limited to, a permit or contract for the installation.

"External Liner" means a layer or membrane constructed of a material compatible with the contents of the AST and is installed inside an existing secondary containment structure to provide additional assurance of impermeability.

"Facility" means any location or part thereof containing or having contained one or more ASTs.

"Fiduciary" means:

a. A person acting for the benefit of another party as a bona fide:

1. Trustee;

2. Executor;

3. Administrator;

4. Custodian;

5. Guardian of estates or guardian ad litem;

6. Receiver;

7. Conservator;

8. Committee of estates of incapacitated persons;

9. Personal representative;

10. Trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

11. Representative in any other capacity that the Secretary, after providing public notice, determines to be similar to the capacities described in paragraphs (5)a.1. through 10. of this section above; and

b. "Fiduciary" does not mean:

1. A person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust

or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person; or

2. A person that acquires ownership or control of a Facility with the objective purpose of avoiding liability of the person or of any other person.

"Field-Constructed" means an AST which is constructed by assembling on-site at a Facility.

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

- a 10-K report submitted to the SEC; or
- an annual report of tangible net worth submitted to a recognized rating service such as Dun & Bradstreet; or
- annual reports submitted to the Energy Information Administration or the Rural Electrification Administration; or
- audited financial report; or
- annual reports submitted to the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation.

"Fixed Roof" means an AST which has an immovable roof or cover used as the sole means to either contain the vapors from a regulated substance stored within the AST or prevent unwanted contaminants from entering the AST.

"Flammable" means a regulated substance which meets the definition of an NFPA 30 Flammable Liquid.

"Floating Roof" means an AST which has a movable roof or cover which floats or rides upon the surface of a regulated substance to contain vapors from a regulated substance stored within the AST or prevent unwanted contaminants from entering the AST.

"Flow Through Process Tank" means a tank that contains a regulated substance or substances and that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of material during the operation of the process. Flow Through Process Tanks include, but are not limited to, seal tanks, surge tanks, bleed tanks, check and delay tanks, phase separator tanks, or tanks in which physical or chemical change of a material is accomplished. A Flow Through Process Tank does not include: 1) a tank that is used for the storage of material before its introduction into a production process; or 2) a tank that is used for storage of products or by-products from the production process; or 3) a tank that is used only to recirculate materials; or 4) a tank that stores fuel for combustion subsequently used to provide heat for a process.

"Foreclosure"; "foreclose" mean, respectively:

a. Acquiring, and to acquire, a facility through:

1. Purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure sale;
2. A deed in lieu of foreclosure, or similar conveyance from a trustee; or
3. Repossession.

b. If the Facility was security for an extension of credit previously contracted:

1. Conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or
2. Any other formal or informal manner by which the person acquires, for subsequent disposition, title to or possession of a Facility in order to protect the security interest of the person.

"Guarantor" means a business entity that:

- Possesses a controlling interest in the Owner or Operator; or
- Possesses a controlling interest in a firm that has a controlling interest in the Owner or Operator; or
- 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
- 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.

"Heating Fuel" also known as heating oil, means a type of fuel oil that is one of seven technical grades and is used for heating purposes. These grades are: No. 1, No. 2, No 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 residual and other fuels used as substitutes for one of these fuels such as kerosene and diesel when used for heating purposes. It contains one percent (1%) or more of a petroleum ~~product~~, product or was originally derived from a petroleum product or petroleum containing product.

"HIG" means Hydrogeologic Investigation Guidance.

"Imminent threat of a release" means the potential for a Release which requires action to prevent or mitigate damage to the environment or endangerment to public health or welfare which may result from such a release.

"Impervious" means a material of sufficient thickness, density and composition that is impenetrable, or has a permeability of less than 1×10^7 cm/sec. to the regulated substance, and that will prevent the discharge to the lands, ground waters, or surface waters of the State of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the material.

"Impressed Current Cathodic Protection System" means direct current supplied to a Cathodic Protection System.

"Indicated Release" means there are signs that an AST, or the secondary containment system are failing or could potentially fail to contain a regulated substance. Indicated releases are releases that are not observable and are not directly attributable to another source.

"Industrial Well" means a non-potable well that is used in the processing, washing, packing, or manufacturing of a product excluding food and beverages.

"Inert Gas" means a gas which is nonreactive with the contents of an AST. Inert gases may include but shall not be limited to nitrogen, carbon dioxide, helium, argon, xenon and krypton. An inert gas may consist of a mixture of different inert gases.

"Inerting" means the technique by which a combustible mixture in the Ullage volume of an AST is rendered non-ignitable by the addition of an inert gas which reduces the oxidant concentration below the Limiting Oxidant Concentration (LOC).

"In Service" means an AST that:

- is being actively maintained or operated; or
- contains a regulated substance or has a regulated substance regularly added to or withdrawn from the AST; or
- is emptied solely for the purpose of cleaning, routine maintenance, or a change in product, for a time period not to exceed one hundred eighty (180) days.

"Leak" means the failure of an AST to contain a regulated substance.

"Leak Detection" means electronic, manual or mechanical measurement of the contents or other characteristics or parameters of an AST which notifies the Operator of the failure of an AST to contain a regulated substance.

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

- The EPA or the Department to require investigations and/or Corrective Action or to recover the costs of investigations and/or Corrective Action; or
- Or on behalf of a third party for Bodily Injury or property damage caused by an Accidental Release; or
- Any person to enforce the terms of a financial responsibility mechanism.

"Lender" means:

a. An insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. §?1813(c)(2)) or an insured credit union (as defined in the Federal Credit Union Act at 12 U.S.C. §?1752(7)) authorized by law to do business in this State;

b. A bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. §?2001 et seq., as amended) authorized by law to do business in this State;

c. A leasing or trust company that is an affiliate of an insured depository institution authorized to do business in this State;

d. Any person (including a successor or assignee of any such person) that makes a bona fide extension of credit to or takes or acquires a security interest from a nonaffiliated person;

e. Any legal entity authorized to buy or sell loans or interests in loans in a bona fide manner in this State;

f. A person that insures or guarantees against a default in the repayment of an extension of credit, or acts as a surety with respect to an extension of credit, to a nonaffiliated person; and

g. A person that provides title insurance and that acquires a facility as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

"Limiting Oxidant Concentration" (LOC) means the concentration of an oxidant below which a deflagration cannot occur.

"Local Government" shall have the meaning given this term by applicable State law and includes Indian tribes. The term is generally intended to include:

- Counties, municipalities, townships, separately chartered and operated special districts (including Local Government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by State charter or constitution; and

- Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

"Major Repair or Major Alteration" means operations that require cutting, addition, removal and/or replacement of the annular plate ring, the shell to bottom weld, or a sizable portion of the shell of an AST. These include but are not limited to the following:

- the installation of any shell penetration beneath the design liquid level larger than 12 inches National Pipe Standard, or any bottom penetration located within 12 in. of the shell.
- the removal and replacement or addition of any shell plate beneath the design liquid level, or any annular plate ring material where the longest dimension of the replacement plate exceeds 12 in.
- the complete or partial (more than one-half of the weld thickness) removal and replacement of more than 12 in. of vertical weld joining shell plates, or radial weld joining the annular plate ring.
- the installation of a new bottom. This does not include new bottoms in ASTs where the foundation under the new bottom is not disturbed and either condition (1) or (2) are met:
 - (1) For ASTs with annular rings, the annular ring remains intact.
 - (2) For ASTs without annular rings, the repair does not result in welding on the existing bottom within the critical zone.
 - the removal and replacement of any part of the weld attaching the shell to the bottom or to the annular ring.
 - jacking of a tank shell.

"Monitor Well" means a well installed in accordance with the *Delaware's Regulations Governing the Construction and Use of Wells* that will be used for the monitoring of ground water quality.

"Motor Fuel" means petroleum or a petroleum-based substance which is typically used in the operation of a motor vehicle, small engine, or aircraft engine, including:

- Motor gasoline;
- Aviation gasoline;
- No. 1 or No. 2 diesel fuel, and
- Any grade of gasohol.

"Motor Oil" means a petroleum product used to lubricate the internal parts of an engine. The term includes lubricating and operational fluids for the mechanical components associated with the engine. This includes any hydraulic, transmission, gear or braking lubricating or operational fluid that through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

"NACE" means National Association of Corrosion Engineers.

"NAPL" means a Non-Aqueous Phase Liquid composed of one or more organic compounds that are immiscible or sparingly soluble in water. The term encompasses all potential occurrences of NAPL including free, mobile, and residual.

- **"Free NAPL"** means NAPL that is hydraulically connected in the pore space and has the potential to be mobile in the environment.
- **"NAPL Body"** means the 3-dimensional form and distribution of NAPL in the subsurface existing in any phase.
- **"NAPL Conceptual Site Model (NCSM)"** means a model describing the physical properties, chemical composition, ~~occurrence~~ occurrence, and geologic setting of the NAPL body from which estimates of flux, risk and potential remedial action can be generated. The NCSM may be a dynamic, living model that changes through time as a function of natural attenuation or engineered remedial action processes, or additional site knowledge.
- **"Mobile NAPL"** means free NAPL that is moving laterally or vertically in the environment under prevailing hydraulic conditions. The result of the NAPL movement is a net mass flux from one point to another. Not all free NAPL is mobile, but all mobile NAPL must be free NAPL.
- **"Residual NAPL"** means NAPL that is hydraulically discontinuous and immobile under prevailing conditions. Residual NAPL cannot move, but is a source for chemicals of concern dissolved in groundwater or in the vapor phase in soil gas. The residual NAPL saturation is a function of the initial or maximum NAPL saturation and the porous medium.

"New AST" means a tank for which substantial physical installation began on or after June 11, 2004. The term substantial physical installation includes, but is not limited to, a permit or contract for the installation.

"NFPA" means National Fire Protection Association, Inc.

"Noncommercial" means a business or organization whose activities do not result in monetary gain, including ~~but not limited to~~ educational institutions, non-profit organizations under the terms of the Internal Revenue Service code definition in section 501(c), State, Federal and Local governmental entities and religious organizations.

"Non-Ignitable" means a gas or vapor in the presence of an oxidant in which combustion cannot be initiated by the introduction of an ignition source such as a flame, spark, or heat.

"Occurrence" as it relates to financial responsibility, means an accident, including continuous or repeated exposure to conditions, which results in a release from an AST. This definition is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence".

"Operator" means a person operating a facility or who has operated a facility, including, ~~but not limited to,~~ by lease, contract or other form of authorization agreement. Operator includes any Person who has any of the responsibility for the care, custody, and control of the daily operation of an AST.

"Orphan Tank" means:

- a tank for which the last person to operate the tank cannot be identified; or
- a tank on property as to which the property Owner can establish that the Owner did not obtain and could not have obtained, through the exercise of reasonable and due diligence, knowledge of the existence of the tank prior to purchase of the property.

"Out of Service" means an AST that is:

- designated as Out of Service by the Owner and Operator or
- an empty tank except when the AST is emptied solely for the purpose of cleaning, routine maintenance or a change in product for a time period not to exceed ~~one hundred eighty (180)~~ 180 days.

"Owner" means:

- a person who has or has had a legal interest in a Facility or AST; or
- a person who has or has had an equitable interest in a Facility or AST; and
- Owner does not mean any person who, without participating in the management of a Facility or Aboveground Storage Tank, holds indicia of ownership in a Facility or Aboveground Storage Tank primarily to protect the person's security interest or is a fiduciary which has a legal title to or manages any property for purposes of administering an estate or trust of which such property is part. In the case of foreclosure the person shall not be deemed the owner of the Aboveground Storage Tank provided that the person provides notification to the Department within ~~thirty (30)~~ 30 days of the initiation of foreclosure proceedings for any property containing an Aboveground Storage Tank, either In Service or Out of Service utilizing a form provided by the Department.

"Oxidant" means any material that can react with a regulated substance to support combustion in the Ullage of an AST. Oxygen in air is the most common oxidant.

"Participation in Management" means actually participating in the management or operational affairs of an Aboveground Storage Tank or Facility and does not include merely ~~have~~ having the capacity to influence, or the unexercised right to control, an Aboveground Storage Tank or Facility operations.

"PEI" means Petroleum Equipment Institute.

"Permanent Change in Contents" means the replacement of one substance stored in an AST and ancillary piping for another substance that would effect a change in the AST and ancillary piping's regulated status based on capacity and substance stored.

"Permanent Closure in Place" or **"Permanently Closed in Place"** or **"Permanently Closing in Place"** or **"Permanently Closed"** means leaving an AST and ancillary piping in its installed location, removing the regulated substance from the AST and ancillary piping, thoroughly cleaning the interior of the AST and the interior of the ancillary piping, disconnecting the ancillary piping from the AST, securing the AST and the ancillary piping to prevent unauthorized access, and discontinuing active use of the AST and ancillary piping with the intent of not introducing a regulated substance into the AST and ancillary piping.

"Permeability" means the ease with which fluid can move through a material and is measured by the rate of flow in suitable units.

"Person" means an entity, individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, company, association, state, municipality, commission, political subdivision of a state, or any interstate body.

"Pipe" means an impermeable hollow cylinder or tubular conduit that conveys or transports regulated substances, or is used for venting, filling, vapor recovery, or removing regulated substances.

"Professional Engineer" means "engineer", as defined in Title 24 **Del.C.** Chapter 28, *Professional Engineers*, namely, a person who by reason of his or her advanced knowledge of mathematics and the physical sciences, acquired by professional education and practical experience, is technically and legally qualified to practice Professional Engineering, and who is licensed by the Delaware Association of *Professional Engineers*.

"Property Damage" shall have the meaning given this term by applicable State law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in

liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

"Provider of Financial Responsibility" means an entity that provides financial responsibility to an Owner or Operator of an AST through one of the mechanisms listed in these Regulations, including a Guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state required mechanism, or a state.

"Public Well" means a well that is used to supply water to more than three dwelling units, 25 or more employees, or for the preparation or manufacturing of food or beverages, or to the public at large.

"RCRA" means the *Solid Waste Disposal Act*, as amended by the *Resource Conservation and Recovery Act of 1976*, as amended, [42 USC §6901 et seq.].

"Reconstruction" means any work necessary to reassemble an AST that has been dismantled and relocated to a new site.

"Regulated Substance" means a liquid or gas that:

- contains ~~one percent (1%)~~ 1% or more of a hazardous substance as defined in the *Comprehensive Environmental Response, Compensation and Liability Act of 1980* [42U.S.C. §9601(14)] and any amendments thereto; or
- contains ~~0.1 percent (0.1%)~~ 0.1% or more of a carcinogen as defined by EPA in the *Integrated Risk Information System* (IRIS) April 2002 and as updated; or
- is a petroleum product, or contains ~~one percent (1%)~~ 1% or more of a petroleum product, or was originally derived from a petroleum or petroleum containing product, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); or
- contains heating fuel as defined in this Part; or
- is a substance determined by the Secretary through regulation to present a risk to public health or welfare or the environment if released into the environment.

"Release" means the spilling, leaking, discharging, leaching, or disposing of a regulated substance into groundwater, surface water, soil, or air that is not permitted by law, ~~regulation~~ regulation, or permit.

"Release Prevention Barrier" means an Impervious barrier that serves to prevent the escape of regulated substance or to contain or channel the released regulated substance for leak detection.

"Relocation" or **"Relocating"** or **"Relocated"** means removing the regulated substance from an AST, thoroughly cleaning the interior of the AST, moving the AST to a new location within a Facility without a transfer of ownership or moving the AST to a different Facility without a transfer of ownership, installing the AST in its new location, and inspecting the AST prior to its continued use for the storage of a regulated substance.

"Remedial Action" means activities conducted to protect human health, safety, and the environment. These activities include but are not limited to evaluating risk, making no further action determinations, monitoring institutional and engineering controls, and designing and operating cleanup equipment.

"Removal" or **"Removing"** or **"Removed"** means taking the regulated substance from the AST and ancillary piping, thoroughly cleaning the interior of the AST and ancillary piping, completely displacing the AST and ancillary piping from its installed location, and rendering the AST and ancillary piping permanently non-useable or discontinuing use of the AST and ancillary piping as an AST and ancillary piping with the intent of not introducing a regulated substance into the AST and ancillary piping.

"Repair" means to restore to proper operating condition a Tank, Pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, Release Detection equipment or other AST System component that has caused a Release of product from the AST System or has failed to function properly.

"Responsible Party" means any Person who:

- (a) Owns or has a legal or equitable interest in a Facility or an AST;
- (b) Operates or otherwise controls activities at a Facility;
- (c) At the time of storage of Regulated Substances in an AST System, operated or otherwise controlled activities at the Facility or UST System, or owned or held a legal or equitable interest therein;
- (d) Arranged for or agreed to the placement of an AST System by contract, agreement or otherwise;
- (e) Caused or contributed to a Release from an AST System; or
- (f) Caused a Release as a result of transfer of a Regulated Substance to or from an AST System.

"Retrofit" or **"Upgrade"** means to modify an AST to meet standards contained in these Regulations.

"Sacrificial Anode Cathodic Protection System" means a system to control corrosion of a metal surface which entails installing an electrode of an electrochemical cell that will oxidize preferentially to the metal surface that has been made the cathode of the electrochemical cell.

"Secondary Containment" means a containment system designed and constructed to retain any regulated substance that leaves the primary containment including an AST and Ancillary Piping and prevent any regulated substance from reaching the surface water, groundwater, or adjacent land before cleanup occurs. Included are structures/ devices sufficiently impermeable to contain released regulated substances for a period of time sufficient for the cleanup and removal of captured material including;

- dikes, berms or retaining walls;
- curbing;
- diversion ponds, holding tanks, sumps;
- vaults;
- double-walled tanks;
- liners external to the tanks;
- other means as approved by the Department.

"Secretary" means the Secretary of the Department of Natural Resources and Environmental Control or a duly authorized designee.

"Security interest" means an interest in an AST or AST system or in a Facility or property on which an AST or AST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain, certain assignments, factoring agreements, accounts receivable financing arrangements, and assignments, if the transaction creates or establishes an interest in an AST or AST system or in the facility or property on which the AST or AST system is located, for the purpose of securing a loan or other obligation.

"Shop-Fabricated" means an AST which is constructed at a tank manufacturer's plant and transported to a Facility for installation.

"Site Assessment" means to measure for the presence of a release where contamination is most likely to be present at an AST site. Selection of sample types, sample locations and measurement methods shall be based on the nature of the substance stored, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release. A site assessment is not restricted to the property containing the AST System.

"Spark Extinguishing System" means a process in which the radiant energy of a spark or an ember is detected and the spark or ember is quenched.

"Spent Acid" or **"Spent Caustic"** means an acid or caustic regulated substance which was used in a process where it was mixed with, or reacted with, or used as a catalyst to produce, or may have come in contact with a Flammable liquid as defined by NFPA 30.

"State" means the State of Delaware.

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

"Substantial Governmental Relationship" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an AST release such as coterminous boundaries, overlapping constituencies, common ground-water aquifer, or other relationship other than monetary compensation that provides a motivation for the Guarantor to provide a guarantee.

"Tangible Net Worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing economic benefits obtained or controlled by a particular entity as a result of past transactions.

~~**"Tank Management Section"** means the Tank Management Section of the Division of Waste and Hazardous Substances in the Delaware Department of Natural Resources and Environmental Control.~~

"Termination" means only those changes that could result in a gap in financial responsibility coverage as where the insured has not obtained substitute coverage or has obtained substitute financial responsibility coverage with a different retroactive date of the original policy.

"Tier 0", as described in DERBCAP, means the initial process of gathering and evaluating data at the time of a tank related activity to assess soil and confirm the presence or absence of a release of a regulated substance.

"UL" means Underwriters Laboratories, Inc.

"Ullage" means the volume of a Fixed Roof AST which does not contain a regulated substance in liquid form. It is synonymous with the vapor space.

"Underground Pipe" means piping or portions of piping meeting all of the following conditions:

- Is physically underground and cannot be visually inspected; and
- Conveys or transports a regulated substance stored in the AST; and
- Is located between the AST and the first vessel, ~~tank tank~~, or other piece of equipment (other than piping components such as pumps, valves and the Dispensing System) that does not meet the definition of an AST.

"Upgrade" or **"Retrofit"** means to modify an AST to meet standards contained in these Regulations.

"Upper Flammable Limit (UFL)" means the highest concentration of a flammable substance in which combustion can propagate in the presence of an oxidant.

"Vault" means a structure that completely encloses the tank and must be constructed of materials compatible with the Regulated Substance to be contained in the AST.

"Verifiable Service" means delivery of mail by means of a delivery service that provides verification upon delivery.

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

3.0 Reference Standards

3.1 Referenced Standards Organizations

3.1.1 The referenced standards listed in this Section have served in part as the basis for the standards enacted under these Regulations. The most recent editions of the referenced standards are available for review and inspection with prior notification at the Department of ~~Natural Resources and Environmental Control, Tank Management Section~~ and from the following sources (addresses of the cited organizations are subject to change):

- 3.1.1.1 American Petroleum Institute (API), 1220 L Street, N.W., Washington, D.C. 20005-4070, (202) 682-8375.
- 3.1.1.2 National Association of Corrosion Engineers (NACE), P. O. Box 218340, Houston, Texas 77218, (713) 492-0535.
- 3.1.1.3 Underwriters Laboratories (UL), 333 Pfingsten Road, Northbrook, Illinois 60062-2096, (847) 272-8800.
- 3.1.1.4 National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269, (617)770-3000.
- 3.1.1.5 American Society for Non-destructive Testing (ASNT), P.O. Box 28518, 1711 Arlington Lane, Columbus, Ohio 43228-0518, (614-274-6003).
- 3.1.1.6 Steel Tank Institute (STI), 944 Donata Court, Lake Zurich, Illinois 60047, (847) 438-8265.
- 3.1.1.7 American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19429-2959.
- 3.1.1.8 American Society of Mechanical Engineers (ASME), ASME International Two Park Avenue, New York, NY 10016-5990, (800) 843-2763.
- 3.1.1.9 National Board Inspection Code, National Board of Boiler and Pressure Vessel Inspectors Testing, 1055 Crupper Drive, Columbus, OH 43229-1183, (614)888-8320.
- 3.1.1.10 United States Department of Labor, Occupational and Safety and Health Administration (OSHA), 200 Constitution Avenue, Washington, D.C. 20210.

3.2 Applicability

3.2.1 In these Regulations, all referenced standards mean the ~~dition~~ edition or version referenced in Part A of the Regulations. The referenced standards apply to all ASTs without regard to or limitation by the application or usage of the referenced standard as expected or specified by the publishers of the referenced standards. For example, API 650 expressly applies only to tanks that contain petroleum, but as utilized in these Regulations, API 650 applies to all ASTs. Where there is an irreconcilable conflict between a standard or recommendation published by an industry or professional organization and referenced by these Regulations, and a requirement in these Regulations, the most stringent shall apply and control. Where there is an irreconcilable conflict between standards or recommendations published by industry or professional organizations and referenced by these Regulations, the most stringent shall apply and control.

3.3 Titles of Standards

- 3.3.1 American Petroleum Institute (API)
 - 3.3.1.1 API Standard 570, *Piping Inspection Code: In-Service Inspection, Rating, Repair, and Alteration, of In-Service Piping Systems*, 3rd Edition. November 2009.
 - 3.3.1.2 API Standard 620, *Design and Construction of Large, Welded, Low-Pressure Storage Tanks*, 12th Edition, 2013.
 - 3.3.1.3 API Standard 650, *Welded Steel Tanks for Oil Storage*, 12th Edition, March 2013.
 - 3.3.1.4 API Recommended Practice 651, *Cathodic Protection of Aboveground Petroleum Storage Tanks*, September 2014 Edition.
 - 3.3.1.5 API Standard 653, *Tank Inspection, Repair, Alteration, and Reconstruction*, 4th Edition with Addendum #1(2010), Addendum #2 (2012) and Addendum #3 (2013).
 - 3.3.1.6 API Specification 12D, *Specification for Field Welded Tanks for Storage of Production Liquid*, Edition 11, 2008.
 - 3.3.1.7 API Standard 2000, *Venting Atmospheric and Low Pressure Storage Tanks*, 7th Edition, 2014.
 - 3.3.1.8 API Recommended Practice 1615, *Installation of Underground Petroleum Storage Systems*, 6th Edition, April 2011.
 - 3.3.1.9 API Recommended Practice 2015, *Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks*, 7th Edition, May 2014.
 - 3.3.1.10 API Recommended Practice 2016, *Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks*, 1st Edition, 2001.
- 3.3.2 National Association of Corrosion Engineers (NACE)
 - 3.3.2.1 NACE Standard Practice 0169-2013, *Control of External Corrosion on Underground or Submerged Metallic Piping Systems*, 2013 Edition.
 - 3.3.2.2 NACE Recommended Practice 0193-2011, *External Cathodic Protection of On-grade Carbon Steel Storage Tank Bottoms*, 2011 Edition.
 - 3.3.2.3 NACE Standard Practice 0294-2006, *Design, Fabrication, and Inspection of Tanks for the Storage of Concentrated Sulfuric Acid and Oleum at Ambient Temperatures*, 2006 Edition.
- 3.3.3 Underwriters Laboratory, Inc. (UL)
 - 3.3.3.1 UL142, *Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids*, 9th Edition, December 2006.
 - 3.3.3.2 UL971, *Standard for Nonmetallic Underground Piping For Flammable Liquids*, 1st Edition, 1995 with revisions through March 2006.
 - 3.3.3.3 UL2085, *Standard for Protected Aboveground Tanks for Flammable and Combustible Liquids*, 2nd Edition, December 1997.
- 3.3.4 National Fire Protection Association (NFPA)
 - 3.3.4.1 NFPA 30, *Flammable and Combustible Liquids Code*, 2015 Edition
 - 3.3.4.2 NFPA 303A, *Automotive and Marine Service Station Code*, 2011 Edition
 - 3.3.4.3 NFPA 69, *Standards on Explosion Prevention Systems*, 2014 Edition.
 - 3.3.4.4 NFPA 704, *Standard for the Identification of the Fire Hazards of Materials for Emergency Response*, 2012 Edition.
 - 3.3.4.5 NFPA 30A, *Code for Motor Fuel Dispensing Facilities and Repair Garages*, 2015 Edition.
- 3.3.5 American Society for Non-destructive Testing (ASNT)
 - 3.3.5.1 SNT-TC-1A, *Personnel Qualifications and Certification in Nondestructive Testing*, 2011 Edition.
 - 3.3.5.2 ASNT, *Central Certification Program NDT Level II*, November 2010 Edition.
- 3.3.6 Steel Tank Institute (STI)
 - 3.3.6.1 SP001, *Standard for Inspection of In-Service Shop Fabricated Above Ground Tanks for Storage of Combustible and Flammable Liquid*, 5th Edition, September 2011.
 - 3.3.6.2 SP031, *Standard for Repair of Shop-Fabricated Aboveground age of Flammable and Combustible Liquids*, 4th Edition, November 2008.
- 3.3.7 American Society for Testing and Materials (ASTM)
 - 3.3.7.1 ASTM D-2517, *Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings*, 2011 Edition.
 - 3.3.7.2 ASTM D-2996, *Standard Specification for Filament Wound Fiberglass (Glass-Fiber-Reinforced Thermosetting Resin) Pipe*, 2007 Edition.

- 3.3.7.3 ASTM D-2583-13A, *Standard Test Method for Indentation Hardness of Rigid Plastics by Means of a Barcol Impressor*, 1996 Edition.
- 3.3.8 American Society of Mechanical Engineers (ASME)
 - 3.3.8.1 ASME RTP-1 ~~[-2013]~~, *Reinforced Thermoset Plastic Corrosion Resistant Equipment*, 2013 Edition.
 - 3.3.8.2 ASME, *Boiler and Pressure Vessel Code Section VIII, Division 1, Design & Fabrication of Pressure Vessels*, 2013 Edition.
 - 3.3.8.3 ASME B31.1, ~~Power Piping~~ *Power Piping*, 2014 Edition.
 - 3.3.8.4 ASME B31.3, ~~Process Piping~~ *Process Piping*. 2012 Edition.
 - 3.3.8.5 ASME B31.4, ~~Pipeline Transportation Systems for Liquids and Slurries~~ **Pipeline Transportation Systems for Liquids and Slurries**. 2012 Edition.
- 3.3.9 National Board Inspection Code (NBIC)
 - 3.3.9.1 *National Board Inspection Code, Part 3, Repairs and Alterations*, 2013 Edition.
- 3.3.10 Occupational Safety and Health Administration (OSHA)
 - 3.3.10.1 OSHA, 29 CFR, 1910.1200, ~~Occupational Safety and Health Standards, Toxic and Hazardous Substances, Hazard Communication~~ **Occupational Safety and Health Standards, Toxic and Hazardous Substances, Hazard Communication**. May 2012.
- 3.4 **Incorporation by Reference [?]**
 - 3.4.1 The Delaware Risk-Based Corrective Action Protocol, ~~[Volume 1 Volume 2]~~, dated January, 2023, published by the Department of Natural Resources and Environmental Control, for Petroleum Underground and Aboveground Storage Tank Sites is hereby adopted and incorporated by reference as the Delaware Risk-Based Corrective Action Protocol and is an enforceable part of these Regulations.
 - 3.4.2 The Hydrogeologic Investigation Guidance, **[Volume 2]**, dated January, 2023, published by the Department of Natural Resources and Environmental Control, is hereby adopted and incorporated by reference for the purposes of compliance with Corrective Action requirements established in Part E and is an enforceable part of these Regulations.
 - 3.4.3 The Investigation, Risk Determination and Remediation Guidance for the Vapor Intrusion Pathway Guidance, dated January, 2023, published by the Department of Natural Resources and Environmental Control, is hereby adopted and incorporated by reference for the purposes of compliance with Corrective Action requirements established in Part E and is an enforceable part of these Regulations.

7 DE Reg. 1765 (06/01/04)

20 DE Reg. 815 (04/01/17)

4.0 Tank Registration and Fees

- 4.1 Registration Requirements
 - 4.1.1 Any person that owns or operates an AST, with the exception of those ASTs listed in Part A, subsection 1.2.2 shall register each AST with the Department utilizing an AST registration form provided by the Department.
 - 4.1.2 Annual payment of registration fees shall be made in accordance with Part A, Section 4.5 of these Regulations, on or before February 1 of every year and until the Department receives a formal notice that the AST has been removed or permanently closed or undergone a permanent change in contents in accordance with these Regulations.
 - 4.1.3 No person shall own or operate an AST unless the AST is registered with the Department
 - 4.1.4 Any person who sells or otherwise transfers ownership of an AST shall notify the new Owner of the AST registration requirements of Part A, of these Regulations.
 - 4.1.5 The Owner shall sign and date all AST registration submittals.
 - 4.1.6 The Owner shall notify the Department in writing of any significant change in the information presented on the original registration form utilizing a form provided by the Department, including but not limited to change of address, change of tank ownership, change of tank Operator, or a change in service at least ~~ten~~ **(10) 10** days prior to the change.
 - 4.1.7 Owners may provide notice for multiple ASTs at a single Facility using one AST registration form, but Owners with ASTs located at more than one Facility must file a separate AST registration form for each Facility.

- 4.1.8 Each registration form shall have attached a Safety Data Sheet (SDS) which complies with the definition of such as contained in OSHA, 29 CFR, 1910.1200, Hazard Communication, with the exception of those ASTs storing heating fuel, diesel, kerosene or gasoline.
- 4.1.9 ASTs that are not subject to an annual registration fee as specified in PART A, subsection 4.5 of these Regulations, are not required to have their registrations renewed on an annual basis by the submittal of any documentation. The AST registration remains in effect until the Department is notified of the AST's removal, permanent closure, permanent change in contents, or transfer of ownership.
- 4.2 Existing ASTs
 - 4.2.1 Owners and Operators shall notify the Department of all existing ASTs that have contained a Regulated Substance on or after January 1, 1992, by completing an AST registration form provided by the Department and submitting the form to the Department by September 5, 2002.
- 4.3 Change In Service, Permanent Closure in Place, Emptying and Removal
 - 4.3.1 The Owner and Operator of any AST which would become subject to these Regulations due to a Change In Service shall comply with these Regulations before instituting the changed use.
 - 4.3.2 Owners or Operators shall notify the Department utilizing a form provided by the Department prior to Removing, Permanently Closing in Place, Emptying, or making a Change In Service to an AST. The notification form must be received by the Department at least ~~ten (10)~~ 10 days prior to beginning the removal or permanent closure in place, emptying, or making a Change In Service to the AST, except in the case of a retrofit or upgrade which shall require the notification as specified in PART A, subsection 4.6, unless such action is in response to an imminent threat to human health, safety or the environment.
 - 4.3.3 Removal or permanent closure in place or Change In Service of an AST without required notification of the Department is prohibited.
 - 4.3.4 Any change in the schedule of work for a Change In Service must be communicated to the Department in writing a minimum of ~~forty-eight (48)~~ 48 hours prior to the new scheduled date of work.
 - 4.3.5 The Owner shall notify the Department in writing of the actual date of completion of any Change In Service.
- 4.4 Transfer of Ownership
 - 4.4.1 When a transfer of ownership of an AST occurs, the new Owner shall submit a completed registration form all required Safety Data Sheets, and proof of compliance with the financial responsibility requirements in PART D of these Regulations to the Department so that the Department shall receive these forms no later than ~~seventy-two (72)~~ 72 hours after the transfer or in accordance with an alternate schedule approved by the Department.
 - 4.4.2 The seller or former Owner shall at the time of ownership transfer, deliver to the buyer and new Owner all available documents and information relevant to the AST, including ~~but not limited to:~~
 - 4.4.2.1 Regulated Substance storage records;
 - 4.4.2.2 Any approved plans for new installations;
 - 4.4.2.3 Copies of registration forms;
 - 4.4.2.4 Testing data and reports;
 - 4.4.2.5 Reports documenting AST Permanent Closure in Place and Removal;
 - 4.4.2.6 Tank lining specifications used, if applicable;
 - 4.4.2.7 Monitoring reports;
 - 4.4.2.8 Soil and groundwater sampling and laboratory chemical analyses reports;
 - 4.4.2.9 Site assessment reports;
 - 4.4.2.10 Equipment maintenance schedules and logs;
 - 4.4.2.11 Repair records.
 - 4.4.3 Any change in the structure of the AST Owner, including but not limited to any change in the corporate form and any change in the form of the business entity, shall constitute a transfer of ownership.
- 4.5 Registration Fees
 - 4.5.1 On or before February 1 of each calendar year, Owners and Operators of an AST shall submit to the Department an annual per tank registration fee in accordance with Title 7 **Del.C.** Ch. 74A, *The Jeffrey Davis Aboveground Storage Tank Act*, §7413A and the table in PART A, subsection 4.5.3 of these Regulations.
 - 4.5.2 A registration fee not received by the Department by October 1, 2002 or by February 1 of each calendar year thereafter is subject to a late charge of 10% of the total fee.

4.5.3 Registration Fee Schedule

Tank Size	Substance Stored	Annual Fee
Greater than or equal to 12,499 gallons and less than 40,000 gallons	Regulated substance other than diesel, heating fuel or kerosene	\$300.00 <u>\$300</u>
Greater than or equal to 40,000 gallons	All regulated substance	\$750.00 <u>\$750</u>
Greater than or equal to 12,499 gallons and less than 40,000 gallons	Ag/Farm ASTs	\$300.00 <u>\$300</u>
Greater than or equal to 40,000 gallons	Ag/Farm ASTs	\$750.00 <u>\$750</u>

4.5.4 No annual registration fee will be required if an AST is removed or permanently closed in place or undergoes a permanent change in contents from a regulated substance to a non-regulated substance prior to the February 1 deadline for payment of the registration fee. To qualify for this exemption, the registration fee shall be assessed until the Owner or Operator of the AST has completed the requirements in these Regulations for compliance with the notification and removal or permanent closure in place or permanent change in contents requirements of these Regulations and the Department has received all required sample results.

4.5.5 The initial AST registration fee shall not be assessed until the calendar year following the year in which the AST installation is completed.

4.6 Retrofitting or Upgrading of ASTs

4.6.1 AST Owners and Operators shall notify the Department of all retrofits or upgrades of an AST utilizing a form provided by the Department and include construction plans and supporting documents such as equipment and manufacturer specifications, at least ~~ten (10)~~ 10 days prior to beginning the retrofit or upgrade work, or other schedule as approved by the Department.

4.6.2 If within the ~~ten (10)~~ 10 day period, the required notification to the Department is completely satisfied, and written approval from the Department has been received the retrofit or upgrade construction may proceed without waiting for the expiration of the ~~ten (10)~~ 10 days.

4.6.3 If within ~~one (1)~~ 1 year after the receipt of the written approval from the Department the retrofit or upgrade work has not commenced, the approval shall expire. The Owner may submit a new registration form and a letter requesting an extension to the Department.

4.6.4 The retrofit or upgrade of the AST may proceed after the Department has issued written approval of the retrofit or upgrade construction plans. The Department shall issue a formal letter of approval or denial within ~~ten (10)~~ 10 days of the Department's receipt of the retrofit or upgrade notification. If the Owner does not receive written notification from the Department within the ~~ten (10)~~ 10 days the Owner may commence retrofit or upgrade construction work provided that:

4.6.4.1 The Owner notifies the Department in writing of the date retrofit or upgrade construction work will commence; and

4.6.4.2 The Owner shall recognize that any actions taken without prior approval is at the risk of the Owner and does not absolve the Owner of the obligation to comply with all applicable requirements of the Regulations.

8 DE Reg. 1167 (02/01/05)

17 DE Reg. 750 (01/01/14)

20 DE Reg. 815 (04/01/17)

5.0 Alternative Procedures Approval Requirements

5.1 Alternative Procedures

5.1.1 The Owner or Operator of an AST subject to the provisions of these Regulations may request in writing a determination from the Department that any requirement of these Regulations shall not apply to such AST, and shall request approval of an alternative procedure as required.

5.2 Requirements for Requesting an Approval of an Alternative Procedure

5.2.1 The Department in its discretion may approve alternative procedures or technology or a combination of alternative procedures or technologies not specified in the Regulations. The alternative procedure request shall be submitted in writing and shall set forth as a minimum the following information:

- 5.2.1.1 Name and location of the Facility and the specific AST(s) for which an alternative procedure is sought; and
- 5.2.1.2 The specific provision of the Regulations for which an alternative procedure is sought; and
- 5.2.1.3 The contents of the AST; and
- 5.2.1.4 The basis for the alternative procedure, including but not limited to the technical difficulties that would result from compliance with the established provision; and
- 5.2.1.5 The alternative procedure or technology for which approval is sought; and
- 5.2.1.6 Documentation that demonstrates that the alternative procedure or technology meets or exceeds the performance standard for approved technologies and that the alternative procedure or technology offers a no less stringent degree of protection for human health, safety or the environment as would the requirements specifically established in these Regulations.

5.3 Tier 0 Investigation Exemption

5.3.1 For any activity that requires a Tier 0 investigation, an Owner or Operator may seek relief from the Tier 0 investigation requirements by providing the following information to the Department, as appropriate:

- 5.3.1.1 Photographs, maps, or drawings of the AST and associated containment area, with written explanation as to how the containment area functions to ensure a Release will be contained, with no impacts to the subsurface of the soil or groundwater; and
- 5.3.1.2 Cross sectional maps illustrating soil strata; and
- 5.3.1.3 Documentation of historic release events illustrating effective containment design with the successful recovery of lost product where an impact to the environment was averted; and
- 5.3.1.4 Existing on-site monitoring well data from other federal or state environmental investigations; and
- 5.3.1.5 Any additional supplemental information that would be helpful to the Department in determining if a Tier 0 investigation is warranted.

5.3.4 Department Response Response.

~~5.3.4~~ The Department shall provide a written response within ninety (90) days to all requests for alternative technology approvals. The written response shall state the Department's justification for denial, approval, or approval with conditions of the request. If the technology or procedure or a combination of technologies or procedures is approved, the Owner and Operator shall comply with any conditions imposed by the Department on its use to ensure the protection of human health, safety or the environment.

17 DE Reg. 750 (01/01/14)

20 DE Reg. 815 (04/01/17)

6.0 Information Access

6.1 Department Authority to Obtain Information

6.1.1 For the purpose of developing or assisting in the development of a standard regulation or of enforcement of these Regulations, an Owner or Operator shall, upon the request of a duly designated officer or employee of the State designated by the Secretary of the Department, furnish information relating to the tank and/or its contents and shall permit the designated officer or employee at all reasonable times to have access to and to copy all records relating to the tank or its contents and to conduct monitoring or require remediation activities, pursuant to Title 7 **Del.C.** Ch. 74A, *The Jeffrey Davis Aboveground Storage Tank Act*, §7406A, which the designated officer or employee deems necessary. For the purpose of developing or assisting in the development of a standard or regulation or enforcement of these Regulations, the designated officer or employee is authorized to:

- 6.1.1.1 ~~enter~~ Enter at reasonable times the Facility or other place where an AST or its records are located. The Owner or Operator shall permit unannounced inspections of tanks pursuant to these Regulations;
- 6.1.1.2 ~~inspect~~ Inspect and obtain samples of regulated substances from any person and to conduct monitoring of tanks, contents, or surrounding soils, water, and/or air. An inspection shall be commenced and completed with reasonable promptness;
- 6.1.1.3 ~~document~~ Document the site assessment, inspection or monitoring with photographs.

6.2 Requirements for Requests for Confidential Data Submission.

- 6.2.1 In submitting data under Title 7 **Del.C.** Ch. 74A, *The Jeffrey Davis Aboveground Storage Tank Act*, and these Regulations, a person required to provide such data may:
 - 6.2.1.1 Designate the data which the Owner or Operator believe is entitled to protections as business or corporate; and
 - 6.2.1.2 Submit such designated data separately from other data submitted under these Regulations.
- 6.3 Protection under United States Code Title 18 Section 1905
 - 6.3.1 Any such records, reports or information obtained shall be entitled to protection under United States Code Title 18 §1905, *Disclosure of confidential information generally*.
- 6.4 Confidential Business Information Designation and Freedom of Information Act Regulations
 - 6.4.1 Any information submitted to the Department in which a confidential business information designation is requested shall be subject to Part A, Section 8.0 of these Regulations and the *Freedom of Information Act Regulations* adopted pursuant to 29 **Del.C.** Ch. 100 as amended.

7 DE Reg. 1765 (06/01/04)

20 DE Reg. 815 (04/01/17)

7.0 Release Preparedness Plan and Release Intervention

- 7.1 Release Preparedness Plan Requirements
 - 7.1.1 The AST Owner or Operator must prepare a Release Preparedness Plan by June 11, 2005, for releases from ASTs at the Facility. A copy shall be kept at the Facility at all times and be made immediately available to the Department upon request. The Plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden Release of a Regulated Substance to soil, surface water or ground water. The Plan shall contain the following information:
 - 7.1.1.1 A Facility map showing the location of buildings, ASTs and their stored products, and site utilities, and
 - 7.1.1.2 Emergency contact phone numbers (i.e. fire, police, DNREC, USCG, hospitals, environmental contractors), and
 - 7.1.1.3 The general location of area receptors and points of exposure such as natural resources, surface water bodies, public and private supply wells, and residential communities, and
 - 7.1.1.4 Fire, explosion and health and safety contingencies; and
 - 7.1.1.5 Contaminated soil excavation, staging, treatment and disposal contingencies; and
 - 7.1.1.6 Regulated substance removal, containment and recovery contingencies; and
 - 7.1.1.7 The Plan shall include the actions Facility personnel shall take to respond to fires, explosions or any unplanned sudden or non-sudden release of a regulated substance to air, soil or surface water at the Facility; and
 - 7.1.1.8 The Plan shall list names, addresses, and office phone numbers of all persons qualified to act as emergency coordinator and this list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates. A Facility emergency coordinator shall be available to respond at all times; and
 - 7.1.1.9 The Plan shall include a list of all emergency equipment at the Facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list shall be kept up to date. In addition, the Plan shall include the location and a physical description of each item on the list and a brief outline of its capabilities; and
 - 7.1.1.10 The Plan shall include an evacuation plan for Facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes in cases where the primary routes could be blocked
 - 7.1.2 A Release Preparedness Plan formulated under the direction of another local, State or federal program or a Facility emergency or operational plan that meets the objectives of this Section may be accepted by the Department as proof of compliance with this Section.
 - 7.1.3 The Release Preparedness Plan shall be reviewed and amended if:
 - 7.1.3.1 Applicable regulations are revised.
 - 7.1.3.2 The Plan fails after a release.

7.1.3.3 The Facility changes its design or operations.

7.1.3.4 The list of emergency coordinators changes.

7 DE Reg. 1765 (06/01/04)

20 DE Reg. 815 (04/01/17)

8.0 Submittal Of Confidential Information

8.1 Denial of Claim of Confidentiality

8.1.1 Any claim of confidentiality as to the name and address of applicants on any registration or notification forms will be denied by the Department.

8.2 Requirements for Business Confidentiality Claim

8.2.1 A business confidentiality claim shall be asserted at the time of submission of the information or at the first opportunity provided, and shall be asserted by a person claiming confidentiality, or the Department may release the information without further notice to the person. Business information is entitled to confidential treatment if:

8.2.1.1 The business has asserted a business confidentiality claim which has not expired by its terms, nor been waived nor withdrawn, and

8.2.1.2 The business has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information and that it intends to continue to take such measures, and

8.2.1.3 The information is not, nor has been, reasonably obtainable without the business' consent by other persons (other than governmental bodies) by the use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding), and

8.2.1.4 No statute specifically requires disclosure of the information, and

8.2.1.5 The business has satisfactorily shown that disclosure is likely to cause substantial harm to its competitive position or the information is voluntarily submitted and its disclosure would likely impair the Department's ability to obtain necessary information in the future.

8.3 Release of information to EPA

8.3.1 Any information to which this Section applies, which may be entitled to confidential treatment as determined by the Department, may be released upon request to the United States Environmental Protection Agency (EPA).

8.4 Confidentiality and Freedom of Information Act

8.4.1 Any information submitted to the Department in which a confidential business information designation is requested shall be subject to Part A, Section 8.0 of these Regulations and the *Freedom of Information Act Regulations* adopted pursuant to 29 **Del.C.** Ch. 100 as amended.

7 DE Reg. 1765 (06/01/04)

20 DE Reg. 815 (04/01/17)

9.0 Signage Requirements

9.1 Requirements for Hazard Labeling of ASTs

9.1.1 All ASTs with a capacity greater than 250 gallons and containing a regulated substance other than diesel, heating fuel or kerosene shall be labeled using the hazard rating system in accordance with NFPA 704, *Standard for the Identification of the Fire Hazards of Materials for Emergency Response*.

9.1.2 All ASTs with a capacity greater than 19,999 gallons containing diesel, heating fuel or kerosene shall be labeled using the hazard rating system in accordance with NFPA 704, *Standard for the Identification of the Fire Hazards of Materials for Emergency Response*.

9.2 Requirements for Labeling of Empty ASTs

9.2.1 All ASTs with a capacity greater than 250 gallons and containing a regulated substance other than diesel, heating fuel or kerosene shall be labeled with the word "Empty" if the tank contents have been removed.

9.2.2 All ASTs with a capacity greater than 19,999 gallons containing diesel, heating fuel or kerosene shall be labeled with the word "Empty" if the tank contents have been removed.

9.3 Requirements for Labeling of Contents and Tank Identification Number of ASTs

9.3.1 All ASTs with a capacity greater than 250 gallons and containing a regulated substance other than diesel, Heating Fuel heating fuel or kerosene shall be labeled with the name of the tank contents or the name of the chemical family associated with the tank contents and the tank identification number as noted on the DNREC registration form.

- 9.3.2 All ASTs having a capacity greater than 19,999 gallons and containing diesel, heating fuel or kerosene shall be labeled with the name of the tank contents or the name of the chemical family associated with the tank contents and the tank identification number as noted on the DNREC registration form.
- 9.4 Compliance Date for Labeling of ASTs
- 9.4.1 All ASTs existing on February 1, 2006 that are required to have a label in accordance with the requirements of PART A, subsection 9.1, PART A, subsection 9.2, or PART A, subsection 9.3 shall be appropriately labeled by February 1, 2006.
- 9.4.2 All ASTs installed or brought into service after February 1, 2006 that are required to have a label in accordance with the requirements of PART A, subsection 9.1, PART A, subsection 9.2, or PART A, subsection 9.3 shall be appropriately labeled before regulated substance is stored in the AST.
- 9.5 Requirements for Labeling of Permanently Closed AST
- 9.5.1 All ASTs with a capacity greater than 250 gallons and contained a regulated substance other than diesel, heating fuel or kerosene and which are permanently closed in accordance with the requirements of these Regulations shall be labeled with the words Permanently Closed and the date of permanent closure within ~~thirty (30)~~ 30 days of the closure date, or for ASTs that were permanently closed prior to the most recent effective date of these Regulations, labels must be affixed within ~~ninety (90)~~ 90 days of the most recent effective date of these Regulations.
- 9.5.2 All ASTs with a capacity greater than 19,999 gallons and contained diesel, heating fuel or kerosene and which are permanently closed in accordance with the requirements of these Regulations shall be labeled with the words Permanently Closed and the date of permanent closure within ~~thirty (30)~~ 30 days of the closure date, or for ASTs that were permanently closed prior to the most recent effective date of these Regulations, labels must be affixed within ~~ninety (90)~~ 90 days of the most recent effective date of these Regulations

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

PART B INSTALLATION AND UPGRADE REQUIREMENTS FOR NEW AND EXISTING ASTS

1.0 New ASTs and AST Relocations

- 1.1 General Requirements for All New ASTs and AST Relocations
- 1.1.1 AST Owners and Operators shall notify the Department at least ~~sixty (60)~~ 60 days prior to installation of all proposed ~~New~~ new ASTs or Relocated ASTs used for storing Regulated Substances. Notice shall specify as a minimum:
- 1.1.1.1 ~~the~~ The date of commencement of installation activities;
- 1.1.1.2 ~~location~~ Location including the address and a plan view dimensioned drawings of the Facility of sufficient detail to locate the AST's with respect to the property lines and buildings or other structures located on the property and showing the relation of the AST to the site and the site to the surrounding area;
- 1.1.1.3 ~~drawings~~ Drawings, design data, and material cut sheets for the type of AST and piping Leak Detection systems;
- 1.1.1.4 ~~description~~ Description of the Regulated Substance to be stored including, Safety Data Sheet which complies with the definition of such as contained in OSHA, 29 CFR, 1910.1200, Hazard Communication, with the exception of those ASTs storing heating fuel, diesel, kerosene or gasoline and CAS registry number or numbers if available;
- 1.1.1.5 ~~type~~ Type of overfill protection device, including drawings and manufacturer specifications;
- 1.1.1.6 ~~detail~~ Detail showing the proposed method of drawing of the secondary containment including the calculations demonstrating the capacity;
- 1.1.1.7 ~~the~~ The design drawing of the proposed Cathodic Protection System showing the layout, calculations on the Cathodic Protection System, material cut sheets including anodes, cables, rectifier, hour meter and backfill, as applicable;
- 1.1.1.8 ~~description~~ Description and drawings of the AST(s) and foundation to be installed, including dimensions, capacity, material of construction, manufacturer's name and address, model number, supplier's name and address, and any other information that completely describes the AST and foundation;

- 1.1.1.9 ~~description~~ Description of piping to be used, including pipe diameters, materials, connections, manufacturer specifications and piping diagrams, as applicable;
- 1.1.1.10 ~~any~~ Any other information that shall accurately convey the intended AST configuration.
- 1.1.1.11 ~~type~~ Type of measuring gauge, and drawings and manufacturer specifications detailing the measuring gauge;
- 1.1.1.12 ~~drawings~~ Drawings, design data, material cut sheets detailing the release prevention barrier;
- 1.1.1.13 ~~drawings~~ Drawings, design data, and calculations for all normal and emergency venting systems;
- 1.1.1.14 ~~design~~ Design data for exterior corrosion protection.
- 1.1.2 No new ASTs shall be constructed of wood or concrete after June 11, 2004.
- 1.1.3 Upon notification by the AST Owner or Operator, a review by the Department of the notification and accompanying documents shall be made for compliance with the requirements for new ASTs or relocated ASTs as applicable, and
 - 1.1.3.1 A formal letter of approval or denial of the installation shall be issued by the Department to the Owner and Operator within ~~sixty (60)~~ 60 days of the Department's receipt of the installation notification and supporting documentation as specified in PART B, subsection 1.1.
 - 1.1.3.2 If a denial is issued, all required corrections and compliance with the new AST requirements or relocated AST requirements, as applicable, shall be met before the installation can be approved.
 - 1.1.3.3 If within the ~~sixty (60)~~ 60 day notification period, the Department or its designee issued a formal letter of approval, the installation of the AST may begin.
- 1.1.4 Approval letters shall be posted at the construction site at the Facility where the new AST installation or AST relocation is in progress.
- 1.1.5 During construction, an Owner or Operator shall not cause or allow a substantial design change which is not in accordance with the approved plans and all terms and conditions of the Department's approval.
- 1.1.6 The design Engineer of record shall approve in writing any and all substantial design changes and resubmit to the Department for formal approval.
- 1.1.7 A formal approval of installation shall be valid for one year from the date of approval. If construction of the AST is not initiated within one year of issuance of the Department's letter of approval, the Owner or Operator shall request an extension in writing, including the cause for the delay and the expected date of construction initiation, or the approval shall lapse. For the purpose of this rule, initiated shall mean construction equipment commonly used in Facility or AST construction has been mobilized to the site and that materials used in the construction of the Facility or AST have been delivered to the site and construction has begun.
- 1.1.8 Department approval for installation of an AST shall not eliminate the need to obtain applicable approvals and permits from the authority(ies) enforcing the *State Fire Prevention Regulations*, local building codes or other State or Federal laws or regulations.
- 1.1.9 All ASTs, piping, appurtenances and secondary containment shall be compatible with the regulated substance stored in the AST.
- 1.1.10 ~~After the most recent Effective Date of these Regulations new~~ New ASTs shall not be installed within a minimum distance of a ~~one hundred and fifty (150)~~ 150 foot radius from a public or industrial well, unless otherwise approved by the Department. A retrofit or upgrade of an AST shall not be considered a new installation for the purposes of this section.
- 1.1.11 ~~After the most recent Effective Date of these Regulations new~~ New ASTs shall not be installed within a minimum distance of a ~~one hundred (100)~~ 100 foot radius from a domestic well, unless otherwise approved by the Department. A retrofit or upgrade of an AST shall not be considered a new installation for the purposes of this section.
- 1.1.12 The Owner shall notify the Department in writing within ~~seven (7)~~ 7 days after the date of final completion of a new installation. The Department shall complete a final on-site inspection within ~~ten (10)~~ 10 days of receipt of the written notice of final installation completion. The Department shall issue written approval to operate or send a letter detailing deficiencies within ~~ten (10)~~ 10 days after the final Department on-site inspection. If the Owner does not receive written notification from the Department within the ~~ten (10)~~ 10 days, the Owner may commence tank operations provided that:
 - 1.1.12.1 The Owner notifies the Department in writing of the date tank operations will commence; and
 - 1.1.12.2 The Owner shall recognize that any actions taken without prior approval is at the risk of the Owner and does not absolve the Owner of the obligation to comply with all applicable requirements of the Regulations.

1.2 Construction Permit Fees

- 1.2.1 The Department shall assess a one-time construction permit fee for a new AST based on the construction fee table below for an AST constructed after June 11, 2004. Any Person required to pay a fee under Title 16 **Del.C.** Ch. 66, *Fire Prevention*, to the State Fire Marshal related to an AST shall receive a 10% reduction in the construction permit fee.

Construction Permit Fee Schedule

Tank Size	Substance Stored	Construction Fee
Greater than or equal to 12,499 gallons and less than 40,000 gallons	Regulated substance other than diesel, heating fuel or kerosene	\$1,500.00
Greater than or equal to 40,000 gallons	All regulated substance	\$3,750.00
Greater than or equal to 12,499 gallons and less than 40,000 gallons	Ag/Farm ASTs	\$1,500.00 *Does not apply if approved Best Management Practice is on file with the Department
Greater than or equal to 40,000 gallons	Ag/Farm ASTs	\$3,750.00

Note: An AST which was Out of Service or permanently closed prior to June 11, 2004 and is intended to be placed into service is subject to the above construction permit fee schedule.

8 DE Reg. 1167 (02/01/05)

17 DE Reg. 750 (01/01/14)

20 DE Reg. 815 (04/01/17)

2.0 Design and Construction Requirements for New Metallic Field-Constructed ASTs

2.1 General Requirements for Design and Construction of New Metallic Field-Constructed ASTs

2.1.1 All new metallic Field-Constructed ASTs that will contain Regulated Substances shall:

2.1.1.1 Be of welded construction.

2.1.1.2 Meet or exceed the following design or manufacturing standards, as applicable:

2.1.1.2.1 API Standard 620, *Design and Construction of Large, Welded, Low-Pressure Storage Tanks*;

2.1.1.2.2 API Standard 650, *Welded Tanks for Oil Storage*;

2.1.1.2.3 API Standard 12D, *Specification for Field Welded Tanks for Storage of Production Liquids*;

2.1.1.2.4 NACE SP0294; *Design, Fabrication, and Inspection of Tanks for the Storage of Concentrated Sulfuric Acid and Oleum at Ambient Temperatures*;

2.1.1.2.5 NFPA 30, *Flammable and Combustible Liquids Code*;

2.1.1.2.6 Other standards approved by the Department.

2.1.2 All **[new]** metallic Field-Constructed ASTs ~~installed after June 11, 2004~~ shall have a suitable foundation capable of supporting the AST full of product or the test media without excessive differential settlement as defined in API 653. The foundation design and construction shall be based on sound engineering practices. The foundation design shall provide positive drainage of water away from the base. ASTs located in areas subject to flooding shall be protected from flotation.

2.1.3 All new metallic Field-Constructed ASTs ~~installed after June 11, 2004~~ with tank bottoms in contact with soil shall be protected from corrosion in accordance with Part B, Section 5.0.

2.1.4 All new metallic Field-Constructed ASTs ~~installed after June 11, 2004~~ shall be placed on a release prevention barrier. The integrity of the release prevention barrier shall not deteriorate due to exposure to the elements or soil in the presence of regulated substances. The following are acceptable release prevention barriers:

2.1.4.1 An impervious soil layer or geosynthetic clay liner with a permeability of 1×10^{-7} cm/sec or less; or

2.1.4.2 An impervious geosynthetic liner installed in accordance with manufacturer's recommendations such as a 60 mil unreinforced liner, 40 mil reinforced liner, or a material of similar or more stringent specifications that is compatible with the Regulated Substance being stored; or

2.1.4.3 A double bottom with Leak Detection monitoring for the presence of a leak of a regulated substance; or

- 2.1.4.4 An impervious concrete slab foundation.
- 2.1.5 All new metallic Field-Constructed ASTs ~~installed after June 11, 2004~~ shall have secondary containment installed in accordance with PART B, Section 7.0.
- 2.1.6 All new metallic Field-Constructed ASTs ~~installed after June 11, 2004~~ shall have base line data including:
 - 2.1.6.1 Floor and wall/shell thickness measurements which shall be kept on file by the Owner for the life of the AST and which shall be made available to the Department upon request.
 - 2.1.6.2 Material certifications which shall be kept on file by the Owner for the life of the AST and which shall be made available to the Department upon request.
- 2.1.7 A report including the welding procedures, welding certification reports, and any non-destructive testing performed on the AST shall be kept on file by the Owner for the life of the AST and which shall be submitted to the Department prior to placing the AST in service.
- 2.1.8 All new metallic Field-Constructed ASTs ~~installed after June 11, 2004~~ constructed for the purpose of storing sulfuric acid or Spent Acid or Spent Caustic or other regulated substances with similar corrosive properties, shall be subject to additional design consideration including ~~but not limited to~~ NACE Standard SP0294, material compatibility, coating requirements and additional non-destructive examination (NDE).
- 2.1.9 All new metallic Field-Constructed ASTs ~~installed after June 11, 2004~~ shall provide a method of leak detection in accordance with PART B, Section 9.0.
- 2.1.10 All new metallic Field-Constructed ASTs ~~installed after June 11, 2004~~ shall be equipped with an overflow prevention and spill containment system in accordance with PART B, Section 8.0.
- 2.1.11 All ASTs regulated under this Section shall be equipped with normal and emergency venting in accordance with API 2000 and NFPA 30.
- 2.1.12 All new metallic Field-Constructed ASTs ~~installed after June 11, 2004~~ shall be inspected and tested in accordance with API 650 or the design standard(s) under which the AST was constructed as applicable before being placed In Service.
- 2.1.13 All exposed exterior surfaces of all new metallic Field-Constructed ASTs ~~installed after June 11, 2004~~ shall be protected from corrosion.
- 2.1.14 The completed installation of all new metallic Field-Constructed ASTs ~~installed after June 11, 2004~~ is to be inspected and certified by a Certified API 653 Inspector.

20 DE Reg. 815 (04/01/17)

3.0 Design and Construction Requirements for New Metallic Shop-Fabricated ASTs

- 3.1 General Requirements for Design and Construction of New Metallic Shop-Fabricated ASTs
 - 3.1.1 All new metallic Shop-Fabricated ASTs that will contain regulated substances shall meet or exceed the following design or manufacturing standards, as applicable:
 - 3.1.1.1 UL 2085, *Protected Aboveground Tanks for Flammable and Combustible Liquids*;
 - 3.1.1.2 UL 142, *Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids*;
 - 3.1.1.3 API 650 Annex J, *Shop-Assembled Storage Tanks*;
 - 3.1.1.4 NFPA 30, *Flammable and Combustible Liquids Code*;
 - 3.1.1.5 ASME, *Boiler and Pressure Vessel Code, Section VIII, Division I, Design & Fabrication of Pressure Vessels*;
 - 3.1.1.6 Other standards approved by the Department.
 - 3.1.2 All new metallic shop-fabricated ASTs ~~installed after June 11, 2004~~ shall have a suitable foundation capable of supporting the AST full of regulated substance or the test media without excessive differential settlement as defined in API 653 or manufacturer's recommendation. The foundation design and construction shall be based on sound engineering practices. The foundation design shall provide positive drainage of water away from the base. ASTs located in areas subject to flooding shall be protected from flotation.
 - 3.1.3 All new metallic shop-fabricated ASTs ~~installed after June 11, 2004~~ with tank bottoms in contact with soil shall be protected from corrosion in accordance with PART B, Section 5.0.
 - 3.1.4 All new metallic Shop-Fabricated ASTs ~~installed after June 11, 2004~~ shall be placed on a release prevention barrier. The integrity of the Release Prevention Barrier shall not deteriorate due to exposure to the elements or soil in the presence of regulated substances. The following are acceptable release prevention barriers:
 - 3.1.4.1 An Impervious soil layer, or geosynthetic clay liner with a permeability of 1×10^{-7} cm/sec or less; or

- 3.1.4.2 An Impervious geosynthetic liner installed in accordance with manufacturer's recommendations such as a 60 mil unreinforced liner, 40 mil reinforced liner, or a material of similar or more stringent specifications that is compatible with the Regulated Substance being stored; or
- 3.1.4.3 A double bottom or double wall with Leak Detection monitoring for the presence of a leak of a regulated substance; or
- 3.1.4.4 An impervious concrete slab foundation; or
- 3.1.4.5 An AST that is in a saddle or other suitable support may utilize steel containment.
- 3.1.5 All new metallic Shop-Fabricated ASTs ~~installed after June 11, 2004~~ shall have secondary containment installed in accordance with PART B, Section 7.0.
- 3.1.6 Installation of all new metallic Shop-Fabricated ASTs ~~installed after June 11, 2004~~ constructed for the purpose of storing sulfuric acid, Spent Acid or Spent Caustic or other regulated substances with similar corrosive properties shall be subject to additional design consideration including but not limited to NACE Standard SP0294, material compatibility, coating requirements and additional non-destructive examination (NDE).
- 3.1.7 All new metallic Shop-Fabricated ASTs ~~installed after June 11, 2004~~ shall provide a method of leak detection in accordance with PART B, Section 9.0.
- 3.1.8 All new metallic Shop-Fabricated ASTs ~~installed after June 11, 2004~~ shall be equipped with an overflow prevention and spill containment system in accordance with PART B, Section 8.0.
- 3.1.9 All new metallic shop-fabricated ASTs ~~installed after June 11, 2004~~ shall be equipped with normal and emergency venting in accordance with API 2000, NFPA 30, UL 142 and UL 2085, as applicable.
- 3.1.10 All new metallic shop-fabricated ASTs ~~installed after June 11, 2004~~ shall be tested in accordance with industry standards and manufacturer's recommendations before being placed in service.
- 3.1.11 All exposed exterior surfaces of all new metallic shop-fabricated ASTs ~~installed after June 11, 2004~~ shall be protected from corrosion.
- 3.1.12 The completed installation of every new metallic shop-fabricated AST ~~installed after June 11, 2004~~ is to be inspected and certified by an inspector familiar with Shop-Fabricated ASTs such as certified STI-SP001 Inspectors and qualified by experience for such inspections.
- 3.1.13 All new metallic Shop-Fabricated ASTs ~~installed after June 11, 2004~~ shall have base line data including:
 - 3.1.13.1 Floor and wall/shell thickness measurements which shall be kept on file by the Owner for the life of the AST and which shall be made available to the Department upon request.
 - 3.1.13.2 Material certifications which shall be kept on file by the Owner for the life of the AST and which shall be submitted to the Department prior to placing the AST in service.
 - 3.1.13.3 A report including the welding procedures, welding certification reports, and any non-destructive testing performed on the AST shall be kept on file by the Owner for the life of the AST and which shall be submitted to the Department prior to placing the AST in service.

7 DE Reg. 1765 (06/01/04)

20 DE Reg. 815 (04/01/17)

4.0 Design and Construction Requirements for New Non-Metallic Shop-Fabricated and Field-Constructed ASTs

- 4.1 General Requirements for Design and Construction of New Non-Metallic Shop-Fabricated and Field-Constructed ASTs
 - 4.1.1 All new non-metallic ASTs shall be designed, fabricated, inspected, ~~stamped~~ stamped, and installed in accordance with ASME, RTP-1 *Reinforced Thermoset Plastic Corrosion Resistant Equipment*.
 - 4.1.2 No new ASTs shall be constructed of wood or concrete after June 11, 2004.
 - 4.1.3 Flammable substances shall not be stored in non-metallic ASTs without specific approval from the Department.
 - 4.1.4 All new non-metallic ASTs ~~installed after June 11, 2004~~ shall have a suitable foundation capable of supporting the AST full of regulated substance or the test media without excessive differential settlement as defined in API 653 or manufacturer's recommendations. The foundation design and construction shall be based on sound engineering practices. The foundation design shall provide positive drainage of water away from the base. ASTs located in areas subject to flooding shall be protected from flotation.
 - 4.1.5 All new non-metallic ASTs ~~installed after June 11, 2004~~ shall be placed on a release prevention barrier. The integrity of the release prevention barrier shall not deteriorate due to exposure to the elements or soil in the presence of regulated substances. The following are acceptable release prevention barriers:

- 4.1.5.1 An impervious soil layer, or geosynthetic clay liner with a permeability of 1×10^{-7} cm/sec or less; or
- 4.1.5.2 An impervious geosynthetic liner installed in accordance with manufacturer's recommendations such as a 60 mil unreinforced liner, 40 mil reinforced liner, or a material of similar or more stringent specifications and that is compatible with the regulated substance being stored; or
- 4.1.5.3 A double bottom or double wall with Leak Detection monitoring for the presence of a leak of a regulated substance; or
- 4.1.5.4 An impervious concrete slab foundation.
- 4.1.6 All new non-metallic ASTs ~~installed after June 11, 2004~~ shall have secondary containment installed in accordance with PART B, Section 7.0.
- 4.1.7 All new non-metallic ASTs ~~installed after June 11, 2004~~ shall have base line data including:
 - 4.1.7.1 Floor and wall/shell thickness measurements which shall be kept on file by the Owner for the life of the AST and which shall be made available to the Department upon request.
 - 4.1.7.2 Material certifications which shall be kept on file by the Owner for the life of the AST and which shall be submitted to the Department prior to placing the AST in service.
- 4.1.8 Installation of all new non-metallic ASTs ~~installed after June 11, 2004~~ constructed for the purpose of storing sulfuric acid, Spent Acid or Spent Caustic or other regulated substances with similar corrosive properties shall be subject to additional design consideration ~~[including but not limited to]~~ NACE SP0294, material compatibility, coating requirements and additional non-destructive examination (NDE).
- 4.1.9 All new non-metallic ASTs ~~installed after June 11, 2004~~ shall provide a method of leak detection in accordance with PART B, Section 9.0.
- 4.1.10 All new non-metallic ASTs ~~installed after June 11, 2004~~ shall be equipped with an overfill prevention and spill containment system in accordance with PART B, Section 8.0.
- 4.1.11 All new non-metallic ASTs ~~installed after June 11, 2004~~ shall be equipped with normal and emergency venting in accordance with API 2000 and NFPA 30.
- 4.1.12 All new non-metallic ASTs ~~installed after June 11, 2004~~ shall be tested in accordance with industry standards and manufacturer's recommendations before being placed in service.
- 4.1.13 All exposed exterior surfaces of new non-metallic ASTs ~~installed after June 11, 2004~~ shall be protected from corrosion or deterioration.
- 4.1.14 The completed installation of all new non-metallic ASTs ~~installed after June 11, 2004~~ shall be inspected in accordance with ASME RTP-1 **[Reinforced Thermoset Plastic Corrosion Resistant Equipment]** and the NBIC, Part 3 **[Repairs and Alterations,]** Supplement 4.

7 DE Reg. 1765 (06/01/04)

20 DE Reg. 815 (04/01/17)

5.0 Design and Installation Requirements for Cathodic Protection Systems for ASTs

- 5.1 General Requirements for Design and Installation of Cathodic Protection Systems for AST
 - 5.1.1 All New metallic ASTs including double bottom ASTs installed on foundations consisting of sand, soil or other material that can allow moisture penetration and corrosion, shall install a Cathodic Protection System to mitigate external corrosion of the tank bottom.
 - 5.1.2 A Cathodic Protection System for the external bottom of a New or Existing metallic AST shall be designed, installed, inspected and maintained to meet or exceed the requirements of the most recent edition of the following industry standards, as applicable:
 - 5.1.2.1 NACE Standard SP0193 *External Cathodic Protection of On-Grade Carbon Steel Storage Tank Bottoms;*
 - 5.1.2.2 API Recommended Practice 651 - *Cathodic Protection of Aboveground Petroleum Storage Tanks;*
 - 5.1.2.3 NACE Standard SP0169 - *Control of External Corrosion on Underground or Submerged Metallic Piping Systems*
- 5.2 Required Qualifications of Personnel Designing Cathodic Protection Systems
 - 5.2.1 Cathodic Protection Systems shall be designed by individuals who have obtained a NACE Cathodic Protection Specialist Certification and have relevant work experience in the design of Cathodic Protection Systems for ASTs.
- 5.3 Design and Installation Requirements for Cathodic Protection Systems
 - 5.3.1 Cathodic Protection Systems shall be installed at the time of installation or upgrade of a metallic AST and shall be operational at the completion of the new installation or upgrade, or other schedule as approved by the Department.

- 5.3.2 Each Cathodic Protection System shall be designed and installed with test stations or other methods to enable the Owner or Operator to monitor the operation of the Cathodic Protection System.
 - 5.3.3 Consideration for monitoring the cathodic protection status of the underside of the AST bottom shall be provided for in the design.
 - 5.3.4 Cathodic Protection Systems shall be designed to provide corrosion protection for the expected active life of the AST or have provisions to allow for the periodic rehabilitation of the Cathodic Protection System.
 - 5.3.5 Measurements of AST to soil potential shall be made no sooner than ~~sixty (60)~~ 60 days and no later than ~~[one hundred and eighty (180)]~~ 180 days after installation of the Cathodic Protection System in accordance with the requirements of PART C, Section 5.0.
- 5.4 Cathodic Protection Criteria
- 5.4.1 The criteria for determining the effectiveness of cathodic protection shall be as indicated in NACE SP0193. **20 DE Reg. 815 (04/01/17)**

6.0 Design, Construction, and Repair Requirements for Underground Piping

- 6.1 General Requirements for New Underground Piping
- 6.1.1 All underground piping installed after June 11, 2004 shall comply with the requirements of this Section.
 - 6.1.2 All underground piping, fittings and connections that are either in contact with the regulated substance or completely buried shall:
 - 6.1.2.1 Be constructed of fiberglass reinforced epoxy, carbon steel, thermoplastic material extrusions, stainless steel, or galvanized steel; or
 - 6.1.2.2 Be constructed of other materials as approved by the Department.
 - 6.1.3 All underground piping and piping secondary containment materials shall be compatible with the Regulated Substance that is to be stored in the AST.
 - 6.1.4 The underground piping layout shall be designed to minimize crossed lines and interference with conduit and other AST components. If crossing of lines is unavoidable, adequate clearance shall be provided to prevent contact.
 - 6.1.5 All fill pipes leading to a pump-filled AST shall be equipped with a properly functioning check valve or equivalent device which provides automatic protection against backflow whenever the piping arrangement of the fill pipe is such that backflow from the AST is possible.
 - 6.1.6 Each AST connection through which a regulated substance can normally flow shall be equipped with an operating isolation valve to control flow unless the AST connection is located at a point higher than the highest liquid level in the AST, such as at the top of a horizontal AST. The valve shall be located on a nozzle welded to the shell of the AST.
 - 6.1.7 Pipe joints shall be cut accurately and deburred to provide liquid-tight seals. No threaded or flanged connections shall be in contact with the soil.
 - 6.1.8 New underground piping systems shall be designed, constructed, and installed with access and isolation points to permit pressure testing of piping without the need for excavation.
 - 6.1.9 Copper or brass tubing or malleable iron shall not be used in AST underground piping.
 - 6.1.10 All new underground piping shall be tested in accordance with API 570 prior to introduction of any regulated substance into the piping.
 - 6.1.11 Metallic underground piping that penetrates earthen or concrete dike walls or other structures shall be sleeved and electrically isolated from the sleeve.
- 6.2 Requirements for New Non - Metallic Underground Piping
- 6.2.1 New Non-metallic underground piping shall be designed and constructed in accordance with:
 - 6.2.1.1 ASTM Specification D-2996, *Standard Specification for Filament Wound RTRP*; and
 - 6.2.1.2 UL 971, *Standard for Nonmetallic Underground Piping for Flammable Liquids*.
 - 6.2.2 The ultimate shear strength of all adhesive and curing agents shall be in compliance with ASTM D-2517, as approved and supplied by the manufacturer.
 - 6.2.3 Thermoplastic extrusion flexible underground piping shall be designed and constructed in accordance with:
 - 6.2.3.1 UL 971, *Standard for Nonmetallic Underground Piping for Flammable Liquids*.
 - 6.2.4 Other non-metallic underground piping may be approved by the Department.
- 6.3 Requirements for New Steel Underground Piping
- 6.3.1 New Steel Underground Piping:

- 6.3.1.1 ~~shall~~ Shall be standard weight or heavier; and
 - 6.3.1.2 ~~shall~~ Shall be installed in accordance with:
 - 6.3.1.2.1 API Recommended Practice 1615, *Installation of Underground Petroleum Storage Systems*; and
 - 6.3.1.2.2 ASME B31.1, *Power Piping*; and
 - 6.3.1.2.3 ASME B31.3, *Process Piping*; and
 - 6.3.1.2.4 ASME B31.4, ~~Pipeline Transportation Systems for Liquids and Slurries~~ Pipeline Transportation Systems for Liquids and Slurries; and
 - 6.3.1.3 ~~shall~~ Shall have a protective coating and be cathodically protected in accordance with PART B, subsection 6.5; or
 - 6.3.1.4 ~~shall~~ Shall have non-metallic secondary containment; or
 - 6.3.1.5 ~~shall~~ Shall have metallic secondary containment that shall have protective wrapping or dielectric coating and shall be cathodically protected by an Impressed Current Cathodic Protection System or Sacrificial Anode Cathodic Protection System unless the metallic secondary containment is not in contact with the soil and is in a non-corrosive environment; or
 - 6.3.1.6 ~~shall~~ Shall not require the addition of cathodic protection if the steel Underground Pipe is not in contact with the soil and is in a non-corrosive environment.
- 6.4 Requirements for New Other Metallic Underground Piping
- 6.4.1 Metallic underground piping other than steel shall:
 - 6.4.1.1 ~~be~~ Be schedule 40 or heavier thickness; and
 - 6.4.1.2 ~~be~~ Be approved by the Department prior to installation.
- 6.5 Requirements for Corrosion Protection for New Steel Underground Piping
- 6.5.1 Corrosion protection for steel underground piping in contact with the soil shall:
 - 6.5.1.1 ~~consist~~ Consist of a Sacrificial Anode Cathodic Protection System or an Impressed Current Cathodic Protection System designed, fabricated, and installed in accordance with nationally recognized standards including but not limited to API RP651, and NACE SP0169; and
 - 6.5.1.2 ~~have~~ Have a Cathodic Protection System designed by individuals who have obtained a NACE Cathodic Protection Specialist Certification and have relevant work experience in the design of Cathodic Protection Systems for Underground Piping; and
 - 6.5.1.3 ~~be~~ Be designed to provide corrosion protection for the expected active life of the AST system or have provisions to allow for the periodic rehabilitation of the Cathodic Protection System; and
 - 6.5.1.4 ~~have~~ Have a test station or other method of monitoring which enables the Operator to confirm that the Cathodic Protection System is operating properly.
 - 6.5.2 Measurements of Underground Pipe-to-soil potential shall be made no sooner than ~~sixty (60)~~ 60 days and no later than ~~one hundred and eighty (180)~~ 180 days after installation of the Cathodic Protection System in accordance with the requirements of PART C, Section 5.0.
- 6.6 Requirements for Backfill Material for New Underground Piping Installations
- 6.6.1 Backfill material adjacent to the underground piping shall consist of sand or pea gravel. The material shall be clean, washed, inert, free flowing, homogeneous, well granulated, non-corrosive, and free of debris, rock, ice, snow or organic material. Particle length shall be no more than 3/8-3/4" in size and shall comply with the manufacturer's specifications. Mixing of the backfill adjacent to the underground pipe with native substance and/or foreign objects is prohibited.
- 6.7 Repair Requirements for Underground Piping
- 6.7.1 Any repairs to Underground ~~Pipe~~ Piping shall be made to ~~equal~~ meet or exceed standards of the original condition of the underground piping.
 - 6.7.2 At any time excavation of soil or removal of concrete, asphalt, or other cover is required during the course of a Repair, Owners and Operators shall perform soil sampling and analysis in accordance with those requirements identified in DERBCAP to measure for the presence of a Release where contamination is most likely to be present at the AST site.
 - 6.7.3 Within 90 days of completion of a Repair of underground piping Owners and Operators shall submit documentation to the Department including the following:
 - 6.7.3.1 Repair completion documentation; and
 - 6.7.3.2 Results of Tier 0 sampling requirements specified in DERBCAP; and
 - 6.7.3.3 Results of any piping tests required by the Department.

~~6.7.2~~ ~~6.7.4~~ An Owner or Operator may repair holes in underground pipe and fittings with repair methods that include but are not limited to patching, welding, or clamping and that are made in accordance with manufacturer's specifications and applicable industry standards as a temporary repair not to exceed ~~thirty (30)~~ 30 days. After ~~thirty (30)~~ 30 days with a temporary repair the underground piping shall be permanently repaired or shall be taken Out of Service.

~~6.7.3~~ ~~6.7.5~~ Permanent repairs shall be:

~~6.7.3.1~~ ~~6.7.5.1~~ Replacement of the affected section of underground pipe, or

~~6.7.3.2~~ ~~6.7.5.2~~ Full welded encirclement of the affected section of underground pipe.

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7.0 Design and Construction Requirements for Secondary Containment and Spill Containment for New ASTs

7.1 General Requirements for Secondary Containment for ASTs.

7.1.1 Secondary containment shall be required for all ~~New~~ new ASTs ~~constructed after June 11, 2004.~~

7.1.2 Secondary containment shall not be used to store materials. The secondary containment shall be used to collect spills or leaks, which shall then be promptly removed, in accordance with appropriate disposal and safety procedures.

7.1.3 If not roofed or otherwise protected from the accumulation of precipitation, the secondary containment area shall be equipped with a manually-controlled pump or siphon or a gravity drain pipe which has a manually-controlled valve, to remove precipitation that collects within the secondary containment system to a Department approved location.

7.1.4 Secondary containment shall be designed and constructed to retain any regulated substance that leaves the primary containment including an AST and ancillary piping and prevent any regulated substance from reaching the surface water, groundwater, or adjacent land before cleanup occurs.

7.1.5 All drainage valves located within the secondary containment system shall remain closed at all times except during controlled drainage events. Secondary containment systems may be equipped with regulated substance sensors that shall automatically close all drainage valves in the event of a leak with prior approval of the Department.

7.1.6 ASTs installed between June 11, 2004 and the most recent effective date of ~~these Regulations~~ this regulation, shall have all regulated substance transfer areas equipped with a spill containment system capable of containing and collecting those spills and overfills and preventing a release where filling connections are made with vehicles.

7.1.7 All regulated substance transfer areas where filling connections are made with vehicles shall be capable of containing and collecting 110% of the volume of the largest compartment of the largest vehicle that may be utilized and preventing a Release for all new ASTs installed and for all ASTs brought into service ~~after the most recent effective date of these Regulations,~~

7.2 Secondary Containment Options for ASTs

7.2.1 Requirements for Diking Configuration as secondary containment

7.2.1.1 Dikes shall be constructed of materials compatible with the contents of the AST and which shall retain any Regulated Substance that leaves the primary containment including an AST and ancillary piping and prevent any regulated substance from reaching the surface water, groundwater, or adjacent land before cleanup occurs.

7.2.1.2 There shall be no openings or unsealed penetrations of the walls or floor of the dike. Any exceptions will be AST specific and shall require Department approval.

7.2.1.3 All dikes shall have a minimum capacity to contain 110% of the volume of the largest AST within the diked area or 100% of the volume of the largest AST plus six inches of freeboard for precipitation, regardless of engineering controls or design.

7.2.1.4 The extent of the diked area shall be sufficient to capture overflows, splashing caused by overfilling and/or the trajectory of sidewall leaks.

7.2.1.5 Sumps shall be installed as part of all dikes and the dike floors sloped to the sumps to enhance material removal.

7.2.1.6 Pumps which are permanently installed for the removal of collected material to areas outside the dike area shall be locked in the off position when not in use and shall be monitored when in use to avoid discharging regulated substances to the environment. Portable pumps which are used for the removal of collected material to areas outside of dikes shall be monitored while in use to avoid discharging regulated substances to the environment. Pumps which discharge material back to the ASTs within the diked area need not be locked when not in use, but pumps which pump in

either direction shall have valve locks to control discharges outside the dike, and when discharging outside the dike shall be monitored.

7.2.1.7 An inspection and maintenance plan shall be developed to periodically review the condition of the secondary containment system.

7.2.1.8 A permanent walkway, stairway or ramp shall provide access to prevent dike wall degradation.

7.2.2 Requirements for Curbing/Paving as Secondary Containment

7.2.2.1 The paving/curbing combination, to be considered secondary containment, shall have a minimum capacity to contain 110% of the volume of the largest AST, or 100% of the volume of the largest AST plus six inches of freeboard for precipitation, or be able to direct spilled or leaked materials to a containment structure that meets these requirements, regardless of engineering controls or design.

7.2.2.2 The curbing and/or paving shall be constructed of materials compatible with the contents of the ASTs around which they are installed. If necessary, the curbing and paving shall be coated with a protective material.

7.2.2.3 To provide a liquid tight seal, curbing shall be installed as either part of the paving (integrally poured) or, if installed later, shall have a liquid barrier included in the installation.

7.2.2.4 The extent of the curbed area shall be sufficient to capture overflows, splashing caused by overfilling and/or the trajectory of sidewall leaks.

7.2.2.5 Sumps shall be installed as part of all curbs and the floors sloped to the sumps to enhance material removal.

7.2.3 Requirements for Underground Vaults as Secondary Containment

7.2.3.1 A Vault shall completely enclose the AST and shall be constructed of materials compatible with the regulated substance to be contained in the AST and shall have a minimum capacity to contain 110% of the volume of the largest AST.

7.2.3.2 All lines to and from ASTs installed in Vaults shall pass through the roof of the Vault. No lines shall penetrate the walls or floor of the Vault.

7.2.3.3 Each AST shall have its own Vault. Adjacent ASTs may share common walls.

7.2.3.4 Vaults shall be designed according to sound engineering practices.

7.2.3.4.1 The floor shall be designed and constructed to withstand stress resulting from fully loaded ASTs within the Vault.

7.2.3.4.2 The top, walls, and floor shall be designed to withstand the anticipated loading including loading from traffic, soil, and groundwater.

7.2.3.4.3 The Vault shall be constructed to be liquid tight.

7.2.3.5 The AST and Vault shall be suitably anchored to withstand uplifting by either water or a regulated substance, including when the AST is empty.

7.2.3.6 The only openings in a Vault are those necessary for access, inspection, filling, ~~emptying~~ emptying, and venting of the AST.

7.2.3.7 There shall be no backfill around the AST and there shall be sufficient space between the AST and the vault to allow inspection of the AST and equipment. ASTs designed for underground use shall not be used in Vaults.

7.2.3.8 Each vault shall be equipped with Continuous Leak Detection and be capable of detecting vapors and liquids.

7.2.3.9 A means to admit a suitable fire suppression agent shall be provided for each vault that contains flammable or combustible substances.

7.2.3.10 Each vault shall have a means for personnel entry.

7.2.4 Requirements for Double-walled ASTs as Secondary Containment

7.2.4.1 A double walled AST may be used to fulfill the requirements for secondary containment if the AST is installed with all of the following:

7.2.4.1.1 Overfill prevention as required in PART B, Section 8.0; and

7.2.4.1.2 Leak detection as required in PART B, Section 9.0; and

7.2.4.1.3 Where an AST roof is involved, the outer wall of the double walled AST shall be designed to contain 100% of the volume of the AST. If there is an open top, the total containment shall be constructed to contain 110% of the volume of the largest AST within the system or 100% of the volume of the largest AST plus six inches of freeboard for precipitation, regardless of engineering controls or design.

7.2.4.2 The outer containment wall shall be compatible with and capable of containing the regulated substance stored.

7.2.5 Requirements for Secondary Containment External Liners

7.2.5.1 Secondary containment external liners shall be constructed and maintained to retain any Regulated Substance that leaves the primary containment including an AST and Ancillary Piping and prevent any Regulated Substance from reaching the surface water, groundwater, or adjacent land before cleanup occurs for the operational life of the ASTs.

7.2.5.2 External lining materials shall be compatible with the regulated substance stored in the AST.

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8.0 Design and Installation Requirements for Overfill and Spill Prevention

8.1 General Requirements for Design and Installation of Overfill and Spill Protection

8.1.1 Owners or Operators shall institute safe fill, shutdown and transfer procedures or equivalent measures established by the Department, that shall ensure that spills resulting from AST overfills or other Regulated Substance transfer operations do not occur.

8.1.2 Overfill equipment shall be installed on all ASTs ~~constructed after the most recent date of promulgation of these Regulations.~~

8.1.3 Overfill equipment shall be installed on all ASTs reactivated per PART B, Section 16.3 ~~after the most recent date of promulgation of these Regulations.~~

8.1.4 Receipts of Regulated Substance shall be authorized by the Operator, or Facility personnel trained by the Operator or Owner. The authorizing person shall ensure the volume available in the AST(s) is greater than the volume of Regulated Substance to be transferred to the AST(s) before the transfer operation commences. The Operator shall ensure that all AST fill valves not in use are secured and that only the AST(s) designated is receiving Regulated Substance. The Operator shall ensure that the transfer operation is monitored either by manual or automatic means to prevent an overfill.

8.1.5 If the transfer operations are not being continuously monitored by a transfer Operator appropriately trained in safe transfer procedures, the AST shall be equipped with overfill prevention equipment that shall automatically shut off the flow into the AST when the AST is no more than 95% full or other safe fill level approved by the Department. All automatic shutoff equipment shall be equipped with a fail-safe mechanism that shall function in the event of power failure, ~~malfunction~~ malfunction, or similar event.

8.1.6 If the transfer operations are being continuously monitored by a transfer operator appropriately trained in safe transfer procedures, the AST shall be equipped with a ~~high-level~~ high-level alarm or other automatic mechanism approved by the Department, that shall immediately alert the Operator to prevent an overfill event.

8.1.6.1 The ~~high-level~~ high-level alarm shall be monitored continuously and upon alert the Operator shall implement safe shut down procedures to prevent an overfill.

8.1.6.2 The alarm shall consist of a visual and audible device capable of alerting the transfer Operator both by sight and hearing, to prevent an overfill situation. If the Operator is in a surveillance station, this alarm shall cause a warning light and audible signal in that station to activate. In addition, this system shall alarm on failure, ~~malfunction~~ malfunction, or power loss.

8.1.7 If installed, an automatic shutdown system utilized during transfer of a regulated substance shall include the capability to direct the flow of a regulated substance to another AST capable of receiving the transferred regulated substance or the capability to shut down the pumping or transfer system.

8.1.8 All ASTs shall be equipped with a gauge or other measuring device that is readily visible and accurately indicates the level of the regulated substance or quantity of the regulated substance in the AST.

8.1.9 The overfill prevention and measuring device shall operate independently of each other.

20 DE Reg. 815 (04/01/17)

9.0 Leak Detection Requirements ~~[for New ASTs]~~

9.1 General Requirements for Leak Detection

9.1.1 A leak of regulated substances shall be detected and contained before contamination of soil outside the containment area or water resources occurs.

9.1.2 New ASTs shall have a method, or combination of methods, of leak detection that can detect a leak from any portion of the AST. Leak detection methods shall be separate from the method utilized to comply with the requirements for overfill prevention in PART B, Section 8.

- 9.1.3 Leak detection methods shall be installed, calibrated, tested, ~~operated~~ **operated,** and maintained in accordance with the manufacturer's instructions, including routine maintenance checks for operability to ensure that the device is functioning as designed.
- 9.1.4 All manufacturers' instructions, and the performance claims and their manner of determination described in writing by the equipment manufacturer or installer shall be retained at the Facility for the life of the AST.
- 9.1.5 Leak detection systems require approval by the Department prior to installation. A leak detection response level shall be described in writing for each method or combination of methods of leak detection used for an AST.
- 9.1.6 The leak detection method or combination of methods used shall be capable of being inspected at least every ~~seven (7)~~ **7** days to determine if a leak from the AST has occurred.
- 9.1.7 Any interstitial spaces, including ~~[but not limited to]~~ those located in double-walled ASTs, double-walled piping, and double bottoms that are installed as part of a new or an upgraded AST, shall be equipped with interstitial monitoring equipment capable of detecting a discharge of a regulated substance into the interstitial space under all operating conditions.
- 9.1.8 The requirements of PART B, subsection 9.1.2, PART B, subsection 9.1.6 and PART B, subsection 9.1.7 shall not apply to double-walled ASTs that are not in contact with the soil and that additionally meet the requirements for secondary containment in accordance with PART B, Section 7.0.

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

10.0 Relocation, Repairs and Modifications Requirements for ASTs

10.1 General Requirements for Relocation, Repairs and Modifications

10.1.1 At any time excavation of soil or removal of concrete, asphalt, or other cover is required during the course of Relocation, Repairs and Modifications Owners and Operators shall perform soil sampling and analysis in accordance with those requirements identified in DERBCAP and Part E of this regulation, to measure for the presence of a Release where contamination is most likely to be present at the AST site. An Owner or Operator shall comply with the conditions specified in Part A, subsection 5.4 of this regulation to request an exemption of the Tier 0 investigation requirements.

10.1.2 Within 90 days of completion of a Relocation, Repair or Modification, Owners and Operators shall submit documentation to the Department including the following:

10.1.2.1 AST Activity completion documentation; and

10.1.2.2 Results of Tier 0 sampling requirements specified in DERBCAP; and

10.1.2.3 Results of any tests required by the Department.

~~10.1.3~~ 10.1.3 Repairs, modifications and relocations shall be performed, inspected and tested in accordance with API 653 or STI-SP001 or STI-SP031 or NACE SP0294 or ASME RTP-1 *Reinforced Thermoset Plastic Corrosion Resistant Equipment* as applicable or other standards approved by the Department.

10.2 Additional Requirements for Relocated ASTs

10.2.1 All relocated ASTs shall meet the standards for New ASTs as applicable, with the exception that the Department may approve the use of the existing material of construction, and shall meet the following requirements before the AST is utilized for storage of regulated substances:

10.2.1.1 The Owner or Operator shall notify the Department of the scheduled relocation and shall have received a formal letter of approval according to the requirements of PART B, Section 1.0; and

10.2.1.2 A thorough internal and external cleaning and inspection performed by a Certified API 653 Inspector or a Certified STI-SP001 Inspector or individual certified under ASME RTP-1 or National Board Inspection Code, as applicable, determines in its new location that the AST is free of defects per the requirements of the applicable code; and

10.2.1.3 The AST is determined to be structurally sound in its new location by a Professional Engineer or an inspector certified per the applicable code such as ~~[but not limited to,]~~ a Certified API 653 Inspector or a Certified STI-SP001 Inspector, or qualified by training and experience in the absence of a code certification process.

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

11.0 Upgrade Requirements for Existing ASTs

11.1 General Requirements for Upgrading Existing ASTs

11.1.1 At any time excavation of soil or removal of concrete, asphalt, or other cover is required during the course of AST upgrades Owners and Operators shall perform soil sampling and analysis in accordance with those requirements identified in DERBCAP and Part E of this regulation, to measure for the presence of a Release where contamination is most likely to be present at the AST site.

11.1.2 Within 60 days of completion of an AST upgrades Owners and Operators shall submit documentation to the Department including the following:

11.1.2.1 AST Activity completion documentation; and

11.1.2.2 Results of Tier 0 sampling requirements specified in DERBCAP; and

11.1.2.3 Results of any tests required by the Department.

~~44.1.4~~ 11.1.3 By June 11, 2005, all ASTs shall be equipped with a gauge or other measuring device that accurately shows the level of regulated substance or the quantity of regulated substance in the AST.

~~44.1.2~~ 11.1.4 By June 11, 2005, all ASTs shall have an overflow prevention procedure per the requirements in PART B, Section 8.0.

~~44.1.3~~ 11.1.5 By June 11, 2007, all ASTs shall have normal and emergency venting installed in accordance with API 2000 or NFPA 30 or UL142 or UL 2085 as applicable.

~~44.1.4~~ 11.1.6 By June 11, 2014, the required overflow prevention equipment and the measuring device shall function independently of each other per the requirements in PART B, Section 8.0.

~~44.1.5~~ 11.1.7 By June 11, 2011, an AST which is not equipped with cathodic protection or an internal liner approved by the Department and documented to be capable of preventing a release, shall be upgraded to meet the requirements of PART B, subsection ~~44.1.7~~ 11.1.9.

~~44.1.6~~ 11.1.8 By June 11, 2019, an AST which is equipped with cathodic protection in accordance with PART B, Section 5.0, or an internal liner approved by the Department and documented to be capable of preventing a Release, shall be upgraded to meet the requirements of PART B, subsection ~~44.1.7~~ 11.1.9.

~~44.1.7~~ 11.1.9 All ASTs shall be equipped with or comply with at least one of the following per the schedule in PART B, subsection ~~44.1.5~~ 11.1.7 or PART B, subsection ~~44.1.6~~ 11.1.8:

~~44.1.7.1~~ 11.1.9.1 Leak detection equipment in accordance with the requirements of PART B, Section 9.0 or alternate method approved by the Department; or

~~44.1.7.2~~ 11.1.9.2 ~~release Release~~ prevention barrier in accordance with the requirements of PART B; or

~~44.1.7.3~~ 11.1.9.3 Double bottom in accordance with the requirements of PART B; or

~~44.1.7.4~~ 11.1.9.4 Annual in service test or inspection approved by the Department; or

~~44.1.7.5~~ 11.1.9.5 Annual internal inspection in accordance with API 653 or other applicable standard.

~~44.1.8~~ 11.1.10 By June 11, 2007, all ASTs shall comply with the inerting requirements of PART B, Section 12.0.

~~44.1.9~~ 11.1.11 ~~Within one (1) year of the most recent Effective Date of these Regulations, all~~ All ASTs, piping, appurtenances and secondary containment shall be compatible with the regulated substance stored in the AST.

11.2 Upgrade Requirements for Existing Underground Piping Systems

11.2.1 By June 11, 2014, all existing underground piping that does not meet the requirements for new underground piping as required in PART B, Section 6.0 shall be upgraded to meet such requirements.

11.3 Upgrade Requirements for Tanks Built Prior to June 11, 2004, Converting to Storage of a Regulated Substance

11.3.1 Persons, who own an aboveground storage tank installed prior to June 11, 2004; which has only stored non-regulated substances; who intend to convert the aboveground storage tank to the storage of a regulated substance and the conversion will make the tank subject to ~~these Regulations~~ this regulation, shall notify the Department of the change in service on an AST registration form provided by the Department at least ~~sixty (60)~~ 60 days prior to initiating the change in service. The form shall be accompanied with documentation that the tank shall comply with the following requirements:

11.3.1.1 The tank shall be subjected to a thorough internal and external cleaning and inspection performed by a Certified API 653 Inspector or a Certified STI-SP001 Inspector or individual certified under ASME RTP-1 or National Board Inspection Code, as applicable, determining that the tank is free of defects per the applicable code; and

11.3.1.2 All aboveground and underground piping connected to the tank which shall convey a regulated substance shall comply with an API 570 external visual inspection and API 570 pressure test as applicable; and

11.3.1.3 The tank is determined to be structurally sound by a Professional Engineer or an inspector certified per the applicable code such as ~~but not limited to~~ a Certified API 653 Inspector or a Certified STI-SP001 Inspector or individual certified under ASME RTP-1 or National Board

Inspection Code, or qualified by training and experience in the absence of a code certification process; and

11.3.1.4 The tank and underground piping shall comply with the schedule of requirements specified in PART B, subsection 11.1 and PART B, subsection 11.2.

11.3.2 If within the ~~sixty (60)~~ 60 day period, the required notification to the Department is completely satisfied, the conversion to storage of a regulated substance may proceed without waiting for the expiration of the ~~sixty (60)~~ 60 days.

11.4 Upgrade Requirements for Tanks ~~Built After June 11, 2004~~ Converting to Storage of a Regulated Substance

11.4.1 Persons, who own an aboveground storage tank ~~installed after June 11, 2004~~; which has only stored non-regulated substances; who intend to convert the aboveground storage tank to the storage of a regulated substance and the conversion will make the tank subject to ~~these Regulations~~ this regulation, shall notify the Department of the change in service utilizing an AST registration form provided by the Department at least ~~sixty (60)~~ 60 days prior to initiating the change in service. The form shall be accompanied with documentation that the tank shall comply with the following requirements:

11.4.1.1 The tank shall meet the standards for new ASTs as specified in PART B, as applicable; and

11.4.1.2 The tank shall be subject to a thorough internal and external cleaning and inspection performed by a Certified API 653 Inspector or a Certified STI-SP001 Inspector or individual certified under ASME RTP-1 or National Board Inspection Code, as applicable, determining that the tank is free of defects per the applicable code; and

11.4.1.3 All aboveground and underground piping connected to the tank which shall convey a regulated substance shall comply with an API 570 external visual inspection and API 570 pressure test as applicable.

11.4.1.4 The tank is determined to be structurally sound by a Professional Engineer or an inspector certified per the applicable code such as ~~but not limited to~~ a Certified API 653 Inspector or a Certified STI-SP001 Inspector or individual certified under ASME RTP-1 or National Board Inspection Code, or qualified by training and experience in the absence of a code certification process.

11.4.2 If within the ~~sixty (60)~~ 60 days period, the required notification to the Department is completely satisfied, the conversion to storage of a regulated substance may proceed without waiting for the expiration of the ~~sixty (60)~~ 60 days.

7 DE Reg. 1765 (06/01/04)

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

12.0 Inerting Requirements for Ullage Volumes of ASTs Without a Floating Roof

12.1 General Requirements For Inerting an AST without a Floating Roof

12.1.1 All ASTs without a Floating Roof installed or erected after June 11, 2004 and containing Flammable Regulated Substances as defined by NFPA 30, or Spent Acids, or Spent Caustics, or other regulated substances as defined by the Department shall have an automatic system in place to maintain the Ullage volume of the AST below the Limiting Oxidant Concentration (LOC), for any gaseous Oxidant which may be present, by the use of an Inert Gas Blanketing system in accordance with NFPA 69. Systems operated above the Upper Flammable Limit (UFL) shall be subject to approval by the Department prior to installation. Other methods to prevent a Deflagration such as ~~but not limited to~~ Spark Extinguishing Systems, Deflagration Suppression, or Deflagration Pressure Containment shall be subject to approval by the Department prior to installation.

12.1.2 The following ASTs shall be exempt from the Inerting requirements of this Section:

12.1.2.1 All existing shop-fabricated ASTs which meet the requirements of UL 142 and the requirements of the Delaware *State Fire Prevention Regulations*;

12.1.2.2 All existing field-constructed ASTs used for Dispensing which meet the requirements of API 650 and API 2000 and the requirements of the Delaware *State Fire Prevention Regulations*;

12.1.2.3 New shop-fabricated horizontal ASTs less than or equal to 50,000 gallons and new shop-fabricated vertical ASTs less than or equal to 30,000 gallons used for Bulk Storage which meet the requirements of UL 142 and the requirements of the Delaware *State Fire Prevention Regulations*;

12.1.2.4 New shop-fabricated horizontal ASTs less than or equal to 50,000 gallons and new shop-fabricated vertical ASTs less than or equal to 30,000 gallons used for Dispensing which meet the requirements of UL 142 and UL 2085 and the requirements of the Delaware *State Fire Prevention Regulations*;

- 12.1.2.5 New field-constructed horizontal or vertical ASTs used for Dispensing that meet the requirements of API 650 and API 2000 and the requirements of the Delaware *State Fire Prevention Regulations*.
- 12.1.3 An automatic system shall be continuously in place, in use, and operating to designed specifications whenever an AST is in service and has the potential for a flammable atmosphere. The system shall be in place, in use and operated to designed specifications unless the AST has been cleaned sufficiently and purged of flammable vapors to safely permit hot work in, on or around the AST.
- 12.1.4 An automatic system shall be in place, in use, and operating to designed specifications that continuously monitors the LOC or alternate monitoring parameters as approved by the Department so that whenever the required LOC or alternate monitoring parameters is not met the system shall:
 - 12.1.4.1 Energize an audible and a visual alarm at the location where the operating parameters of the affected AST are monitored and controlled; and
 - 12.1.4.2 Be equipped with an emergency system capable of discontinuing the energy supply to any pumps engaged in moving liquid into or out of the affected AST.
- 12.1.5 Work to return the system to specified operating parameters shall begin immediately after an alarm is registered. If the AST cannot be returned to the required LOC within 24 hours, the Department shall be notified and be given an indication of when the AST can be returned to the required LOC.
- 12.1.6 During the time period that the system is not operating within the required LOC no actions shall be taken which unreasonably increase the probability of a deflagration occurring within the affected AST.
- 12.1.7 The system shall be repaired within a time frame mutually agreed to by the Department and the AST Owner or Operator.
- 12.1.8 The Department shall be notified within 24 hours when the affected AST is returned to the required LOC.
- 12.1.9 The gases exhausted or vented from a regulated AST operating under an Inerting system shall be treated in a manner which is compliant with all applicable Department Regulations and Permits.

20 DE Reg. 815 (04/01/17)

13.0 Out of Service Requirements

- 13.1 General Requirements for out of service ASTs
 - 13.1.1 An AST is out of service if the AST:
 - 13.1.1.1 has been designated as out of service by the Owner or Operator; or
 - 13.1.1.2 is an empty tank except when the AST is emptied solely for the purpose of cleaning, routine maintenance or a change in product for a time period not to exceed ~~one hundred eighty (180)~~ 180 days.
 - 13.1.1.3 is not in use, in that it has not had, within any 45-day period, a Regulated Substance transferred into or withdrawn from the AST and has been drained of all contents and is empty.
 - 13.1.2 The Owner and Operator shall notify the Department, utilizing a form provided by the Department, upon taking an AST out of service unless the AST is empty or out of service because of scheduled testing or inspection per ~~these Regulations~~ this regulation.
 - 13.1.3 The Owner and Operator of an AST that has remained out of service for greater than ~~eighteen (18)~~ 18 months shall:
 - 13.1.3.1 Disconnect the AST and isolate from all piping; and
 - 13.1.3.2 Secure the AST to prevent unauthorized entrance or tampering so that a Regulated Substance is not accidentally or intentionally introduced into the AST; and
 - 13.1.3.3 Thoroughly Empty the AST and all ancillary piping and retain documentation of the proper disposition of the removed sludge, liquids, solids and residual regulated substance.
 - 13.1.4 The Owner or Operator of an AST that has remained out of service for a period greater than ~~three (3)~~ 3 years shall assess the site to determine whether there is soil or groundwater contamination attributable to the AST as per the requirements of PART B, Section 14.0 in accordance with the requirements specified in DERBCAP and Part E of this regulation. Within 90 days of completion, the Owner or Operator shall submit the results of the site assessment to the Department. An Owner or Operator shall comply with the conditions specified in Part A, subsection 5.4 of this regulation to request an exemption of the Tier 0 investigation requirements.
 - 13.1.5 An AST that is out of service, but is not empty, shall be in compliance with all the applicable requirements of ~~these Regulations~~ this regulations, until the AST is removed, permanently closed in place, has undergone a permanent change in contents to a non-regulated substance, or is converted to another use in accordance with ~~these Regulations~~ this regulations.

- 13.1.6 An AST that is out of service and is empty is not required to be in compliance with the inspection, monitoring, testing and record keeping requirements of PART C, with the exception of PART C, Section 5.0 as applicable, only during the time the AST is out of service and empty.
- 13.1.7 When an AST has been out of service, is empty, and ~~a site assessment has been performed in accordance with these Regulations~~ all requirements specified in DERBCAP have been satisfied, the AST is determined by the Department to be permanently closed.
- 13.1.8 ASTs that are used periodically, such as for seasonal use or an emergency storage or overflow containment AST that is expeditiously emptied, are not “out of service” even when they do not contain a regulated substance. The AST Owner or Operator must submit a request in writing to the Department to be designated as a seasonal or emergency storage or overflow containment AST.

13.2 Reactivating Out of Service AST

- 13.2.1 An AST Owner or Operator who reactivates an AST, which has been out of service per PART B, subsection 13.1.1 shall notify the Department utilizing a form provided by the Department ~~ten (10)~~ 10 days prior to putting the AST back into service.
- 13.2.2 Prior to placing an AST which has been out of service and empty, back into service, the Owner or Operator shall thoroughly inspect and test the AST and appurtenances per the required time frames in PART C of ~~these Regulations~~ this regulation.
- 13.2.3 An AST which was out of service prior to June 11, 2004 and is intended to be placed into service must comply with all new AST standards in ~~these Regulations~~ this regulation including payment of required construction fees in PART B, Section 1.2 and submission of installation documentation in accordance with PART B prior to being placed back In Service.

7 DE Reg. 1765 (06/01/04)

20 DE Reg. 815 (04/01/17)

14.0 ~~Site Assessment Requirements for AST Removal; or Relocation; or Permanent AST Closure in Place; or Permanent Change in Contents of an AST; or Out of Service; or Retrofit; or Upgrade; or repair; or maintenance~~ [Reserved.]

14.1 ~~General Requirements for Retrofit, Upgrade, repair or maintenance activity~~

- 14.1.1 ~~During any AST activity, when there is evidence of soil or groundwater contamination from a regulated substance attributable to the AST, detected by site assessment, observation, or analysis, the Owner or Operator shall notify the Department immediately of any evidence of soil or groundwater contamination from a regulated substance and shall comply with all notification and corrective action requirements of Part E of these Regulations.~~

14.2 ~~Site Assessment during an AST Removal, Relocation, Permanent Closure in Place, Permanent Change in Contents, Converting the AST to Another Use Out of Service Retrofit, Upgrade, repair or maintenance associated with the AST~~

- 14.2.1 ~~The Owner or Operator of the AST shall perform a site assessment to determine whether there is soil or groundwater contamination attributable to the AST when:~~

- 14.2.1.1 ~~The AST has been out of service for a period greater than three (3) years; or~~
- 14.2.1.2 ~~The AST has a permanent change in contents from a regulated substance to a non-regulated substance; or~~
- 14.2.1.3 ~~After dismantling and removing an AST or permanently closing in place an AST or relocating an AST or converting the AST to a use other than as an AST; or~~
- 14.2.1.4 ~~Soil is excavated during retrofit, upgrade, repair, or maintenance associated with the AST.~~

- 14.2.2 ~~The site assessment necessary to determine if any contamination is present, shall be performed using the following investigative methods, as applicable:~~

- 14.2.2.1 ~~Test pits shall be excavated or soil borings advanced in the immediate vicinity of the AST, and representative soil and groundwater samples shall be obtained.~~
- 14.2.2.2 ~~Soil and groundwater samples shall be obtained from the ground surface immediately beneath the AST, at the location of any visual staining or regulated substance accumulation, and beneath the ancillary piping.~~
- 14.2.2.3 ~~All leak detection devices or subsurface monitoring locations shall be sampled.~~
- 14.2.2.4 ~~The site shall be evaluated in accordance with the most recent Delaware Aboveground Storage Tank Site Assessment Sampling Guidance or other approved Department procedure.~~

- 14.2.3 ~~The soil and groundwater samples shall be submitted to a laboratory certified to perform the required analyses.~~

- 14.2.4 Analytes shall be selected based upon any and all regulated substances stored in the AST over its lifetime. Laboratory analysis methods for the analytes shall be methods approved by the Department.
- 14.2.5 The samples shall be obtained from the locations with the suspected highest concentration of contaminants of concern.
- 14.2.6 A Site Assessment shall not commence without prior written approval by the Department.
- 14.2.7 The Owner or Operator shall complete a site assessment and submit the results to the Department within ninety (90) days of the completion of the activities referenced in PART B, subsection 14.2.2.

7 DE Reg. 1765 (06/01/04)

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

15.0 AST Removal Requirements

15.1 General Requirements for AST Removal

- 15.1.1 The AST Owner or Operator shall notify the Department of the scheduled removal of an AST utilizing a form provided by the Department not later than ten (10) days prior to the removal of an AST.
- 15.1.2 An AST and ancillary piping may be treated as separate entities for the purpose of removal, permanent closure in place or permanent change in contents.
- 15.1.3 The AST Owner or Operator shall ~~comply with the requirements of PART B, Section 14.0~~ perform Tier 0 sampling and analysis in accordance with the requirements specified in DERBCAP and Part E of this regulation. Within 90 days of completion, the Owner or Operator shall submit sampling results to the Department. An Owner or Operator shall comply with the conditions specified in Part A, subsection 5.4 of this regulation to request an exemption of the Tier 0 investigation requirements.

15.2 Additional Requirements for AST Removal

- 15.2.1 To remove an AST, an Owner or Operator shall at a minimum comply with the following requirements:
- 15.2.1.1 Remove all the regulated substance from the AST and ancillary piping; and
- 15.2.1.2 Thoroughly clean the interior of the AST and all ancillary piping of all sludge, solids, and residual regulated substance with documentation of the proper disposition of the removed sludge, solids and residual regulated substance; and
- 15.2.1.3 Completely displace the AST and ancillary piping from its installed location, and render the AST and ancillary piping permanently non-useable or discontinue use of the AST and ancillary piping as an AST and ancillary piping with the intent of not introducing a regulated substance into the AST and ancillary piping.

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

16.0 Permanent Closure in Place

16.1 General Requirements for Permanent Closure in Place of ASTs

- 16.1.1 The Owner or Operator shall notify the Department of the scheduled permanent closure in place of an AST utilizing a form provided by the Department not later than ~~ten (10)~~ 10 days prior to the permanent closure in place of an AST.
- 16.1.2 An AST and ancillary piping may be treated as separate entities for the purpose of removal, permanent closure in place or permanent change in contents.
- 16.1.3 The AST Owner or Operator shall ~~comply with the requirements of PART B, Section 14.0~~ perform Tier 0 sampling and analysis in accordance with the requirements specified in DERBCAP and Part E of this regulation. Within 90 days of completion the Owner or Operator shall submit the Tier 0 sampling results to the Department. An Owner or Operator shall comply with the conditions specified in Part A, subsection 5.4 of this regulation to request an exemption of the Tier 0 investigation requirements.

16.2 Additional Requirements for Permanent Closure in Place of ASTs

- 16.2.1 To Permanently close in Place an AST, the AST Owner or Operator shall at a minimum comply with the following requirements:
- 16.2.1.1 Empty the AST and all ancillary piping of all regulated substances in accordance with API RP2015 and API RP2016 and retain documentation of the proper disposition of the removed sludge, liquids, solids and residual regulated substance for a minimum of ~~three (3)~~ 3 years; and
- 16.2.1.2 Secure the AST to prevent unauthorized entrance or tampering so that a regulated substance is not accidentally or intentionally introduced into the AST; and

16.2.1.3 All permanently closed ASTs shall be labeled in accordance with PART A, subsection 9.5.

16.3 Reactivating a Permanently Closed AST

16.3.1 An AST Owner or Operator who reactivates an AST, which has been permanently closed per this Part, shall notify the Department utilizing a form provided by the Department in accordance with PART B, subsection 1.1, prior to putting the AST back into service.

16.3.2 Prior to placing an AST which has been permanently closed back into service, the Owner or Operator shall meet all new AST standards in ~~these Regulations~~ this regulation.

16.3.3 An AST which was permanently closed prior to June 11, 2004 and is intended to be placed into service must comply with all new AST standards in ~~these Regulations~~ this regulation including payment of required construction fees in PART B, subsection 1.2 and submission of installation documentation in accordance with PART B.

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

17.0 Permanent Change in Contents Requirements

17.1 General Requirements for Permanent Change in Contents

17.1.1 The AST Owner or Operator shall notify the Department of the scheduled permanent change in contents of an AST utilizing a form provided by the Department not later than ~~ten (10)~~ 10 days prior to the permanent change in contents of an AST.

17.1.2 An AST and ancillary piping may be treated as separate entities for the purpose of removal, permanent closure in place or permanent change in contents.

17.1.3 The AST Owner or Operator shall ~~comply with the requirements of PART B, Section 14.0~~ perform Tier 0 sampling and analysis in accordance with the requirements specified in DERBCAP and Part E of this regulation. Within 90 days of completion the Owner or Operator shall submit the Tier 0 sampling results to the Department. An Owner or Operator shall comply with the conditions specified in Part A, subsection 5.4 of this regulation to request an exemption of the Tier 0 investigation requirements.

17.2 Additional Requirements for Permanent Change in Contents

17.2.1 To undergo a permanent change in contents in an AST, the AST Owner or Operator shall at a minimum comply with the following requirements:

17.2.1.1 Remove all the regulated substance from the AST and ancillary piping; and

17.2.1.2 Thoroughly clean the interior of the AST and all ancillary piping of all sludge, solids, and residual regulated substance with documentation of the proper disposition of the removed sludge, solids and residual regulated substance; and

17.2.1.3 Continue active use of the AST and ancillary piping with the intent of only storing and conveying a non-regulated substance in the AST and ancillary piping.

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

PART C INSPECTION, MONITORING, TESTING, AND RECORD KEEPING REQUIREMENTS FOR ABOVEGROUND STORAGE TANKS

1.0 Inventory Control Requirements

1.1 General Requirements for Inventory Control

1.1.1 AST Owners or Operators shall maintain inventory control records for each AST containing a regulated substance. Records shall be kept for each AST or cluster of ASTs if they are normally interconnected, and shall include measurements of transfers of a regulated substance into and out of the AST, measurements of inventory on hand, and records of gains and losses. Reconciliation of records shall be kept current, shall account for all variables which could affect an apparent loss or gain, and shall be in accordance with generally accepted practices. The records shall be accumulated for each day an AST has a regulated substance added or withdrawn but in no instance shall the interval between measurement of inventory on hand exceed ~~seven (7)~~ 7 days. The records shall include at a minimum:

1.1.1.1 Description and quantity of the Regulated Substance in the AST. The equipment used shall be capable of measuring the level of regulated substance over the entire operating range of the AST's height.

- 1.1.2 By July 11, 2004 AST Owners or Operators shall institute inventory control procedures capable of detecting a significant variation of inventory. A significant variation shall be considered as a gain or a loss in excess of 1% of the throughput or storage capacity of each individual AST on a ~~thirty (30)~~ 30 day or monthly basis.
 - 1.1.2.1 Reconciliations of inventory measurements shall be conducted monthly or every ~~thirty (30)~~ 30 days. If the significant variation persists for two consecutive months or two consecutive ~~thirty (30)~~ 30 day periods, the Owner or Operator shall conduct an investigation to determine the cause of the variation. This investigation shall be completed within ~~ten (10)~~ 10 working days of the end of the second reconciliation period that shows significant variation. If this investigation does not reveal the cause of the inventory variation the Owner or Operator shall notify the Department and shall adhere to the corrective action requirements of Part E of ~~these Regulations~~ this regulation.
 - 1.1.2.2 If the AST is equipped with a Continuous Leak Detection monitoring system and cathodic protection of the AST and ancillary piping, a significant variation of inventory for this section shall be considered as a gain or a loss in excess of 3% of the throughput or storage capacity of each individual AST on a monthly or ~~thirty (30)~~ 30 day basis.
 - 1.1.2.3 Inventory records shall be maintained for a period of not less than ~~three (3)~~ 3 years and shall be made available for Department inspection within ~~ten (10)~~ 10 days upon request.

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

2.0 Inspection Requirements for Secondary Containment

- 2.1 General Requirements for Secondary Containment Inspection
 - 2.1.1 Secondary containment for all ASTs subject to ~~these Regulations~~ this regulation shall be inspected as a part of external inspections and routine in service inspections beginning no later than December 8, 2004.
 - 2.1.2 If the secondary containment has been tested or inspected and fails to meet the criteria established in Part B, Section 7.0 the Owner or Operator shall have ~~sixty (60)~~ 60 days from the date of the inspection identifying the problem to correct the problem or other schedule approved by the Department. Temporary safety measures shall be instituted as required by the Department.
 - 2.1.3 Owners and Operators of ASTs shall adhere to the sampling, reporting, and corrective action according to the requirements of specified in DERBCAP, and Part E of these Regulations this regulation anytime evidence of a leak or release from secondary containment is noted during the course of an inspection.
 - 2.1.4 If a significant change in the structure of the secondary containment occurs, the Owner or Operator shall verify that the secondary containment meets or exceeds the criteria established in Part B, Section 7.0 of ~~these Regulations~~ this regulation.
- 2.2 Routine In Service Inspection Requirements for Secondary Containment
 - 2.2.1 The routine in service inspection shall monitor the condition of the secondary containment at an interval not to exceed ~~thirty one (31)~~ 31 days.
 - 2.2.2 The routine in service inspection of the secondary containment shall include visual inspection from the ground.
- 2.3 External Inspection Requirements for Secondary Containment
 - 2.3.1 External inspections of the secondary containment shall monitor the condition of the secondary containment at an interval not to exceed ~~five (5)~~ 5 years.
 - 2.3.2 External inspections of secondary containment shall be performed by inspectors familiar with secondary containment and qualified by experience for such inspections.
 - 2.3.3 Secondary containment shall be inspected to ensure that it has been maintained in a condition that shall ensure it is capable of retaining any regulated substance that leaves the primary containment including an AST and ancillary piping and prevent any regulated substance from reaching the surface water, groundwater, or soil outside the secondary containment before cleanup occurs.

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

3.0 Testing Requirements for Overfill Protection and Gauges

- 3.1 General Requirements for Overfill Protection Testing
 - 3.1.1 The overfill prevention system required in Part B, Section 8.0 shall be tested no less frequently than every ~~ninety three (93)~~ 93 days to ensure proper function and records of testing shall be maintained at the Facility for ~~three (3)~~ 3 years.

- 3.1.2 Existing ASTs with overfill prevention systems shall implement the testing requirements as required in PART C, subsection 3.1.1 by July 11, 2004.
- 3.1.3 The gauge or measuring device required in Part B, Section 8.0 shall be calibrated no less frequently than once every ~~twelve (12)~~ 12 months and records of testing shall be maintained at the Facility for ~~three (3)~~ 3 years.
- 3.1.4 Existing ASTs with a gauge or measuring device shall implement the calibration requirements as required in PART C, subsection 3.1.3 by July 11, 2004.
- 3.1.5 The gauge or measuring device as required in PART B, Section 8.0 shall be calibrated, tested, operated and maintained in accordance with the manufacturer's specifications, including routine maintenance checks for operability to ensure that the device is functioning as designed.
- 3.1.6 All manufacturer's instructions and performance claims and their manner of determination described in writing by the equipment manufacturer or installer for the gauge or measuring device shall be retained at the Facility for the life of the gauge or measuring device.
- 3.1.7 If the manufacturer of the gauge or measuring device cannot be determined, or no standard is available, the gauge or measuring device shall be calibrated to 1% of the volume of the AST.
- 3.1.8 The overfill protection system shall be calibrated, tested, operated and maintained in accordance with the manufacturer's specifications, including routine maintenance checks for operability to ensure that the overfill protection system is functioning as designed.
- 3.1.9 All manufacturer's instructions and performance claims and their manner of determination described in writing by the equipment manufacturer or installer for the overfill protection system shall be retained at the Facility for the life of the overfill protection system.

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

4.0 Inspection, Monitoring and Testing Requirements for Underground Piping

4.1 General Requirements for Underground Piping Inspection, Monitoring and Testing

- 4.1.1 Existing underground piping in compliance with an API 570 inspection and testing schedule as of June 11, 2004, or other schedule approved by the Department, shall adhere to its current established inspection schedule.
- 4.1.2 All existing underground piping not in compliance with an API 570 inspection and testing schedule as of June 11, 2004, or other schedule approved by the Department, shall be pressure tested annually, in accordance with API 570 and API 574 where applicable, or in accordance with manufacturer's specifications, or in accordance with a method approved in writing by the Department, until it is upgraded to the new piping standards or removed from service.
- 4.1.3 In lieu of annual testing, the Department may approve an alternative risk-based schedule on a case-by-case basis. Any alternative method shall be approved in writing by the Department prior to implementation. In no case shall the inspection interval exceed ~~ten (10)~~ 10 years.
- 4.1.4 New underground piping shall comply with the inspection and testing schedule in accordance with API 570 or other schedule approved by the Department.
- 4.1.5 Underground piping that has been repaired or reactivated after being out-of-service, shall be reassessed to ensure the underground piping meets or exceeds the original performance specifications prior to returning to service.
- 4.1.6 The steam return and exhaust lines of heating coils that discharge to the environment, or which pass the steam return or exhaust lines through a settling tank, skimmer, or other separation or retention system, shall be inspected for any possible contamination every month or every ~~thirty (30)~~ 30 days.
- 4.1.7 Records of compliance with all testing requirements shall be kept on file at the Facility for the life of the underground piping system and shall be made available to the Department upon request.
- 4.1.8 Any underground piping determined to be leaking or releasing a regulated substance shall be removed from service, by prohibiting the introduction of additional regulated substances into the underground piping, within 24 hours and evacuated as soon as practicable. Faulty underground piping shall remain out of service until repaired. Release reporting and corrective actions shall be accomplished in accordance with Part E of ~~these Regulations~~ this regulation.

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

5.0 Inspection, Monitoring and Testing Requirements for Cathodic Protection Systems for ASTs and Underground Piping

5.1 General Requirements for ASTs and Underground Piping Cathodic Protection Systems

- 5.1.1 All Cathodic Protection Systems shall be operated and maintained to provide continuous corrosion protection to the external soil side portion of the metal components of that portion of the AST and underground piping that contain a regulated substance and are in contact with the soil.
- 5.1.2 A Cathodic Protection System shall be inspected and maintained to meet or exceed the requirements of the most recent edition of the following industry standards:
 - 5.1.2.1 NACE Standard RP0193, *External Cathodic Protection of On-Grade Carbon Steel Storage Tank Bottoms*; and
 - 5.1.2.2 API RP651, *Cathodic Protection of Aboveground Petroleum Storage Tanks*; and
 - 5.1.2.3 NACE Standard RP0169, *Control of External Corrosion on Underground or Submerged Metallic Piping Systems*, and
- 5.1.3 By June 11, 2005 existing ASTs with a Cathodic Protection System shall have test stations or access points which enable the Owner or Operator to test the adequacy of cathodic protection.
- 5.1.4 Owners and Operators of Existing ASTs with a Cathodic Protection System shall initiate the requirements in this Section on June 11, 2004.

5.2 Requirements for Impressed Current Cathodic Protection Systems

- 5.2.1 The source of protective current for an Impressed Current Cathodic Protection System shall be monitored in accordance with one of the Standards referenced in PART C, subsection 5.1.2, but in no case shall the monitoring frequency be less than at least once every ~~thirty-one (31)~~ 31 days, and the results recorded. If any inspection or monitoring indicates that the system is not functioning properly and the AST or underground piping are not being adequately protected in accordance with one of the Standards referenced in PART C, subsection 5.1.2, the cause shall be determined and the necessary repairs shall be made within ~~sixty (60)~~ 60 days or other schedule approved by the Department, in accordance with one of the Standards referenced in PART C, subsection 5.1.2.
- 5.2.2 All Impressed Current Cathodic Protection Systems shall be inspected and tested every ~~twelve (12)~~ 12 months as part of a preventative maintenance program to minimize in-service failure. The inspection and tests shall include a check for electrical shorts, ground connections, meter accuracy, and circuit resistance. The effectiveness of isolating devices, continuity bonds, and insulators shall be evaluated during this inspection.
- 5.2.3 Impressed Current Cathodic Protection Systems that are not operating as required shall be repaired or replaced within ~~sixty (60)~~ 60 days or other schedule approved by the Department, or the AST and underground piping which has the non-operational system shall be drained of its regulated substance and placed out of service in accordance with PART B, Section 13.0 until the Impressed Current System is repaired or replaced.
- 5.2.4 The impressed current source shall not be de-energized at any time including periods when the Facility is closed (except during power failures or during service work on the AST or underground piping or the Impressed Current Cathodic Protection System), and the impressed current source shall be equipped with a continuously operating meter or meters which displays voltage, amperage and run time to show that the system is working.
- 5.2.5 Records of the continuous operation, inspection, and testing of Impressed Current Cathodic Protection Systems shall be maintained at the Facility for the operational life of the AST and underground piping.

5.3 Requirements for Sacrificial Anode Cathodic Protection Systems.

- 5.3.1 Sacrificial Anode Cathodic Protection Systems shall be inspected and tested at a minimum of once every 12 months, in accordance with industry Standards as referenced in PART C, subsection 5.1.2. Sufficient AST-to-soil and underground piping-to-soil potential measurements shall be made and recorded to determine if the AST and underground piping is protected in accordance with one of the industry Standards referenced in PART C, subsection 5.1.2. If any inspection ~~and~~ or test indicates that the system is not functioning properly and the AST or underground piping are not being adequately protected in accordance with one of the Standards referenced in PART C, subsection 5.1.2, the cause shall be determined and the necessary repairs shall be made within ~~sixty (60)~~ 60 days or other schedule approved by the Department, in accordance with one of the Standards referenced in PART C, subsection 5.1.2
- 5.3.2 Sacrificial Anode Cathodic Protection Systems that are not operating as required shall be repaired or replaced within ~~[sixty (60)]~~ **[60]** days or other schedule approved by the Department, or the AST and underground piping which has the non-operational system shall be drained of its regulated substance and

placed out of service in accordance with Part B, Section 13.0 until the Sacrificial Anode Cathodic Protection System is repaired or replaced.

- 5.3.3 Records of the operation, inspection, and testing of Sacrificial Anode Cathodic Protection Systems shall be maintained at the Facility for the operational life of the AST and underground piping.
- 5.4 Required Qualifications of Personnel Designing, Maintaining and Repairing Cathodic Protection Systems
 - 5.4.1 Cathodic Protection Systems shall be designed by individuals who have obtained a NACE Cathodic Protection Specialist Certification and have relevant work experience in the design of Cathodic Protection Systems for ASTs and underground piping.
 - 5.4.2 For the maintenance and repair of existing Cathodic Protection Systems, or the replacement of an existing system component with a similar component, excluding minor maintenance procedures that do not substantially change the system such as replacement of fuses, the individual shall be certified by NACE for Cathodic Protection at the CP Technician, CP Technologist, or CP Specialist level and have specific knowledge and experience in the maintenance and repair of Cathodic Protection Systems for ASTs and underground piping. The NACE certified individual performing a specific task on a Cathodic Protection System shall be qualified at the appropriate Certification Level for that specific task as defined by NACE.
 - 5.4.3 For the inspection of Cathodic Protection Systems such as identifying damaged components or the recording of rectifier readings the individual does not need to be certified by NACE for Cathodic Protection.

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

6.0 Inspection Requirements for Metallic Field-constructed ASTS

- 6.1 General Requirements for Metallic Field-Constructed AST Inspections
 - 6.1.1 All new and existing metallic field-constructed ASTs shall meet or exceed the applicable standards or recommendations in API 653 and, as applicable, NACE SP0294 or the requirements in this Section, whichever are more stringent. Where multiple standards may be applied during the course of a tank inspection, only one (1) standard shall be utilized.
 - 6.1.2 Owners and Operators shall notify the Department in writing ~~ten (10)~~ 10 days prior to work commencing when all new and existing metallic field-constructed ASTs subject to ~~these Regulations~~ this regulation are emptied for maintenance, repairs, or removed from service.
 - 6.1.3 All new metallic field-constructed ASTs and existing metallic field-constructed ASTs with new tank bottoms, shall complete an internal inspection in accordance with PART C, subsection 6.4, within ~~ten (10)~~ 10 years of the date of completion of the installation of the AST or completion of the installation of the new tank bottom. All existing metallic field-constructed ASTs shall complete an internal inspection in accordance with PART C, subsection 6.4, by June 11, 2007 except those ASTs that are in compliance with an established, documented API 653 or NACE SP0294 inspection schedule, as of June 11, 2004.
 - 6.1.4 All new metallic field-constructed ASTs shall complete an external inspection in accordance with PART C, subsection 6.3, within ~~five (5)~~ 5 years of the date of completion of the installation. All existing metallic field-constructed ASTs shall complete an external inspection in accordance with PART C, subsection 6.3, by June 11, 2005, except those ASTs that are in compliance with an established, documented API 653 or NACE SP0294 inspection schedule, as of June 11, 2004.
 - 6.1.5 When an AST has been tested or inspected as required by ~~these Regulations~~ this regulation, the Owner or Operator shall immediately initiate the actions required or recommended by the report of the Certified API 653 Inspector, including ~~but not limited to~~ requirements or recommendations for repair or removal from service.
 - 6.1.6 A report of the findings of any API 653 inspection that concludes the AST is not fit for service shall be submitted to the Department and the AST Owner or Operator within ~~thirty (30)~~ 30 days of the conclusion of the inspection. The Owner or Operator shall submit to the Department with the API 653 inspection report an additional report detailing a proposed course of action including ~~but not limited to~~ removal of the AST contents and a schedule for repairs prior to the AST being returned to service. Removal of the AST contents shall commence within ~~five (5)~~ 5 days of the conclusion that the AST is not fit for service and completion of the removal of the AST contents shall not exceed ~~ninety (90)~~ 90 days, unless an alternative schedule is approved by the Department.
 - 6.1.7 Any existing metallic field-constructed AST not meeting the material specification requirements of API 650 and API 653 shall be reviewed and analyzed by the appropriate professional engineering disciplines to determine the AST's fitness for service. In no instance shall the review exceed ~~ninety (90)~~ 90 days. A report shall be written and submitted to the AST Owner and Operator and the Department within thirty (30) days of the conclusion of the review detailing the findings of the review and shall propose a course of

action. The Department shall review the report and issue an approval or denial for the continued use of the AST to store a regulated substance, within ~~thirty (30)~~ 30 days of the Department's receipt of the report.

- 6.1.8 Owners and Operators of ASTs shall adhere to the reporting requirements, and the corrective action requirements of in accordance with the requirements specified in DERBCAP and Part E of this regulation, at any time evidence of a release or leak is noted during the course of an inspection.
- 6.1.9 Underground pipe is not subject to the requirements of Part C, Section 6.0.
- 6.2 Requirements for Routine In Service Inspections for Metallic Field-Constructed ASTs
 - 6.2.1 A routine in service inspection shall monitor the external condition of the AST and all aboveground ancillary piping at an interval not to exceed ~~thirty-one (31)~~ 31 days.
 - 6.2.2 The routine in service inspection shall at a minimum be completed in accordance with the guidance contained in API 653 and API 570 or other equivalent procedure approved by the Department. An appropriate check list containing at a minimum the criteria in API 653 *Annex C, Tank in-service Inspection Checklist* and API 574 *Annex A, External Inspection Checklist for Process Piping* and including the condition of the secondary containment shall be developed and completed for each AST and aboveground ancillary piping at each routine in service inspection. For ASTs equipped with a Release Prevention Barrier or a double bottom, the checklist shall include criteria for visual inspection for evidence of releases and leaks.
 - 6.2.3 The routine in service inspection may be completed by the Owner or Operator designated personnel other than an API certified inspector. If designated personnel are not specifically certified in accordance with API 653, training shall include ~~but is not limited to~~ the following:
 - 6.2.3.1 Basic information regarding occupational safety, hazard recognition, personnel protection, and Facility operations; and
 - 6.2.3.2 The procedures to be followed in conducting the daily visual and weekly Facility inspections; and
 - 6.2.3.3 The procedures to be followed upon recognition of a hazard or the potential for a hazard; and
 - 6.2.3.4 The procedure for evaluating the condition of the AST and appurtenances; and
 - 6.2.3.5 The procedures for responding to releases and leaks of a regulated substance.
 - 6.2.3.6 Records of training shall be maintained at the Facility by the Owner or Operator for ~~five (5)~~ 5 years after the termination date of employment for personnel and shall be made available for review at the Department's request.
 - 6.2.4 The routine in service inspection shall include close visual inspection from the ground.
 - 6.2.5 Routine in service inspection reports shall be retained at the Facility by the Owner or Operator for ~~five (5)~~ 5 years after the routine in service inspection and shall be made available for review at the Department's request.
 - 6.2.6 The routine in service inspection program shall be developed and implemented by December 8, 2004.
- 6.3 Requirements for External Inspections for Metallic Field-Constructed ASTs
 - 6.3.1 External inspections shall at a minimum follow the edition referenced in PART A, Section 3.0, of nationally recognized codes, standards, guidelines or recommended practices including ~~but not limited to~~ API 653, API 570, and NACE SP-0294.
 - 6.3.2 External inspection frequencies for ASTs and aboveground ancillary piping shall follow the recommended guidelines, codes, standards or recommended practices referenced in PART C, subsection 6.3.1, including ~~but not limited to~~ the calculated corrosion rate, but in no instance shall the external inspection frequency exceed ~~five (5)~~ 5 years.
 - 6.3.3 Only Certified API 653 Inspectors and Certified API 570 Inspectors shall perform external inspections. An appropriate check list containing at a minimum the criteria in API 653 *Annex C, Tank In Service Inspection Checklist* and API 574 *Annex A, External Inspection Checklist for Process Piping* and including the condition of the secondary containment, shall be developed and completed for each AST and aboveground ancillary piping at each external inspection. Where material thickness measurements are performed, only qualified American Society for Non Destructive Testing (ASNT) SNT-TC-1A, Level II technicians or ASNT Central Certification Program Level II technicians or Certified API 653 Inspectors with experience in performing material thickness measurements shall perform the test.
 - 6.3.4 External inspection reports including calibration of material thickness testing equipment shall be retained at the Facility for the life of the AST by current and future Owners and Operators.
- 6.4 Requirements for Internal Inspections for Metallic Field-Constructed ASTs
 - 6.4.1 Internal inspections shall at a minimum follow the edition referenced in PART A, Section 3.0, of nationally recognized standards, guidelines or recommended practices including ~~but not limited to~~ API 653 and, if applicable, NACE SP-0294.

- 6.4.2 The internal inspection shall at a minimum be completed in accordance with the recommended guidelines, codes, ~~standards~~ standards, or recommended practices referenced in PART C, subsection 6.4.1 or other equivalent procedure approved by the Department. An appropriate check list containing at a minimum the criteria in API 653 *Annex C, Tank Out-Of-Service Inspection Checklist* shall be developed and completed for each AST at each internal inspection.
- 6.4.3 Internal inspection frequencies for ASTs with an established documented corrosion rate, as of June 11, 2004, shall follow the inspection frequency of API 653 or NACE SP0294 as applicable including ~~but not limited to~~ the use of calculated corrosion rates.
- 6.4.4 The AST corrosion rates shall not be based on experience with ASTs in similar service unless previously approved by the Department.
- 6.4.5 Only Certified API 653 Inspectors shall perform the internal inspections. Where non-destructive testing methods are performed, only qualified American Society for Non Destructive Testing (ASNT) SNT-TC-1A, latest edition, Level II technician or ASNT Central Certification Program Level II technician or Certified API 653 Inspectors with experience in performing non-destructive testing shall perform the test.
- 6.4.6 Alternative internal inspection intervals may be established as outlined in API 653 using the risk based inspection procedures, robotics, statistical analysis and related methods allowed by API 653, only for ASTs with 110% secondary containment dikes and a continuous method of Leak detection. Any alternative method shall be approved in writing by the Department prior to implementation.
- 6.4.7 Internal inspection reports shall be submitted to the Department within ~~thirty (30)~~ 30 days of inspection completion and shall be retained at the Facility for the life of the AST by current and future Owners and Operators.
- 6.4.8 The internal inspection report shall at a minimum include the following:
- 6.4.8.1 The report ~~shall~~ must be typed, not written by hand; and
 - 6.4.8.2 The report ~~shall state~~ must identify the date(s) that the inspection was conducted; and
 - 6.4.8.3 The report ~~shall state~~ must indicate that the inspection was an internal inspection and what industry inspection standard was utilized; and
 - 6.4.8.4 The report ~~shall~~ must contain the name, address, and phone number of the inspection company that conducted the inspection; and
 - 6.4.8.5 The report ~~shall~~ must contain the printed name of the certified inspector, the inspector's certification number or copy of the certification certificate, and the signature of the certified inspector; and
 - 6.4.8.6 The report ~~shall~~ must list the tank data including ~~but not limited to~~, the tank diameter, tank height, regulated substance stored, date of tank construction, construction code, material of tank construction, tank orientation, tank identification number as listed on the DNREC AST registration form, type of foundation, type of roof, presence or absence of secondary containment, material of construction of secondary containment, notation of type of tank bottom as single or double, presence or absence of Leak Detection, type of Leak Detection if present, presence or absence of tank insulation, presence or absence of cathodic protection, and type of cathodic protection if present; and
 - 6.4.8.7 The report ~~shall~~ must list all data collected including ~~but not limited to~~, thickness measurements, settlement measurements, out of round measurements and cathodic protection testing results; and
 - 6.4.8.8 The report ~~shall~~ must include all repairs required by industry standards; and
 - 6.4.8.9 The report ~~shall~~ must include all recommendations for repairs and Upgrades not required by industry standards but recommended by the certified inspector; and
 - 6.4.8.10 The report ~~shall~~ must include details of any repairs or Upgrade made to the tank as required or recommended by the certified inspector and any records of inspections of the repair or Upgrade; and
 - 6.4.8.11 The report ~~shall~~ must state the date the next inspection is due according to the inspection code utilized for the inspection.

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

7.0 Inspection Requirements for Metallic Shop-Fabricated ASTs

7.1 General Requirements for Metallic Shop-Fabricated AST Inspections

- 7.1.1 All new and existing metallic shop-fabricated ASTs shall meet or exceed the applicable standards or recommendations in API 653 or STI-SP001 or NACE SP0294 or the requirements in this Section whichever are more stringent. Where multiple standards may be applied during the course of a tank inspection, only ~~one (1)~~ 1 standard shall be applied.
- 7.1.2 Owners and Operators shall notify the Department in writing ~~ten (10)~~ 10 days prior to work commencing when all new and existing metallic shop-fabricated ASTs subject to these Regulations are emptied for maintenance, repairs, or removed from service.
- 7.1.3 All new metallic shop-fabricated ASTs shall complete an internal inspection in accordance with PART C, Section 7.0, within ~~ten 10~~ 10 years of the date of completion of the installation. All existing metallic shop-fabricated ASTs shall complete an internal inspection in accordance with PART C, Section 7.4, by June 11, 2007, except those ASTs that are in compliance with an established, documented API 653 or STI-SP001 or NACE SP0294 inspection schedule.
- 7.1.4 All new metallic shop-fabricated ASTs shall complete an external inspection in accordance with PART C, subsection 7.3, within ~~five 5~~ 5 years of the date of completion of the installation. All Existing metallic shop-fabricated ASTs shall complete an external inspection in accordance with PART C, subsection 7.3 by June 11, 2005, except those ASTs that are in compliance with an established, documented API 653 or STI-SP001 or NACE SP0294 inspection schedule.
- 7.1.5 When an AST has been tested or inspected as required by ~~these Regulations~~ this regulation, the Owner or Operator shall immediately initiate the actions required or recommended by the report of the Certified API 653 Inspector or the Certified STI-SP001 Inspector, including ~~but not limited to~~ recommendations for repair or removal from service.
- 7.1.6 A report of the findings of any API 653 or STI - SP001 inspection that concludes the AST is not fit for service shall be submitted to the Department and the AST Owner or Operator within ~~thirty (30)~~ 30 days of the conclusion of the inspection. The Owner or Operator shall submit to the Department with the API 653 or STI-SP001 inspection report an additional report detailing a proposed course of action including ~~but not limited to~~ removal of the AST contents and a schedule for repairs prior to the AST being returned to service. Removal of the AST contents shall commence within ~~five (5)~~ 5 days of the conclusion that the AST is not fit for service and completion of the removal of the AST contents shall not exceed ~~ninety (90)~~ 90 days, unless an alternative schedule is approved by the Department.
- 7.1.7 Any existing metallic shop-fabricated AST not meeting the material specification requirements of UL 2085, UL 142, or API 650 Form J, shall be reviewed and analyzed by the appropriate professional engineering disciplines to determine the AST's fitness for service. In no instance shall the review exceed ~~ninety (90)~~ 90 days. A report shall be written and submitted to the AST Owner and Operator and the Department within ~~thirty (30)~~ 30 days of the conclusion of the review detailing the findings of the review and shall propose a course of action. The Department shall review the report and issue an approval or denial for the continued use of the AST to store a regulated substance within ~~thirty (30)~~ 30 days of the Department's receipt of the report.
- 7.1.8 Owners and Operators of ASTs shall adhere to the reporting requirements, and the corrective action requirements of in accordance with the requirements specified in DERBCAP and Part E of this regulation at any time evidence of a release or leak is noted during the course of an inspection.
- 7.1.9 Underground pipe is not subject to the requirements of Part C, Section 7.0.
- 7.2 Requirements for Routine In Service Inspections for Shop-Fabricated ASTs
 - 7.2.1 The routine in-service inspection shall monitor the external condition of the AST and all aboveground ancillary piping at an interval not to exceed ~~thirty (30)~~ 30 days.
 - 7.2.2 The routine in service inspection shall at a minimum be completed in accordance with the guidance contained in API 653 or STI SP001 and API 570 or other equivalent procedure approved by the Department. An appropriate check list containing at a minimum the criteria in API 653 *Annex C, Tank In-service Inspection Checklist* and API 574 *Annex A, External Inspection Checklist for Process Piping* and including the condition of the Secondary Containment shall be developed and completed for each AST and aboveground Ancillary Piping at each routine in service inspection. For ASTs equipped with a Release Prevention Barrier or a double bottom, the checklist shall include criteria for visual inspection for evidence of Releases and Leaks.
 - 7.2.3 The routine in service inspection may be completed by Owner or Operator designated personnel other than an API or STI certified inspector. If designated personnel are not specifically certified in accordance with API 653 or STI-SP001, training shall include but is not limited to the following:
 - 7.2.3.1 Basic information regarding occupational safety, hazard recognition, personnel protection, and Facility operations; and

- 7.2.3.2 The procedures to be followed in conducting the daily visual and weekly Facility inspections; and
- 7.2.3.3 The procedures to be followed upon recognition of a hazard or the potential for a hazard; and
- 7.2.3.4 The procedure for evaluating the condition of the AST and appurtenances; and
- 7.2.3.5 The procedures for responding to releases and leaks of a regulated substance; and
- 7.2.3.6 Records of training shall be maintained at the Facility by the Owner or Operator for ~~five (5)~~ 5 years after the termination date of employment for personnel and shall be made available for review at the Department's request.

7.2.4 The routine in service inspection shall include close visual inspection from the ground.

7.2.5 Routine in service inspection reports shall be retained at the Facility by the Owner or Operator for ~~five (5)~~ 5 years after the routine in service inspection and shall be made available for review at the Department's request.

7.2.6 The routine in service inspection program shall be developed and implemented by December 8, 2004.

7.3 Requirements for External Inspections

7.3.1 External inspections shall at a minimum follow the latest approved edition of nationally recognized codes, standards, guidelines or recommended practices including ~~but not limited to~~ API 653, API 570, and NACE SP0294 or STI SP001.

7.3.2 External inspection frequencies for ASTs and aboveground ancillary piping shall follow the recommended guidelines, codes, ~~standards~~ standards, or recommended practices referenced in PART C, subsection 7.3.1 including ~~but not limited to~~ the calculated corrosion rate, but in no instance shall the external inspection frequency exceed ~~five (5)~~ 5 years.

7.3.3 Only Certified API 653 Inspectors or Certified STI-SP001 Inspectors or Certified API 570 Inspectors shall perform external inspections. An appropriate check list containing at a minimum the criteria in API 653 *Annex C, Tank In Service Inspection Checklist* and API 574 *Annex A, External Inspection Checklist for Process Piping* and including the condition of the secondary containment, shall be developed and completed for each AST and aboveground ancillary piping at each external inspection. Where material thickness measurements are performed, only qualified American Society for Non Destructive Testing (ASNT) SNT-TC-1A, Level II technicians or ASNT Central Certification Program Level II technicians or Certified API 653 Inspectors with experience in performing material thickness measurements shall perform the test.

7.3.4 External inspection reports shall be retained at the Facility for the life of the AST by current and future Owners and Operators.

7.4 Requirements Internal Inspections

7.4.1 Internal inspections shall follow the latest approved edition of nationally recognized standards, guidelines or recommended practices including ~~but not limited to~~ API 653 and, if applicable, NACE SP0294 or STI-SP001.

7.4.2 The internal inspection shall at a minimum be completed in accordance with the recommended guidelines, codes, ~~standards~~ standards, or recommended practices referenced in PART C, subsection 7.4.1 or other equivalent procedure approved by the Department. An appropriate check list containing at a minimum the criteria in API 653 *Annex C, Tank Out-of-Service Inspection Checklist* shall be developed and completed for each AST at each internal inspection.

7.4.3 Internal inspection frequencies for ASTs with an established documented corrosion rate as of June 11, 2004 shall follow the inspection frequency of API 653, or NACE SP0294, or STI SP001 as applicable including but not limited to the use of calculated corrosion rates.

7.4.4 The AST corrosion rate shall not be determined based upon experience with tanks in similar service, unless previously approved by the Department.

7.4.5 Only Certified API 653 Inspectors or Certified STI-SP001 Inspectors shall perform the internal inspections. Where non-destructive testing methods are performed, only qualified SNT-TC-1A, Level II technicians or ASNT Central Certification Program Level II technicians or Certified API 653 Inspectors with experience in performing non-destructive testing shall perform the test.

7.4.6 Alternative internal inspection intervals may be established as outlined in API 653 using the risk based inspection procedures, robotics, statistical analysis and related methods allowed by API 653. Any alternative method shall be approved by the Department prior to implementation.

7.4.7 Internal inspection reports shall be submitted to the Department and shall be retained at the Facility for the life of the AST by current and future Owners and Operators.

7.4.8 The internal inspection report shall at a minimum include the following:

- 7.4.8.1 The report ~~shall~~ must be typed, not written by hand; and

- 7.4.8.2 The report ~~shall state~~ must identify the date(s) that the inspection was conducted; and
- 7.4.8.3 The report ~~shall state~~ must indicate if the inspection was an internal inspection and what industry inspection standard was utilized; and
- 7.4.8.4 The report ~~shall~~ must contain the name, address, and phone number of the inspection company that conducted the inspection; and
- 7.4.8.5 The report ~~shall~~ must contain the printed name of the certified inspector, the inspector's certification number or copy of certification certificate, and the signature of the certified inspector; and
- 7.4.8.6 The report ~~shall~~ must list the tank data including ~~but not limited to~~, the tank diameter, tank height, regulated substance stored, date of tank construction, construction code, material of tank construction, tank orientation, tank identification number as listed on the DNREC AST registration form, type of foundation, type of roof, presence or absence of secondary containment, material of construction of secondary containment, notation of type of tank bottom as single or double, presence or absence of leak detection, type of leak detection if present, presence or absence of tank insulation, presence or absence of cathodic protection, and type of cathodic protection if present.
- 7.4.8.7 The report ~~shall~~ must list all data collected including ~~but not limited to~~, thickness measurements, settlement measurements, out of round measurements and cathodic protection testing results; and
- 7.4.8.8 The report ~~shall~~ must include all repairs required by industry standards; and
- 7.4.8.9 The report ~~shall~~ must include all recommendations for repairs and upgrades not required by industry standards but recommended by the certified inspector; and
- 7.4.8.10 The report ~~shall~~ must include details of any repairs or upgrades made to the tank as required or recommended by the certified inspector and any records of inspections of the repair or upgrade.
- 7.4.8.11 The report ~~shall~~ must state the date the next inspection is due according to the inspection code utilized for the inspection.

20 DE Reg. 815 (04/01/17)

8.0 Inspection Requirements for Non-Metallic Field-Constructed and Shop-Fabricated ASTs

8.1 Fiber Reinforced Thermosetting Plastic (FRTP) Field Constructed and Shop-Fabricated ASTs

8.1.1 General Requirements

- 8.1.1.1 All non-metallic field-constructed or shop-fabricated ASTs constructed of fiber reinforced thermosetting plastic (FRTP) shall meet or exceed the requirements in this Section or the reference standards in this Section whichever are more stringent. Where multiple standards may be applied during the course of a tank inspection, only ~~one (1)~~ 1 standard shall be utilized.
- 8.1.1.2 Inspections shall only be performed by inspectors familiar with ASTs constructed of fiber reinforced thermosetting plastic and qualified by experience for such inspections, including ~~but not limited to~~ those individuals certified under:
 - 8.1.1.2.1 ~~ASME RTP-1, Reinforced Thermoset Plastic Corrosion Resistant Equipment; *Reinforced Thermoset Plastic Corrosion Resistant Equipment*; or~~
 - 8.1.1.2.2 National Board Inspection Code (NBIC), *Part 3, Repairs and Alterations*.
- 8.1.1.3 The Owner or Operator shall notify the Department in writing ~~ten (10)~~ 10 days prior to work commencing when ASTs subject to this Section are emptied for maintenance, repairs, or removed from service.
- 8.1.1.4 When a FRTP AST has been tested or inspected as required by ~~these Regulations~~ this regulation the Owner or Operator shall immediately initiate the actions required or recommended by the report of the certified inspector or the experience qualified individual, including ~~but not limited to~~ recommendations for repair or removal from service.
- 8.1.1.5 A report of the findings of any inspection required by this Section that concludes the AST is not fit for service shall be submitted to the Department and the AST Owner or Operator within ~~thirty (30)~~ 30 days of the conclusion of the inspection. The Owner or Operator shall submit to the Department with the inspection report an additional report detailing a proposed course of action including ~~but not limited to~~ removal of the AST contents and a schedule for repairs prior to the AST being returned to service. Removal of the AST contents shall commence within ~~five (5)~~ 5 days of the conclusion that the AST is not fit for service and completion of the removal of the AST contents

shall not exceed ~~ninety (90)~~ 90 days, unless an alternative schedule is approved by the Department.

8.1.1.6 Owners and Operators of ASTs shall adhere to the reporting requirements, and the corrective action requirements of ~~in accordance with the requirements specified in DERBCAP and Part E of this regulation~~ at any time evidence of a release or leak is noted during the course of an inspection.

8.1.2 Applicability and Scope of Inspections

8.1.2.1 All routine in service inspections, external inspections, and internal inspection requirements for ASTs constructed of fiber reinforced thermosetting plastic shall apply to any ASTs which are constructed with a structural laminate and a liner to protect the structural laminate. The structural laminate is defined as one or more layers of reinforced resin material bonded together. The inspection shall evaluate damage to the AST from mechanical sources and from regulated substances, acids, alkalis, compounds containing fluorine, hydrocarbons, and water.

8.1.2.2 All exposed surfaces shall be visually examined during external and internal inspections for defects, and mechanical and environmental damage in the liner or the laminate. Classification and acceptance of any defects in the liner or laminate shall be according to Table 1 in NBIC, Part 3, **[Repairs and Alterations,]** Supplement 4. Defects to look for shall include but are not limited to:

- 8.1.2.2.1 Cracks;
- 8.1.2.2.2 Separation of secondary edges;
- 8.1.2.2.3 Leaks, especially around nozzles;
- 8.1.2.2.4 Discolored areas;
- 8.1.2.2.5 Areas of mechanical damage such as impacts or gouges;
- 8.1.2.2.6 Surface deterioration or fiber exposure;
- 8.1.2.2.7 Cracked or broken attachments;
- 8.1.2.2.8 Damage due to dynamic loading;
- 8.1.2.2.9 Defective supports;
- 8.1.2.2.10 Delaminations;
- 8.1.2.2.11 Blisters.

8.1.2.3 A careful observation shall be made of the condition of the complete AST, including but not limited to, maintenance and operation of the AST as a guide in forming an opinion of the care the AST receives. The history of the AST shall be established, and shall include, ~~but is not limited to,~~ the date which the AST was constructed or installed, the service history, the maintenance history, and a review of previous inspection records. Process conditions shall be reviewed to identify areas most likely to sustain damage. Surface cleaning procedures and requirements shall also be reviewed.

8.1.2.4 The following tools shall be available to inspectors and used when necessary by inspectors while performing external and internal inspections:

- 8.1.2.4.1 Adequate lighting including overall lighting and a portable lamp for close inspections; and
- 8.1.2.4.2 Hand held magnifying glass; and
- 8.1.2.4.3 Barcol hardness tester; and
- 8.1.2.4.4 Small pick or pen knife; and
- 8.1.2.4.5 Small quantity of acetone and cotton swabs; and
- 8.1.2.4.6 Liquid penetrant testing kit.

8.1.3 Inspector Qualifications for External and Internal ~~Inspections~~ Inspections.

~~8.1.3.1~~ Only inspectors familiar with ASTs constructed of fiber reinforced thermosetting plastic and qualified by experience shall perform external and internal inspections. These inspectors include, ~~but are not limited to~~ individuals certified under ASME RTP-1 and NBIC, Part 3, Repairs and Alterations. The inspector shall be able to read a Jaeger Type No. 1 Standard Chart at a distance of not less than 12 inches. The inspector shall be capable of distinguishing and differentiating contrast between colors. Visually acuity shall be checked annually.

8.1.4 Initial Inspection Requirements

8.1.4.1 Internal Inspection Requirements

8.1.4.1.1 All new Fiber Reinforced Thermosetting Plastic shop-fabricated and field-constructed ASTs shall complete an internal inspection in accordance with Part C, subsection 8.1.7, within ~~one~~ 1 year of being placed into service.

- 8.1.4.1.2 All existing Fiber Reinforced Thermosetting Plastic shop-fabricated and field constructed ASTs shall complete an internal inspection in accordance with PART C, subsection 8.1.7 by June 11, 2007, except those ASTs that have an established, documented inspection schedule that includes the inspection criteria and frequency established in this Section.
- 8.1.4.2 External Inspection Requirements
 - 8.1.4.2.1 All new Fiber Reinforced Thermosetting Plastic shop-fabricated and field constructed ASTs shall complete an external inspection in accordance with PART C, subsection 8.1.6, within ~~three (3)~~ 3 years of the date of the AST being placed into service.
 - 8.1.4.2.2 All existing Fiber Reinforced Thermosetting Plastic shop-fabricated and field constructed ASTs shall complete an external inspection in accordance with PART C, subsection 8.1.6 by June 11, 2007 except ASTs that have an established, documented inspection schedule that includes the inspection criteria and frequency established in this Section.
- 8.1.5 Routine In Service Inspections
 - 8.1.5.1 A routine in service inspection shall monitor the external condition of the AST and all aboveground Ancillary Piping at an interval not to exceed ~~thirty-one (31)~~ 31 days.
 - 8.1.5.2 The routine in service inspection shall include a visual external inspection of the AST's exterior surfaces. An appropriate check list containing at a minimum the criteria in PART C, subsection §8.1.5.3.4 and API 653 *Annex C, Tank In-Service Inspection Checklist* and API 574 *Annex A, External Inspection Checklist for Process Piping* and including the condition of the secondary containment, will be developed and completed for each AST at each routine in service inspection. For ASTs equipped with a Release Prevention Barrier or a double bottom, the checklist shall include criteria for visual inspection for evidence of releases and leaks.
 - 8.1.5.3 The routine in service inspection may be completed by Owner or Operator designated personnel other than an API, STI, ASME RTP-4, or NBIC certified inspector. If designated personnel are not specifically trained in accordance with a nationally recognized certification program, training shall include but is not limited to the following:
 - 8.1.5.3.1 Basic information regarding occupational safety, hazard recognition, personnel protection, and Facility operations; and
 - 8.1.5.3.2 The procedures to be followed in conducting the daily visual and weekly Facility inspections; and
 - 8.1.5.3.3 The procedures to be followed upon recognition of a hazard or the potential for a hazard; and
 - 8.1.5.3.4 The procedures for evaluating the condition of the AST and appurtenances including ~~but not limited to~~ the following:
 - 8.1.5.3.4.1 Shell ~~[distortations distortions]~~;
 - 8.1.5.3.4.2 Signs of settlement;
 - 8.1.5.3.4.3 Condition of the foundation;
 - 8.1.5.3.4.4 Condition of the insulation;
 - 8.1.5.3.4.5 Cracks;
 - 8.1.5.3.4.6 Separation of secondary edges;
 - 8.1.5.3.4.7 Discolored areas;
 - 8.1.5.3.4.8 Areas of mechanical damage such as impacts and gouges;
 - 8.1.5.3.4.9 Surface deterioration and fiber exposure;
 - 8.1.5.3.4.10 Damage due to dynamic loading;
 - 8.1.5.3.4.11 Defective supports;
 - 8.1.5.3.4.12 Delaminations;
 - 8.1.5.3.4.13 Blisters;
 - 8.1.5.3.5 The procedures for responding to releases and leaks of a regulated substance.
 - 8.1.5.3.6 Records of training shall be maintained at the Facility by the Owner or Operator for ~~five (5)~~ 5 years after the termination date of employment for personnel and shall be made available for review at the Department's request.
 - 8.1.5.4 The routine in service inspection shall include close visual inspection from the ground.
 - 8.1.5.5 Routine in service inspection reports shall be retained at the Facility by the Owner or Operator for ~~five (5)~~ 5 years after the routine in service inspection and shall be made available for review at the Department's request.

8.1.5.6 The routine in service inspection program shall be developed and implemented by December 8, 2004.

8.1.6 External Inspections

8.1.6.1 General Requirements

8.1.6.1.1 External inspections shall at a minimum follow the requirements of this Section.

8.1.6.1.2 External inspection frequencies shall at a minimum follow the requirements of this Section, but in no instance shall the external inspection frequency exceed ~~five (5)~~ 5 years.

8.1.6.1.3 Where material thickness measurements are performed, only qualified American Society for Non Destructive Testing (ASNT) SNT-TC-1A, Level II technicians or ASNT Central Certification Program Level II technicians or Certified API 653 Inspectors with experience in performing material thickness measurements shall perform the test.

8.1.6.1.4 External inspection reports including calibration of material thickness testing equipment shall be retained at the Facility for the life of the AST by current and future Owners and Operators.

8.1.6.2 Specific Requirements for External Inspections

8.1.6.2.1 The external inspection shall include the examination of the exterior surfaces of the AST and its structural attachments and appurtenances for defects and mechanical, thermal, and environmental damage. All exposed surfaces shall be examined for evidence of damage from impact, gouging, abrasion, scratching, and temperature variations. External inspections shall include examination for areas exposed to sunlight that may be degraded by the ultraviolet light with a resulting change in surface color and increased fiber prominence. External inspections shall include examination for a change in color as a result of damage from overheating. Insulation shall be removed to the extent necessary to determine the condition of the exterior surfaces of the AST. The areas to inspect shall include ~~but is not limited to~~ the following:

8.1.6.2.1.1 Nozzle attachments;

8.1.6.2.1.2 Gusset attachments;

8.1.6.2.1.3 Flanges;

8.1.6.2.1.4 Secondary joints;

8.1.6.2.1.5 Hold down lugs;

8.1.6.2.1.6 Lifting lugs; **[and]**

8.1.6.2.1.7 Gauge attachments.

8.1.6.2.2 Attachments of legs, saddles, skirts, or other components shall be examined for cracks where the component attaches to or contacts the AST. The exterior surface of the AST in the vicinity of the attached component shall be examined for cracks.

8.1.6.2.3 Piping loads on nozzles may be excessive. Therefore, all nozzles shall be closely examined for cracks.

8.1.6.2.4 The location of all external damage shall be noted so that the opposing internal surface at that location can be examined. For example, an impact load applied to the outer surface may be transmitted through the laminate causing a star crack in the inner surface.

8.1.6.2.5 If known upsets occur that are outside the AST's designed specifications, then an external inspection shall be performed within ~~[thirty (30)]~~ 30 days of the upset to ensure the integrity of the AST.

8.1.6.2.6 The following factors shall be considered when determining whether the initial external inspection interval after being placed in service and subsequent external inspections intervals need to be shortened to ensure the integrity of the AST:

8.1.6.2.6.1 The distance between the AST and personnel and other equipment;

8.1.6.2.6.2 Contains Regulated Substances or is subject to conditions known to degrade or shorten the life of the laminates or liner;

8.1.6.2.6.3 Past experience has shown that more frequent external inspection are necessary;

8.1.6.2.6.4 Insurance or other regulatory requirements.

8.1.7 Internal Inspections

8.1.7.1 General Requirements

8.1.7.1.1 Internal inspections shall, at a minimum, follow the requirements of this Section.

8.1.7.1.2 Internal inspection frequencies shall at a minimum follow the requirements of this Section, but in no instance shall the internal inspection frequency exceed ~~ten (10)~~ 10 years, or other schedule approved by the Department.

- 8.1.7.1.3 Where non-destructive testing methods are performed, only qualified SNT-TC-1A, Level II technicians or ASNT Central Certification Program Level II technicians or Certified API 653 Inspectors with experience in performing non-destructive testing methods shall perform the test.
- 8.1.7.1.4 Internal inspection reports shall be submitted to the Department and shall be retained at the Facility for the life of the AST by current and future Owners and Operators.
- 8.1.7.2 Specific Requirements for Internal Inspections
 - 8.1.7.2.1 The internal inspection shall include examination of the AST to ensure the integrity of the liner and the structural laminate has not been compromised. The laminate shall be examined for damage caused by the following conditions:
 - 8.1.7.2.1.1 Excessive service temperature;
 - 8.1.7.2.1.2 Mechanical or service abuse;
 - 8.1.7.2.1.3 Ultraviolet light.
 - 8.1.7.2.2 Surfaces shall be dry and clean for the internal inspection. Every effort shall be made to minimize damage to the liner, if the AST is so equipped, during the internal inspection. Defects or damage to look for during the internal inspection shall include ~~[but is not limited to]~~ the following:
 - 8.1.7.2.2.1 Indentations;
 - 8.1.7.2.2.2 Cracks;
 - 8.1.7.2.2.3 Porosity;
 - 8.1.7.2.2.4 Exposed fibers;
 - 8.1.7.2.2.5 Lack of resin;
 - 8.1.7.2.2.6 Delamination;
 - 8.1.7.2.2.7 Thinning at points of fluid impingement;
 - 8.1.7.2.2.8 Blisters;
 - 8.1.7.2.2.9 Scratches;
 - 8.1.7.2.2.10 Gouges; and
 - 8.1.7.2.2.11 Discolorations.
 - 8.1.7.2.3 All surfaces shall be examined with both direct and oblique illumination. Color differences, opacity, stains, wetness, roughness, or any deviation from the original surface based upon the original cutout sample condition shall be noted and investigated. Liquid level lines shall be defined so the laminate condition in both the wet and dry zones can be determined. The following areas shall be closely examined for cracks, porosity, or chemical attacks on the liner or laminate:
 - 8.1.7.2.3.1 Fittings;
 - 8.1.7.2.3.2 Changes in shape;
 - 8.1.7.2.3.3 Baffles;
 - 8.1.7.2.3.4 Secondary overlays;
 - 8.1.7.2.3.5 Nozzles;
 - 8.1.7.2.3.6 Cut edges; and
 - 8.1.7.2.3.7 Supports and internal structures and areas of attachment.
 - 8.1.7.2.4 The inspector shall look for cracks, porosity, and any indication of deterioration of the liner and laminate. Liquid penetrant examination ~~per RT-630 of ASME Section X~~ as approved by the Department, may be used to locate and determine the extent of cracks. Deterioration of the surface may include softening of fiber prominence.
 - 8.1.7.2.5 A Barcol 934-1 hardness test, which can be found in the Standard ASTM D-2583, shall be performed on areas of suspected laminate degeneration. The resin hardness values shall be used to monitor the condition of the laminate over time as compared to the initial hardness value. If the corrosion resistant barrier shows such severe attack (for example, loose chopped strand glass mat fibers) that penetration of the corrosion barrier appears imminent before the next scheduled internal inspection, then the corrosion barrier shall be replaced.
 - 8.1.7.2.6 If known upsets occur that are outside the AST's design specifications then an internal inspection shall be performed within ~~thirty (30)~~ 30 days of the upset to ensure the integrity of the AST.

8.1.7.2.7 The following factors shall be considered when determining whether the initial internal inspection interval after being placed in service and subsequent external inspections intervals need to be shortened to ensure the integrity of the AST:

8.1.7.2.7.1 The distance between the AST and personnel and other equipment;

8.1.7.2.7.2 Contains regulated substances or is subject to conditions known to degrade or shorten the life of the laminates or liner;

8.1.7.2.7.3 Past experience has shown that more frequent external inspections are necessary;

8.1.7.2.7.4 Insurance or other regulatory requirements.

8.1.7.3 Internal Inspection Report Requirements

8.1.7.3.1 The internal inspection report shall at a minimum include the following:

8.1.7.3.1.1 The report shall be typed, not written by hand; and

8.1.7.3.1.2 The report shall state the date(s) that the inspection was conducted; and

8.1.7.3.1.3 The report shall state the inspection was an internal inspection and what industry inspection standard was utilized; and

8.1.7.3.1.4 The report shall contain the name, address, and phone number of the inspection company that conducted the inspection; and

8.1.7.3.1.5 The report shall contain the printed name of the certified inspector, the inspector's certification number or copy of certification certificate, and the signature of the certified inspector; and

8.1.7.3.1.6 The report shall list the tank data including ~~but not limited to~~, the tank diameter, tank height, regulated substance stored, date of tank construction, construction code, material of tank construction, tank orientation, tank identification number as listed on the DNREC AST registration form, type of foundation, type of roof, presence or absence of secondary containment, material of construction of secondary containment, notation of type of tank bottom as single or double, presence or absence of leak detection, type of leak detection if present, presence or absence of tank insulation, presence or absence of cathodic protection, and type of cathodic protection if present.

8.1.7.3.1.7 The report shall list all data collected including ~~but not limited to~~, thickness measurements, settlement measurements, out of round measurements and cathodic protection testing results; and

8.1.7.3.1.8 The report shall include all repairs required by industry standards; and

8.1.7.3.1.9 The report shall include all recommendations for repairs and upgrades not required by industry standards but recommended by the certified inspector; and

8.1.7.3.1.10 The report shall include details of any repairs or upgrades made to the tank as required or recommended by the certified inspector and any records of inspections of the repair or Upgrade.

8.1.7.3.1.11 The report shall state the date the next inspection is due according to the inspection code utilized for the inspection.

8.1.8 Underground Pipe Requirements

8.1.8.1 Underground Pipe is not subject to the requirements of Part C, Section 8.0.

8.2 Other Non-Metallic Field-Constructed and Shop-Fabricated ASTs

8.2.1 General Requirements

8.2.1.1 Owners or Operators of non-metallic field-constructed or shop-fabricated ASTs constructed of material other than fiber reinforced thermosetting plastic (FRTP), shall submit to the Department for approval before implementation, a schedule and criteria for inspections and testing. Inspection criteria shall include routine inspections, internal ~~inspections~~ inspections, and external inspections. Testing criteria shall include non-destructive testing and thickness measurements. The Owner or Operator shall also meet any applicable reference standards.

8.2.1.2 The Owner or Operator shall notify the Department in writing ~~ten (10)~~ 10 days prior to work commencing when ASTs subject to this Section are emptied for maintenance, repairs, or removed from service.

8.2.1.3 When a non-metallic AST has been tested or inspected as required by ~~these Regulations~~ this regulation, the Owner or Operator shall immediately initiate the actions required or recommended by the report of the certified inspector or the experience qualified individual, including ~~but not limited to~~ recommendations for repair or removal from service.

8.2.1.4 A report of the findings of any inspection required by this Section that concludes the AST is not fit for service shall be submitted to the Department and the AST Owner and Operator within ~~thirty (30)~~ 30 days of the conclusion of the inspection. The Owner or Operator shall submit to the Department with the inspection report an additional report detailing a proposed course of action including ~~but not limited to~~ removal of the AST contents and a schedule for repairs prior to the AST being returned to service. Removal of the AST contents shall commence within ~~five (5)~~ 5 days of the conclusion that the AST is not fit for service and completion of the removal of the AST contents shall not exceed ~~ninety (90)~~ 90 days, unless an alternative schedule is approved by the Department.

8.2.1.5 Inspections shall only be performed by inspectors familiar with the non-metallic material or materials from which the AST is constructed and qualified by experience for such inspections, including ~~but not limited to~~ those individuals certified under:

8.2.1.5.1 ASME RTP-1, Reinforced Thermoset Plastic Corrosion Resistant Equipment; or

8.2.1.5.2 National Board Inspection Code (NBIC), Part 3, Repairs and Alterations.

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

9.0 Inspection and Monitoring Requirements for Leak Detection

9.1 General Requirements

9.1.1 A Leak of Regulated Substances shall be detected and contained to prevent an impact on surface water, groundwater, or soil outside the Secondary Containment.

9.1.2 Leak Detection methods other than visual shall be calibrated, tested, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance checks for operability to ensure that the device is functioning as designed.

9.1.3 All manufacturers' instructions and the performance claims and their manner of determination described in writing by the equipment manufacturer or installer for the Leak Detection method shall be retained at the Facility for the life of the AST.

9.2 Leak Detection Inspection and Monitoring

9.2.1 The Leak Detection method or combination of methods used, except for those ASTs equipped with a Release Prevention Barrier or a double bottom, shall be inspected and monitored at least weekly to determine if a Leak from the AST has occurred. A checklist for each Leak Detection monitoring point shall be generated to document whether a Leak did or did not occur.

9.2.1.1 Leak Detection checklists that did not document a Leak shall be retained at the Facility by the Owner or Operator for ~~five (5)~~ 5 years after the Leak Detection inspection and shall be made available for review at the Department's request.

9.2.1.2 Leak Detection checklists that did document a Leak shall be retained at the Facility by the Owner or Operator for the life of the AST by current and future Owners or Operators.

9.2.1.3 Owners or Operators shall adhere to the reporting requirements, and the corrective action ~~requirements of in accordance with the requirements specified in DERBCAP and Part E of this regulation~~ at any time evidence of a leak or release is noted during the course of an inspection.

20 DE Reg. 815 (04/01/17)

10.0 Inspection and Monitoring Requirements for Inerting and Deflagration Prevention Systems

10.1 General Requirements

10.1.1 All ASTs subject to the Inerting Requirements of ~~these Regulations~~ this regulation shall have the Inerting system or other Department approved Deflagration prevention system continuously in place, in use, and operating to design specifications whenever an AST is in service and has the potential for a Flammable atmosphere. The system shall be in place, in use and operated to design specifications unless the AST has been cleaned sufficiently and purged of Flammable vapors to safely permit hot work in, on or around the AST.

10.1.2 Owners or Operators of ASTs subject to the Inerting Requirements of ~~these Regulations~~ this regulation shall adhere to the reporting requirements of ~~Part B Section 12~~ Part B, Section 12.0 at any time the Inerting system or other Department approved Deflagration prevention system is not operating in compliance with the requirements of ~~Part B Section 12~~ Part B, Section 12.0.

10.2 Inspection and Monitoring

- 10.2.1 Inerting systems and other Department approved Deflagration prevention systems shall be calibrated, tested, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance checks for operability to ensure that the system is functioning as designed. However, in no instance shall the calibration and testing of the Inerting system or other Department approved Deflagration system exceed one year.
- 10.2.2 Records of the calibration, testing, and maintenance of Inerting systems and other Department approved Deflagration prevention systems shall be made and shall be retained at the Facility by the Owner or Operator for ~~five (5)~~ 5 years after the report was generated. Reports shall be made available for review at the Department's request.
- 10.2.3 All manufacturers' instructions, and the performance claims and their manner of determination described in writing by the equipment manufacturer or installer for the Inerting system or Deflagration prevention system shall be retained at the Facility for the life of the AST.

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PART D FINANCIAL RESPONSIBILITY REQUIREMENTS FOR ASTs

1.0 General Requirements for Financial Responsibility

1.1 Applicability

- 1.1.1 This Part applies to Owners and Operators of ASTs as defined in Title 7 **Del.C.** Ch. 74A, §7402A and not otherwise exempt under Title 7 **Del.C.** Ch. 74A, §7404A or PART D, subsection 1.1.2.
- 1.1.2 An AST that is subject to and in compliance with the financial requirements of *Delaware's Regulations Governing Hazardous Waste* or 40 CFR 264 or 40 CFR 265 is exempt from compliance with PART D.
- 1.1.3 Financial responsibility under this Part is only applicable to accidental releases occurring after the date established in PART D, Section 2.
- 1.1.4 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 requirements of this Part for ASTs owned by a State or Federal government entity.
- 1.1.5 If the Owner and Operator of an AST 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 PART D, Section 2.0.

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2.0 Compliance Dates and Documentation of Compliance

2.1 Required Financial Responsibility Documentation and Dates of Compliance

- 2.1.1 Owners and Operators of ASTs shall comply with the requirements of PART D by June 1, 2005.
- 2.1.2 Owners and Operators shall submit the appropriate documentation as referenced in PART D, Sections 5.0 through 15.0 and Forms A through Q once every ~~twelve (12)~~ 12 months to the Department as proof of compliance with the financial responsibility requirements of this Part. Owners and Operators shall maintain a copy of all documentation as referenced in PART D, Sections 5.0 through 15.0 and Forms A-through Q of PART D.
- 2.1.3 Owners and Operators shall maintain evidence of all current and historical financial responsibility mechanisms used to demonstrate financial responsibility under PART D until released from the requirements under PART D, Section 19.0.
- 2.1.4 Records documenting compliance with the financial responsibility requirements of this Part shall be made available upon the request of the Department.
- 2.1.5 Owners and Operators shall submit to the Department documentation of the current mechanism within ~~thirty (30)~~ 30 days of confirmation of a release from the AST.
- 2.1.6 No AST shall contain a regulated substance without a current and valid financial responsibility mechanism in accordance with the applicable requirements of ~~these Regulations~~ this regulation.

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3.0 Amount and Scope of Required Financial Responsibility

3.1 Required Amount of Financial Responsibility by Aggregate Storage Capacity

3.1.1 Owners and Operators of ASTs 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 ASTs in at least the following amounts. Aggregate storage capacities used to establish the following levels of financial responsibility are the total storage capacity of all applicable ASTs in the State of Delaware:

3.1.1.1 For a person owning aggregate storage capacity less than or equal to 500,000 gallons, the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of \$500,000 per occurrence and \$1 million annual aggregate.

3.1.1.2 For a person owning aggregate storage capacity of greater than 500,000 gallons and less than or equal to 1,000,000 gallons, the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of \$1 million per occurrence and \$1 million annual aggregate.

3.1.1.3 For a person owning aggregate storage capacity of greater than 1,000,000 gallons and less than or equal to 3,000,000 gallons, the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of \$1 million per occurrence and \$2 million annual aggregate.

3.1.1.4 For a person owning aggregate storage capacity of greater than 3,000,000 gallons and less than or equal to 5,000,000 gallons, the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of \$2 million per occurrence and \$4 million annual aggregate.

3.1.1.5 For a person owning aggregate storage of greater than 5,000,000 gallons, the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of \$3 million per occurrence and \$6 million annual aggregate.

3.2 Additional Financial Responsibility Requirements

3.2.1 The amount of financial responsibility required under this Section excludes legal defense and administrative costs.

3.2.2 The required per occurrence and annual aggregate coverage amounts do not in any way limit the liability of the Owner or Operator.

3.2.3 The annual aggregate on ASTs is separate from the annual aggregate on underground storage tanks.

3.2.4 Owners and Operators shall review the amount of financial responsibility provided whenever additional ASTs are installed to comply with the requirements of PART D, subsection 3.1.

8 DE Reg. 1167 (02/01/05)

20 DE Reg. 815 (04/01/17)

4.0 Allowable Mechanisms and Combinations of Mechanisms

4.1 Allowable Financial Responsibility Mechanisms

4.1.1 Except as provided by Part D, subsection 4.1.2 and PART D, subsection 4.1.3:

4.1.1.1 An Owner or Operator may use any one or combination of the mechanisms listed in PART D, Sections 5.0 through 10.0, inclusive, to satisfy the requirements of PART D, Section 3.0.

4.1.1.2 A Local Government Owner or Operator may use any one or combination of the mechanisms listed in PART D, Sections 5.0 through 14.0, inclusive, to satisfy the requirements of PART D, Section 3.0.

4.1.2 An Owner or Operator may use Self-Insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the Owner or Operator are not consolidated with the financial statements of the Guarantor.

4.1.3 If the Owner or Operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

4.1.3.1 Taking corrective action; and

4.1.3.2 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 PART D, subsection 3.1.

4.1.4 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.

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5.0 Self-Insurance

5.1 Requirements for Use of Self-Insurance to Comply with Financial Responsibility

5.1.1 To satisfy the requirements of PART D, Section 3.0 by Self-Insurance, the Owner, Operator, or Guarantor shall:

- 5.1.1.1 Meet the financial test in PART D, subsection 5.1.2 or PART D, subsection 5.1.3 based on year-end financial statements for the latest completed Financial Reporting Year; and,
- 5.1.1.2 Complete PART D, Section 21.0 Form A exactly as shown, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted; and,
- 5.1.1.3 Submit the completed PART D, Section 21.0, Form A to the Department, signed by the Chief Financial Officer of the Owner, Operator, or Guarantor, within ~~one hundred and twenty (120)~~ 120 days of the close of each fiscal year.

5.1.2 Alternative I - Net Worth Test

- 5.1.2.1 The Owner, Operator, or Guarantor, shall have a tangible net worth of at least \$10 million; and
- 5.1.2.2 The Owner, Operator, or Guarantor, shall have a tangible net worth of at least ten times the sum of the following:
 - 5.1.2.2.1 The applicable annual aggregate amount required by PART D, Section 3.0 less the amount obtained through another mechanism or combination of mechanisms in accordance with PART D, Section 4.0, for which a financial test is used to demonstrate financial responsibility to the Department under this Section; and
 - 5.1.2.2.2 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), and
- 5.1.2.3 The Owner, Operator, or Guarantor, shall either:
 - 5.1.2.3.1 File financial statements annually with the U.S. Securities and Exchange Commission (SEC), the Energy Information Administration (EIA), or the Rural Utilities Service (RUS); or
 - 5.1.2.3.2 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
- 5.1.2.4 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.

5.1.3 Alternative II - Net Working Capital Test

- 5.1.3.1 The Owner, Operator, or Guarantor shall have a tangible net worth of at least \$10 million; and
- 5.1.3.2 The Owner, Operator, or Guarantor shall have a tangible net worth of six times the sum of the following:
 - 5.1.3.2.1 The applicable annual aggregate amount required by PART D, Section 3.0 less the amount obtained through another mechanism or combination of mechanisms in accordance with PART D, Section 4.0, for which a financial test is used to demonstrate financial responsibility to the Department under this Section; and
 - 5.1.3.2.2 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); and
- 5.1.3.3 The Owner, Operator, or Guarantor shall have either:
 - 5.1.3.3.1 At least ~~90 percent~~ 90% of assets are in the United States, or
 - 5.1.3.3.2 U.S. assets are at least ~~six~~ 6 times the sum of the following:
 - 5.1.3.3.2.1 The applicable annual aggregate amount required by PART D, Section 3.0 less the amount obtained through another mechanism or combination of mechanisms in accordance with PART D, Section 4.0, for which a financial test is used to demonstrate financial responsibility to the Department under this Section; and
 - 5.1.3.3.2.2 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); and
- 5.1.3.4 The Owner, Operator, or Guarantor shall have either

- 5.1.3.4.1 Net working capital of at least ~~six~~ 6 times the sum of the following:
 - 5.1.3.4.1.1 The applicable annual aggregate amount required by PART D, Section 3.0 less the amount obtained through another mechanism or combination of mechanisms in accordance with PART D, Section 4.0, for which a financial test is used to demonstrate financial responsibility to the Department under this Section; and
 - 5.1.3.4.1.2 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
- 5.1.3.4.2 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, and
- 5.1.3.5 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, and
- 5.1.3.6 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 PART D, subsection 5.1.2.4 and the independently audited year-end financial statements and footnotes for the latest completed Financial Reporting Year.
- 5.1.4 If an Owner or Operator finds that he or she no longer meets the requirements of PART D, subsection 5.1, the Owner or Operator shall obtain alternative coverage within ~~one hundred fifty (150)~~ 150 days of the latest completed Financial Reporting Year.
- 5.1.5 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 PART D, subsection 5.1, the Owner or Operator shall obtain alternate coverage within 30 days after notification by verifiable service of such a finding.
- 5.1.6 If the Owner and Operator fail to obtain alternate coverage within ~~one hundred fifty (150)~~ 150 days of finding that ~~he or she~~ the Owner and Operator no longer meets the requirements of PART D, subsection 5.1, or within ~~thirty (30)~~ 30 days of notification by the Department that he or she no longer meets the requirements of PART D, subsection 5.1, the Owner or Operator shall notify the Secretary of such failure within ~~ten (10)~~ 10 days.

20 DE Reg. 815 (04/01/17)

6.0 Guarantee

- 6.1 Requirements for Use of Guarantee to Comply with Financial Responsibility
 - 6.1.1 An Owner or Operator may satisfy the requirements of PART D, Section 3.0 by obtaining a guarantee that conforms to the requirements of this Section. The Guarantor must be a business entity that:
 - 6.1.1.1 Possesses a controlling interest in the Owner or Operator; or
 - 6.1.1.2 Possesses a controlling interest in a firm that has a controlling interest in the Owner or Operator; or
 - 6.1.1.3 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
 - 6.1.1.4 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.
 - 6.1.2 The Guarantor shall:
 - 6.1.2.1 Comply with PART D, Section 5.0; and
 - 6.1.2.2 Complete PART D, Section 22.0, Form B, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; and
 - 6.1.2.3 Submit the completed PART D, Section 22.0, Form B to the Department together with their submission under PART D, Section 5.0; and
 - 6.1.2.4 Provide the Owner or Operator with copies of their submissions under PART D, subsections 6.1.2.1 and PART D, subsection 6.1.2.3.

- 6.1.3 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)~~ 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)~~ 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 subsection 17.2.
- 6.1.4 If the Department notifies the Guarantor that he no longer meets the requirements of PART D subsection 5.1.1.1, the Guarantor shall notify the Owner and Operator by Verifiable Service within ~~ten (10)~~ 10 days of receiving such notification from the Department. The guarantee will terminate no less than ~~one hundred twenty (120)~~ 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 PART D, subsection 17.2.
- 6.1.5 The Owner or Operator who uses a guarantee to satisfy the requirements of PART D Section 3.0 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 PART D, Section 18.0. This standby trust fund shall meet the requirements specified in PART D, Section 15.0.
- 6.1.6 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.

20 DE Reg. 815 (04/01/17)

7.0 Insurance and Risk Retention Group Coverage

- 7.1 Requirements for Use of Insurance or Risk Retention Group to Comply with Financial Responsibility
- 7.1.1 An Owner or Operator may satisfy the requirements of PART D, Section 3.0 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.
- 7.1.2 Each insurance policy shall be amended by an endorsement worded as specified in PART D, Section 22.0, Form C or evidenced by a certificate of insurance worded as specified in PART D, Section 23.0, Form D except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.
- 7.1.3 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.

20 DE Reg. 815 (04/01/17)

8.0 Surety Bond

- 8.1 Requirements for Use of Surety Bond to Comply with Financial Responsibility
- 8.1.1 An Owner or Operator may satisfy the requirements of PART D, Section 3.1, by obtaining a surety bond that conforms to the requirements of this Section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.
- 8.1.2 The surety bond shall be worded as shown in PART D, Section 24.0, Form E, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.
- 8.1.3 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 PART D, Section 3.0.
- 8.1.4 The Owner or Operator who uses a surety bond to satisfy the requirements of PART D, Section 3.0 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 PART D, Section 18.0. This standby trust fund shall meet the requirements specified in PART D, Section 15.0.
- 8.1.5 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.

- 8.1.6 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 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 PART D, subsection 17.2.
- 8.1.7 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 PART D, subsection 17.2.

20 DE Reg. 815 (04/01/17)

9.0 Letter of Credit

- 9.1 Requirements for Use of Letter of Credit to Comply with Financial Responsibility
- 9.1.1 An Owner or Operator may satisfy the requirements of PART D, Section 3.0 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.
- 9.1.2 The letter of credit shall be worded as shown in PART D, Section 25.0, Form F except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- 9.1.3 An Owner or Operator who uses a letter of credit to satisfy the requirements of PART D, Section 3.0 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 PART D, Section 18.0. This standby trust fund shall meet the requirements specified in PART D, Section 15.0.
- 9.1.4 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 and twenty (120)~~ 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 and twenty (120)~~ 120 days will begin on the date when the Owner and Operator receives the notice, as evidenced by the verifiable service.

20 DE Reg. 815 (04/01/17)

10.0 Trust Fund

- 10.1 Requirements for Use of Trust Fund to Comply with Financial Responsibility
- 10.1.1 An Owner or Operator may satisfy the requirements of PART D, Section 3.0 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.
- 10.1.2 The wording of the trust agreement shall be identical to the wording specified in PART D, Section 26.0, Form G except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and shall be accompanied by a formal certification of acknowledgment as specified in PART D, Section 26.0, Form G.
- 10.1.3 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.
- 10.1.4 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.
- 10.1.5 If other financial responsibility 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.
- 10.1.6 Within ~~sixty (60)~~ 60 days after receiving a request from the Owner or Operator for Release of funds as specified in PART D, subsection 10.1.4 or PART D, subsection 10.1.5, the Department will instruct the trustee to Release to the Owner or Operator such funds as the Department specifies in writing by verifiable service.

20 DE Reg. 815 (04/01/17)

11.0 Local Government Bond Rating Test

- 11.1 Requirements for Use of Local Government Bond Rating Test to Comply with Financial Responsibility

- 11.1.1 A general purpose local government Owner or Operator and/or local government serving as a Guarantor may satisfy the requirements of PART D, Section 3.0 by having a currently outstanding issue or issues of general obligation bonds of at least the minimum Annual Aggregate amount required in PART D, Section 3.0 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.
- 11.1.2 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 PART D, Section 3.0:
 - 11.1.2.1 having a currently outstanding issue or issues of revenue bonds of at least the minimum Annual Aggregate amount required in PART D, Section 3.0 excluding refunded issues and having a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.
- 11.1.3 The local government Owner or Operator or Guarantor shall maintain a copy of its bond rating published within the last ~~twelve (12)~~ 12 months by Moody's or Standard & Poor's.
- 11.1.4 To demonstrate that it meets the local government bond rating test, the Chief Financial Officer of a general purpose local government Owner or Operator and/or Guarantor shall have a letter signed by the Chief Financial Officer worded as specified in PART D, Section 27.0, Form J except that instructions in brackets are to be replaced by the relevant information and the brackets deleted.
- 11.1.5 To demonstrate that it meets the local government bond rating test, the Chief Financial Officer of local government Owner, Operator, or Guarantor other than a general purpose government shall have a letter signed by the Chief Financial Officer worded as specified in PART D, Section 28.0, Form K except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
- 11.1.6 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)~~ 30 days after notification of such a finding.
- 11.1.7 If a local government Owner or Operator using the bond rating test to provide financial responsibility finds that it no longer meets the bond rating test requirements, the local government Owner or Operator shall obtain alternative coverage within ~~one hundred and fifty (150)~~ 150 days of the change in status.
- 11.1.8 A local government Owner or Operator using the Local Government bond rating test under PART D, Section 44 11.0 shall maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.

20 DE Reg. 815 (04/01/17)

12.0 Local Government Financial Test

- 12.1 Requirements for Use of Local Government Financial Test to Comply with Financial Responsibility
 - 12.1.1 A local government Owner or Operator may satisfy the requirements of PART D, Section 3.0 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 PART D, subsection 12.1.3 and PART D, subsection 12.1.4 based on year-end financial statements for the latest completed Financial Reporting Year.
 - 12.1.2 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:
 - 12.1.2.1 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.

- 12.1.2.2 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).
- 12.1.2.3 Local Revenues: Consists of total revenues (as defined in PART D, subsection 12.1.2.1) minus the sum of all transfers from other governmental entities, including all monies received from Federal, State, or local government sources.
- 12.1.2.4 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 non-interest bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.
- 12.1.2.5 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.
- 12.1.2.6 Population: Consists of the number of people in the area served by the local government.
- 12.1.3 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.
- 12.1.4 The local government Owner or Operator shall have a letter signed by the Chief Financial Officer worded as specified in PART D, Section 29.0, Form L except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
- 12.1.5 To demonstrate that it meets the financial test under PART D, subsection 12.1.2, the Chief Financial Officer of the local government Owner or Operator, shall sign, within ~~one hundred and twenty (120)~~ 120 days of the close of each Financial Reporting Year, as defined by the twelve month period for which financial statements used to support the financial test are prepared, a letter worded as specified in PART D, Section 29.0, Form L except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
- 12.1.6 If a local government Owner or Operator using the test to provide financial responsibility 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 and fifty (150)~~ 150 days of the end of the year for which financial statements have been prepared.
- 12.1.7 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 PART D, subsection §12.1.2 and PART D, subsection 12.1.5, the Owner or Operator shall obtain alternate coverage within ~~thirty (30)~~ 30 days after notification of such a finding.
- 12.1.8 If the local government Owner or Operator fails to obtain alternate assurance within ~~one hundred and fifty (150)~~ 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)~~ 30 days of notification by the Department that it no longer meets the requirements of the financial test, the Owner or Operator shall notify the Department of such failure within ~~ten (10)~~ 10 days.

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13.0 Local Government Guarantee

13.1 Requirements for Use of Local Government Guarantee to Comply with Financial Responsibility

- 13.1.1 A local government Owner or Operator may satisfy the requirements of PART D, Section 3.0 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:
 - 13.1.1.1 Demonstrate that it meets the bond rating test requirement of PART D, Section 11.0 and deliver a copy of the completed Chief Financial Officer's letter as contained in PART D, Section 27.0, Form J to the local government Owner or Operator; or
 - 13.1.1.2 Demonstrate that it meets the worksheet test requirements of PART D, Section 12.0 and deliver a copy of the completed Chief Financial Officer's letter as contained in PART D, Section 28.0, Form K to the local government Owner and Operator; or
 - 13.1.1.3 Demonstrate that it meets the local government fund requirements of PART D, subsection 14.1.1.1, PART D, subsection 14.1.1.2 or PART D, subsection 14.1.1.3 and deliver a copy of the completed Chief Financial Officer's letter as contained in PART D Section 31.0, Form Q to the local government Owner and Operator.
- 13.1.2 If the local government Guarantor is unable to demonstrate financial responsibility under any of the mechanisms in PART D, Section 11.0, PART D, Section 12.0 or PART D, Section 14.0, 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 and twenty (120)~~ 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 PART D, subsection 17.2.
- 13.1.3 The guarantee agreement shall be worded as specified in PART D, Section 29.0 Form M, PART D, Section 30.0, Form N, PART D, Section 31.0 Form O or PART D, Section 32.0 Form P, depending on which of the following alternative guarantee arrangements is selected:
 - 13.1.3.1 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 as specified in PART D, Section 29.0 Form M or PART D, Section 30.0, Form N.
 - 13.1.3.2 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 as specified in PART D, Section 31.0 Form O or PART D, Section 32.0 Form P.
- 13.1.4 If the Guarantor is a State, the local government Guarantee With Standby Trust shall be worded as shown in PART D, Section 29.0 Form M, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
- 13.1.5 If the Guarantor is a local government, the local government Guarantee With Standby Trust shall be worded as shown in PART D, Section 30.0 Form N, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
- 13.1.6 If the Guarantor is a State, the local government Guarantee Without Standby Trust shall be worded as shown in PART D, Section 31.0 Form O, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
- 13.1.7 If the Guarantor is a local government, the local government Guarantee Without Standby Trust shall be worded as shown in PART D, Section 32.0 Form P, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
- 13.1.8 A local government Owner or Operator using the local government Guarantee under PART D, Section 13.0, where the Guarantor's demonstration of financial responsibility relies on the bond rating test under PART D, Section 11.0, shall maintain a copy of the Guarantor's bond rating published within the last twelve months by Moody's or Standard & Poor's.
- 13.1.9 A local government Owner or Operator using the local government Guarantee supported by PART D, Section 14.0, 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.

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14.0 Local Government Fund

14.1 Requirements for Use of Local Government Fund to Comply with Financial Responsibility

14.1.1. A local government Owner or Operator may satisfy the requirements of PART D, Section 3.0 by establishing a dedicated fund account that conforms to the requirements of this Section. Except as specified in PART D, subsection 14.1.1.2, a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:

14.1.1.1 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 ASTs and is funded for the full amount of coverage required under PART D, Section 3.0, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or

14.1.1.2 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 ASTs, and is funded for ~~five~~ 5 times the full amount of coverage required under PART D, Section 3.0, 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 PART D, Section 3.0, the amount of financial responsibility demonstrated by the fund shall not exceed one fifth the amount in the fund; or

14.1.1.3 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 ASTs. A payment is made to the fund once every year for ~~seven~~ 7 years until the fund is fully-funded. This ~~seven~~ 7 year period is 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 responsibility 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

14.1.1.3.1 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 ASTs, or

14.1.1.3.2 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.

14.1.2 To demonstrate that it meets the requirements of the local government fund, the Chief Financial Officer of the local government Owner or Operator and/or Guarantor shall sign a letter worded as specified in PART D, Section 31.0, Form Q, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

14.1.3 An Owner or Operator using a local government fund under PART D, Section 14.0 shall maintain the following documents:

14.1.3.1 A copy of the State constitutional provision or local government statute, charter, ordinance, or order dedicating the fund, and

14.1.3.2 Year-end financial statements for the most recent completed Financial Reporting Year showing the amount in the fund. If the fund is established under PART D, subsection 14.1.1.3 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

14.1.3.3 If the fund is established under PART D, subsection 14.1.1.3 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 PART D, subsection 14.1.1.3.1, or attestation by the State Attorney General as specified under PART D, subsection 14.1.1.3.2.

15.0 Standby Trust Fund

15.1 Requirements for Use of Standby Trust Fund to Comply with Financial Responsibility

- 15.1.1 An Owner or Operator using any one of the mechanisms authorized by PART D, Section 6.0, PART D, Section 8.0, PART D, Section 9.0 and PART D, Section 10.0 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.
- 15.1.2 The standby trust agreement shall be worded as shown in PART D, Section 28.0 Form H except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- 15.1.3 The Secretary will instruct the trustee to refund the balance of the standby trust fund to the Provider of Financial Responsibility 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 responsibility mechanism for which the standby trust fund was established.
- 15.1.4 An Owner or Operator may establish one trust fund as the depository mechanism for all funds assured in compliance with PART D.

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16.0 Substitution of Financial Responsibility Mechanisms by Owner or Operator

16.1 Requirements for Substitution of Financial Responsibility Mechanisms

- 16.1.1 An Owner or Operator may substitute any alternate financial responsibility mechanisms as specified in PART D, provided that at all times the Owner or Operator maintains an effective financial responsibility mechanism or combination of mechanisms that satisfies the requirements of PART D, Section 3.0.
- 16.1.2 After obtaining alternate financial responsibility as specified in PART D, an Owner or Operator may cancel a financial responsibility mechanism by providing notice as evidenced by verifiable service, to the Provider of Financial Responsibility and shall submit a copy of such notice to the Department within ~~ten (10)~~ 10 days of the change.
- 16.1.3 When an Owner or Operator changes from one type of financial responsibility mechanism to another, the Owner or Operator shall submit the required documentation as stipulated in ~~these Regulations~~ this regulation for the new financial responsibility mechanism to the Department within ~~ten (10)~~ 10 days of the change.

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17.0 Cancellation or Non-Renewal, Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Responsibility

17.1 Requirements for Cancellation or Non-Renewal of a Financial Responsibility Mechanism:

- 17.1.1 Except as otherwise provided, a Provider of Financial Responsibility 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:
 - 17.1.1.1 Termination of a local government guarantee, a guarantee, a surety bond or a letter of credit may not occur until ~~one hundred and twenty (120)~~ 120 days after the date on which the Owner and Operator receives the notice of Termination, as evidenced by verifiable service.
 - 17.1.1.2 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)~~ 60 days after the date on which the Owner and Operator receives the notice of termination, as evidenced by verifiable service.
 - 17.1.1.3 Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of ~~ten (10)~~ 10 days after the date on which the Owner and Operator receives the notice of termination, as evidenced by verifiable service.
 - 17.1.1.4 The Owner or Operator shall notify the Department within ~~ten (10)~~ 10 days upon receiving notification of cancellation or non-renewal subject to the requirements of PART D, subsection 17.1.
- 17.1.2 If a provider of financial responsibility cancels or fails to renew for reasons other than the incapacity of the provider as specified in PART D, subsection 17.2, the Owner and Operator shall obtain alternate coverage within ~~sixty (60)~~ 60 days after receipt of the notice of termination. The Owner and Operator shall submit proof of the alternative financial responsibility mechanism to the Department in accordance with PART D.

- 17.1.3 If the Owner and Operator fail to obtain alternate coverage within ~~sixty (60)~~ 60 days after receipt of the notice of termination, the Owner and Operator shall notify the Department of such failure within ~~ten (10)~~ 10 days and shall submit the following to the Department:
- 17.1.3.1 The name and address of the Provider of Financial Responsibility; and
 - 17.1.3.2 The effective date of termination; and
 - 17.1.3.3 The evidence of the financial responsibility mechanism subject to the Termination maintained in accordance with PART D, Section 2.0.
- 17.1.4 In the event of termination or nonrenewal of liability insurance coverage used to meet the financial responsibility requirements, the insurer shall notify the Department of termination or nonrenewal not more than ~~fifteen (15)~~ 15 days after the date of termination or nonrenewal. The notice shall state the name and address of the insured, the date of termination or nonrenewal, and the address(es) of the facility(ies) previously insured. Failure to notify or timely provide a copy to the Department will not invalidate a provider's action to terminate coverage or deny renewal of coverage.
- 17.2 Requirements for Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Responsibility
- 17.2.1 Within ~~ten (10)~~ 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 PART D, Sections 5.0 through 15.0 and Forms A through Q demonstrating current compliance with the financial responsibility requirements PART D.
 - 17.2.2 Within ~~ten (10)~~ 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a Guarantor providing financial responsibility as debtor, such Guarantor shall notify the Owner and Operator and the Department by verifiable service of such commencement.
 - 17.2.3 Within ~~ten (10)~~ 10 days after the suspension or revocation of the authority of a Provider of Financial Responsibility to issue a financial responsibility mechanism, such provider shall notify the Owner and Operator by verifiable service of such suspension or revocation.
 - 17.2.4 Within ~~ten (10)~~ 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.
 - 17.2.5 Within ~~ten (10)~~ 10 days of receiving notification per PART D, subsection 17.2.2, PART D, subsection 17.2.3 or PART D, subsection 17.2.4, the Owner shall notify the Department by verifiable service.
 - 17.2.6 An Owner or Operator who obtains financial responsibility by a mechanism other than the financial test of Self-Insurance will be deemed to be without the required financial responsibility in the event of bankruptcy or incapacity of its Provider of Financial Responsibility, or a suspension or revocation of the authority of the Provider of Financial Responsibility to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit.
 - 17.2.7 Except in the case of financial test of Self-Insurance, the Owner and Operator shall obtain alternate financial responsibility within ~~thirty (30)~~ 30 days after receiving notice of a bankruptcy or incapacity of its provider of financial responsibility per PART D, subsection 17.2. If the Owner or Operator does not obtain alternate coverage within ~~thirty (30)~~ 30 days after such notification, the Owner and Operator shall notify the Department within ~~ten (10)~~ 10 days.
 - 17.2.8 An Owner or Operator who has a potential or existing claim filed with a Guarantor, indemnitor or other provider of financial responsibility 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.

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18.0 Drawing on Financial Responsibility Mechanisms

- 18.1 Requirements for Drawing on Mechanisms
- 18.1.1 Except as specified in PART D, subsection 18.1.4, 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 responsibility mechanism, into the standby trust if:
 - 18.1.1.1 The Owner or Operator fails to establish alternate financial responsibility within ~~sixty (60)~~ 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial responsibility mechanisms; and

- 18.1.1.2 The Department determines or suspects that a release from an AST 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~~ this regulation of a release from an AST covered by the mechanism; or
- 18.1.1.3 The conditions of PART D, subsection 18.1.2.1 or PART D, subsection 18.1.2.2 are satisfied.
- 18.1.2 The Department may draw on a standby trust fund when:
 - 18.1.2.1 The Department makes a final determination that a release has occurred and immediate or ~~long term~~ 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~~ this regulation; or
 - 18.1.2.2 The Department has received either:
 - 18.1.2.2.1 Certification from the Owner or Operator and the ~~third-party~~ 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 shown in PART D, Section 28.0, Form I of this Part except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; or
 - 18.1.2.2.2 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 AST covered by financial responsibility under PART D and the Department determines that the Owner or Operator has not satisfied the judgment.
- 18.1.3 If the Department determines that the amount of corrective action costs and ~~third-party~~ third-party liability claims eligible for payment under PART D, subsection 18.1.2 may exceed the balance of the standby trust fund and the obligation of the provider of financial responsibility, 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 PART D, subsection 18.1.2.
- 18.1.4 A governmental entity acting as Guarantor under PART D, Section 13.0, the local government guarantee without standby trust, shall make payments as directed by the Secretary under the circumstances described in PART D, subsection 18.1.1, PART D, subsection 18.1.2 and PART D, subsection 18.1.3.

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19.0 Release from the Requirements of Financial Responsibility

- 19.1 Requirements for Release from the Requirements of Financial Responsibility
 - 19.1.1 An Owner and Operator is no longer required to maintain financial responsibility under PART D for an AST when:
 - 19.1.1.1 The requirements of PART B, Section 14.0 have been met; and
 - 19.1.1.2 When the financial responsibility mechanism being used is Self-Insurance, guarantee, surety bond, letter of credit, trust fund, local government bond rating test, local government financial test, local government guarantee, or local government fund after corrective action has been completed as required by PART E of ~~these Regulations~~ this regulation; or
 - 19.1.1.3 When the financial responsibility mechanism being utilized is Insurance, a claim has been submitted to the Insurance provider in accordance with all the requirements set forth by the Insurance provider and the applicable policy requirements.

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20.0 Replenishments of Required Financial Responsibility

- 20.1 Requirements for Replenishments of Financial Responsibility Mechanisms
 - 20.1.1 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:
 - 20.1.1.1 Replenish the value of financial responsibility to equal the full amount of coverage required, or
 - 20.1.1.2 Acquire another financial responsibility mechanism for the amount by which funds in the standby trust have been reduced.
 - 20.1.2 For purposes of this Section, the full amount of coverage required is the amount of financial responsibility required by PART D, Section 3.0. If a combination of mechanisms was used to provide the financial

responsibility funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

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Section 21. Form A - AST Financial Test of Self-Insurance

Letter from Chief Financial Officer

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) aboveground storage tank(s) (AST).

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

List for each Facility: the name and address of the Facility where ASTs assured by this Financial Test are located, and indicate which ASTs are assured by this Financial Test. List each AST by the AST identification number provided in the registration form submitted pursuant to PART A of ~~these Regulations~~ this regulation.

AST Facility I.D. Number: _____ (as listed on DNREC registration certificate)

Facility Name: _____

Facility Street: _____

Facility City: _____ **Facility Zip Code:** _____

AST ID# (from AST registration form)	AST size (in gallons)	AST contents	Covered by this Financial Test of Self Insurance Y/N

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 aggregate UST and AST 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 D, subsection 5.1 as the Delaware *Regulations Governing Aboveground Storage Tanks* were constituted on the date shown immediately below.

(Signature) _____

(Name) _____

(Title) _____

(Date) _____

[Fill in the information for Alternative I if the criteria of PART D, subsection 5.1.2 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of PART D, subsection 5.1.3 are being used to demonstrate compliance with the financial test requirements.]

Alternative I

- 1. Amount of AST 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 UST or 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?..... **c Yes c No***
(Tangible Net Worth at least \$10million)
- 8. Is line 6 at least 10 times line 3?..... **c Yes c 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 AST Financial Responsibility requirements.**

Complete Lines 9-11 OR Line 12

- 9. Have financial statements for the latest fiscal year been filed with the U.S. Securities and Exchange Commission?..... **c Yes c No**
- 10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration?..... **c Yes c No**
- 11. Have financial statements for the latest fiscal year been filed with the Rural Utilities Service?..... **c Yes c No**
- 12. Has financial information been provided to Dun & Bradstreet, and has Dun & Bradstreet provided a financial strength rating of 4A or 5A?..... **c Yes c No**
(Answer "Yes" only if both criteria have been met.)
- 13. If the firm's year end financial statements have been independently audited, they do not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification? If the answer to

line 13 is "No" this test cannot be used to meet the AST FR requirements. **c Yes c No**
(Answer "Yes" only if all criteria have been met.)

Alternative II

- 1. Amount of AST 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 UST or 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?..... **c Yes c No***
(Tangible Net Worth at least \$10 million)
- 9. Is line 6 at least 6 times line 3?..... **c Yes c No***
(Tangible Net Worth 6 times other environmental obligations)

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

- 10. Are at least 90 percent of assets located in the U.S.? **c Yes c 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 AST coverage plus other environmental liabilities) **c Yes c 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?..... **c Yes c 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)?..... **C Yes C 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? If the answer to line 20 is "No" this test cannot be used to meet the FR requirements.

Answer "Yes" only if both criteria have been met)..... **C Yes C No**

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Section 22. Form B - AST Guarantee

GUARANTEE

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

Recitals

(1) Guarantor meets or exceeds the financial test criteria of PART D, subsection 5.1.2 or PART D, subsection 5.1.3 and agrees to comply with the requirements for Guarantors as specified in PART D, subsection 6.1.

(2) [Owner or Operator] owns or operates the following aboveground storage tanks (ASTs) covered by this guarantee:

List for each Facility: the name and address of the Facility where ASTs assured by this Guarantee are located, and indicate which ASTs are assured by this Guarantee. List each AST by the AST identification number provided in the registration form submitted pursuant to Part A of ~~these Regulations~~ this regulation.

AST Facility I.D. Number: _____ (as listed on DNREC registration certificate)

Facility Name: _____

Facility Street: _____

Facility City: _____ **Facility Zip Code:** _____

AST ID# (from AST registration form)	AST size (in gallons)	AST contents	Covered by this Guarantee Y/N

This guarantee satisfies PART D, Section 3.0 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 ASTs or locations, indicate the type of coverage applicable to each AST or location arising from operating the above-identified AST(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 ~~sixty (60) Days~~ 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 AST covered by this Guarantee, the Guarantor, upon instructions from the Department, shall fund a standby trust fund in accordance with the provisions of PART D, Section 18.0 in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [Owner or Operator] has failed to perform Corrective Action for Release arising out of the operation of the above-identified tank(s) in accordance with PART E of this regulation, the Guarantor upon written instructions from the Department shall fund a standby trust fund in accordance with the provisions of PART D, Section 18.0 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 ASTs, 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 D, Section 18.0 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 D, subsection 5.1.1 and PART D, subsection 5.1.2, or PART D, subsection 5.1.3, Guarantor shall send within ~~one hundred and twenty (120) Days~~ 120 days of such failure, by Verifiable Service, notice to [Owner and Operator]. The Guarantee will terminate ~~one hundred and twenty (120) Days~~ 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 ~~ten (10) Days~~ 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~~ this regulation.

(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~~ this regulation for the above-identified ASTs, except that Guarantor may cancel this Guarantee by sending notice by certified mail to [Owner or Operator] such cancellation to become effective no earlier than ~~one hundred and twenty (120) Days~~ 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 AST;
- (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 PART D, Section 3.0.

(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 D, Section 6.0 of the Delaware *Regulations Governing Aboveground Storage Tanks* 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: _____

20 DE Reg. 815 (04/01/17)

Section 23. Form C - AST Endorsement

ENDORSEMENT

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

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

Policy Number: _____

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

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

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

Name of [Insured]: _____

Address of [Insured]: _____

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following aboveground storage tanks (ASTs):

List for each Facility: the name and address of the Facility where ASTs assured by this Policy Endorsement are located, and indicate which ASTs are assured by this Policy Endorsement. List each AST by the AST identification number provided in the registration form submitted pursuant to Part A of ~~these Regulations~~ this regulation.

AST Facility I.D. Number: _____ (as listed on DNREC registration certificate)

Facility Name: _____

Facility Street: _____

Facility City: _____ Facility Zip Code: _____

AST ID# (from AST registration form)	AST size (in gallons)	AST contents	Covered by this Insurance Policy endorsement? Y/N

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 ASTs or locations, indicate the type of coverage applicable to each ASTs or location] arising from operating the AST(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 ASTs or locations, indicate the amount of coverage for each type of coverage and/or for each AST or location], exclusive of Legal Defense Costs which are subject to a separate limit under the policy. This coverage is provided under _____. The Effective Date of said policy is _____. [Policy Number] [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 2.0 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 D, Sections 5 through 15.
- 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 ~~sixty (60) Days~~ 60 after a copy of such written notice is received by the insured.
- e. 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 ~~ten (10) Days~~ 10 days after a copy of such written notice is received by the insured.
- f. Insert for claims-made policies:
The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six (6) months of the Effective Date of 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.

- g. In the event of termination or nonrenewal of the insurance by the ["Insurer" or "Group"], the insurer shall notify the Department of ~~Natural Resources and Environmental Control, Tank Management Section~~, by Verifiable Service, of termination or nonrenewal not more than ~~twenty (20) Days~~ 20 days after the termination or nonrenewal. The notice shall state the name and address of the insured, the date of termination or nonrenewal, and the address of the ASTs previously insured.

I hereby certify that the wording of this instrument is identical to the wording in, PART D, Section 23.0 Form C, of the Delaware *Regulations Governing Aboveground Storage Tanks* as constituted on the date shown immediately below and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more States"].

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

Name of Person signing: _____
Print legibly or type

Title of Person signing: _____
Print legibly or type

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

Address of Representative: _____
Print legibly or type

20 DE Reg. 815 (04/01/17)

Section 24. Form D - AST Certificate of Insurance

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

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

Policy Number: _____

Endorsement (if applicable): _____

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

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

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

Name of [Insured]: _____

Address of [Insured]: _____

Certification:

1. [Name of the Insurer or Risk Retention Group], the "Insurer" or "Group," as identified above, hereby certifies that it has issued liability insurance covering the following aboveground storage tanks (ASTs):

List for each Facility: the name and address of the Facility where ASTs assured by this Policy are located, and indicate which ASTs are assured by this Policy. List each AST by the AST identification number provided in the registration form submitted pursuant to PART A of ~~these Regulations~~ this regulation.

AST Facility I.D. Number: _____ (as listed on DNREC registration certificate)

Facility Name: _____

Facility Street: _____

Facility City: _____ **Facility Zip Code:** _____

AST ID# (from AST registration form)	AST size (in gallons)	AST contents	Covered by this Insurance Policy? Y/N

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 or locations, indicate the type of coverage applicable to each tank or location arising from operating the AST(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 ASTs or locations, indicate the amount of coverage for each type of coverage and/or for each AST 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 Sections 5.0 through 15.0 of this Part.
 - 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 ~~sixty (60) Days~~ 60 days after a copy of such written notice is received by the insured.
- e. 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 ~~ten (10) Days~~ 10 days after a copy of such written notice is received by the insured.
- f. 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.
- g. In the event of termination or nonrenewal of the insurance by the ["Insurer" or "Group"], the insurer shall notify the Department of ~~Natural Resources and Environmental Control, Tank Management Section~~, by Verifiable Service, of termination or nonrenewal not more than ~~thirty (30)~~ 30 Days after the termination or nonrenewal. The notice shall state the name and address of the insured, the date of termination or nonrenewal, and the address of the ASTs previously insured.

I hereby certify that the wording of this instrument is identical to the wording in PART D, Section 23.0, Form D of the Delaware *Regulations Governing Aboveground Storage Tanks* as constituted on the date shown immediately below and that the ["Insurer" or "Group"] is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States."

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

Name of Person signing: _____
Print legibly or type

Title of Person signing: _____
Print legibly or type

Authorized Representative of [Insurer or Risk Retention Group]

Address of Representative: _____
Print legibly or type

20 DE Reg. 815 (04/01/17)

Section 25. Form E - AST Surety Bond

SURETY BOND

Date bond executed: _____

Period of Coverage: _____

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

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

State of incorporation (if applicable): _____

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

Scope of Coverage:

List for each Facility: the name and address of the Facility where ASTs assured by this Surety are located, and indicate which ASTs are assured by this Surety. List each AST by the AST identification number provided in the registration form submitted pursuant to Part A of ~~these Regulations~~ this regulation.

AST Facility I.D. Number: _____ (as listed on DNREC registration certificate)

Facility Name: _____

Facility Street: _____

Facility City: _____ **Facility Zip Code:** _____

AST ID# (from AST registration form)	AST size (in gallons)	AST contents	Covered by this Surety? Y/N

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 AST.

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.** Ch. 74A, as amended, to provide financial responsibility 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 or locations, indicate the type of coverage applicable to each tank or

location) arising from operating the ASTs 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 responsibility;

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~~ this regulation 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(s) identified above,] or if the Principal shall provide alternate financial responsibility, as specified in PART D of ~~these Regulations~~ this regulation, within ~~one hundred twenty (120) Days~~ 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 AST;
- (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 D, Section 3.0, of ~~these regulations~~ this regulation.

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~~ this regulation 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~~ this regulation 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 D, Section 18.0 of ~~these Regulations~~ this regulation.

Upon notification by the Department that the Principal has failed to provide alternate financial assurance responsibility within ~~sixty (60)~~ 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 D, Section 18.0 of ~~these Regulations~~ this regulation.

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 ~~one hundred twenty (120) Days~~ 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 Part D, Section 25.0 Form E of the Delaware *Regulations Governing Aboveground Storage Tanks* as such Regulations were constituted on the date this bond was executed.

PRINCIPAL:

Signature(s): _____

Name(s): _____

Print legibly or type

Title(s): _____

Print legibly or type

[Corporate seal]

CORPORATE SURETY(IES)

Name and address: _____

Print legibly or type

State of Incorporation: _____

Print legibly or type

Liability limit: \$ _____

Print legibly or type

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: \$ _____

20 DE Reg. 815 (04/01/17)

Section 26. Form F - AST Irrevocable Standby Letter of Credit

[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. Ch. 74A."

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 aboveground storage tanks (ASTs) identified below in the amount of [in words] \$[insert dollar amount] per Occurrence and [in words] \$[insert dollar amount] Annual Aggregate:

List for each Facility: the name and address of the Facility where ASTs assured by this Letter of Credit are located, and indicate which ASTs are assured by this Letter of Credit. List each AST by the AST identification number provided in the registration form submitted pursuant to PART A of ~~these Regulations~~ this regulation.

AST Facility I.D. Number: _____ (as listed on DNREC registration certificate)

Facility Name: _____

Facility Street: _____

Facility City: _____ **Facility Zip Code:** _____

AST ID# (from AST registration form)	AST size (in gallons)	AST contents	Covered by this Letter of Credit? Y/N

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 an AST;
- (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 PART D, Section 3.0, of ~~these Regulations~~ this regulation.

This letter of credit is effective as of [*date*] and shall expire on [*date*] but such expiration date shall be automatically extended for a period of [*at least the length of the original term*] on [*expiration date*] and on each successive expiration date, unless, at least ~~one hundred twenty (120) Days~~ 120 days before the current expiration date, we notify [*Owner or Operator*] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [*Owner or Operator*] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for ~~one hundred twenty (120) Days~~ 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 PART D, Section 25.0, Form F of the Delaware *Regulations Governing Aboveground Storage Tanks* as such Regulations were constituted on the date shown immediately below.

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

Name and Title: _____
 Print legibly or type

Name and Title: _____
 Print legibly or type

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"*].

20 DE Reg. 810 (04/01/17)

Section 27. Form G - AST Trust Agreement

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 "Name of State" or "a national bank"*], the "Trustee."

Whereas, the Department of Natural Resources and Environmental Control (the Department), an agency of the State of Delaware, has established certain regulations applicable to the Grantor, requiring that an Owner or Operator of an aboveground storage tank (AST) 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 AST.

List for each Facility: the name and address of the Facility where ASTs assured by this Trust Agreement are located, and indicate which ASTs are assured by this Trust Agreement. List each AST by the AST identification number provided in the registration form submitted pursuant to PART A of ~~these Regulations~~ this regulation.

AST Facility I.D. Number: _____ (as listed on DNREC registration certificate)

Facility Name: _____

Facility Street: _____

Facility City: _____ Facility Zip Code: _____

AST ID# (from AST registration form)	AST size (in gallons)	AST contents	Covered by this Trust Agreement? Y/N

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. 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 Responsibility pursuant to the DNREC 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 Responsibility, any payments necessary to discharge any liability of the Grantor established by the Department.

SECTION 3. PAYMENT FOR CORRECTIVE ACTION AND/OR THIRD-PARTY LIABILITY CLAIMS

The Trustee shall make payments from the Fund as the DNREC 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 ASTs covered by the financial responsibility 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 AST;
- (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 D, Section 3.0, of ~~these Regulations~~ this regulation. 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 DNREC 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 4. PAYMENTS COMPRISING THE FUND

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

SECTION 5. 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 ASTs, 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 6. 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 7. 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 8. 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 9. 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 10. 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 11. 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~~ 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 8.0.

SECTION 12. 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 Exhibit A as required in Section 18 or such other designees as the Grantor may designate by amendment to Exhibit A. 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 13. 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 14. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Agreement as provided in PART D, Section 13.0 of this 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 15. 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 16. 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 17. 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.

SECTION 18. DESIGNATED SIGNERS

Exhibit A shall be attached to the trust agreement and shall list the Persons designated by the Grantor to sign orders, requests and instructions to the trustee.

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 Part D, Section 27.0 Form G of the Delaware Regulations Governing Aboveground Storage Tanks as such Regulations were constituted on the date below.

Signature of Grantor: _____

Name of the Grantor: _____
Print legibly or type

Title of the Grantor: _____
Print legibly or type

Attest:
Signature of Trustee: _____

Name of Trustee: _____
Print legibly or type

Title: _____
Print legibly or type
Seal

Attest
Signature of Witness: _____

Name of Witness: _____
Print legibly or type

Title of Witness: _____
Print legibly or type
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 [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], 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: _____

SEAL

20 DE Reg. 815 (04/01/17)

Section 28. Form H - AST Standby Trust Agreement

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 [Name of State]" or "a national bank"], the "Trustee."

Whereas, the Department of Natural Resources and Environmental Control (the Department), an agency of the State of Delaware, has established certain regulations applicable to the Grantor, requiring that an Owner or Operator of an aboveground storage tank (AST) 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 AST.

List for each Facility: the name and address of the Facility where ASTs utilizing this Standby Trust Agreement are located, and indicate which ASTs are utilizing this Standby Trust Agreement. List each AST by the AST identification number provided in the registration form submitted pursuant to Part A of ~~these Regulations~~ this regulation.

AST Facility I.D. Number: _____ (as listed on DNREC registration certificate)

Facility Name: _____

Facility Street: _____

Facility City: _____ **Facility Zip Code:** _____

AST ID# (from AST registration form)	AST size (in gallons)	AST contents	Covered by this Standby Trust Agreement? Y/N

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 responsibility for the ASTs 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 RESPONSIBILITY MECHANISM

This Agreement pertains to the [identify the financial responsibility mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments].

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 Responsibility 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 Responsibility, 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 DNREC 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 ASTs covered by the financial responsibility 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 AST;
- (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 D, Section 3.0, of ~~these Regulations~~ this regulation. 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 tanks, 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~~ days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.0.

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 Exhibit A as required in Section 19.0 or such other designees as the Grantor may designate by amendment to Exhibit A. 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 14.0 of this 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.

SECTION 19. DESIGNATED SIGNERS

Exhibit A shall be attached to the trust agreement and shall list the Persons designated by the Grantor to sign orders, requests and instructions to the trustee.

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 PART D, Section 28.0, Form H of the Delaware *Regulations Governing Aboveground Storage Tanks* as such Regulations were constituted on the date below.

Signature of Grantor: _____

Name of the Grantor: _____
Print legibly or type

Title of the Grantor: _____
Print legibly or type

Attest:

Signature of Trustee: _____

Name of Trustee: _____
Print legibly or type

Title: _____
Print legibly or type
Seal

Attest:

Signature of Witness: _____

Name of Witness: _____
Print legibly or type

Title: _____
Print legibly or type
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: _____

20 DE Reg. 815 (04/01/17)

Section 29. Form I - AST Certification of Valid Claim

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*] aboveground storage tank should be paid in the amount of \$[_____].

Signature(s) of Owner or Operator: _____

Name of Owner or Operator: _____
Print legibly or type

Name of Attorney for Owner or Operator: _____
Print legibly or type

Signature of Attorney for Owner or Operator: _____

Notary: _____ Date: _____

Signature of Claimant: _____

Name of Claimant: _____
Print legibly or type

Name of Attorney for Claimant: _____
Print legibly or type

Signature of Attorney for Claimant: _____

Notary _____ Date _____

20 DE Reg. 815 (04/01/17)

Section 30. Form J - AST Bond Rating Test - General Purpose Local Government

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) aboveground storage tank(s) (ASTs).

ASTs at the following facilities are assured by this bond rating test.

List for each Facility: the name and address of the Facility where ASTs assured by this Bond Rating Test are located, and indicate which ASTs are assured by this Bond Rating Test. List each AST by the AST identification number provided in the registration form submitted pursuant to Part A of ~~these Regulations~~ this regulation.

AST Facility I.D. Number: _____ (as listed on DNREC registration certificate)

Facility Name: _____

Facility Street: _____

Facility City: _____ **Facility Zip Code:** _____

AST ID# (from AST registration form)	AST size (in gallons)	AST contents	Covered by this Bond Rating Test? Y/N

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by *[name of Local Government Owner or Operator, or Guarantor]* to demonstrate financial responsibility are as follows: *[complete table]*

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency*

*Moody's or Standard & Poor's

The total outstanding obligation of *[insert amount]*, excluding refunded bond issues, exceeds the minimum amount required in PART D, Section 3.0. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last ~~twelve (12)~~ **12** months. Neither rating service has provided notification within the last ~~twelve (12)~~ **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 D, Section 30.0, Form J of the Delaware *Regulations Governing Aboveground Storage Tanks* as such Regulations were constituted on the date shown immediately below.

Signature: _____

Name: _____

Print legibly or type

Title: _____

Print legibly or type

Date: _____

20 DE Reg. 815 (04/01/17)

Section 31. Form K - AST Bond Rating Test/Local Government - Other

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) aboveground storage tank(s) (ASTs). 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.

ASTs at the following facilities are assured by this bond rating test:

List for each Facility: the name and address of the Facility where ASTs assured by this Bond Rating Test are located, and indicate which ASTs are assured by this Bond Rating Test. List each AST by the AST identification number provided in the registration form submitted pursuant to Part A of ~~these Regulations~~ this regulation.

AST Facility I.D. Number: _____ (as listed on DNREC registration certificate)

Facility Name: _____

Facility Street: _____

Facility City: _____ **Facility Zip Code:** _____

AST ID# (from AST registration form)	AST size (in gallons)	AST contents	Covered by this Bond Rating Test? Y/N

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [*name of Local Government Owner or Operator, or Guarantor*] to demonstrate financial responsibility are as follows: [*complete table*]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency*

*Moody's or Standard & Poor's

The total outstanding obligation of [*insert amount*], excluding refunded bond issues, exceeds the minimum amount required in PART D, Section 3.0. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last ~~twelve (12)~~ 12 months. Neither rating service has provided notification within the last ~~twelve (12)~~ 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 D, Section 31.0, Form K of the Delaware *Regulations Governing Aboveground Storage Tanks* as such Regulations were constituted on the date shown immediately below.

Signature: _____

Name: _____

Print legibly or type

Title: _____

Print legibly or type

Date: _____

20 DE Reg. 815 (04/01/17)

Section 32. Form L - AST Local Government Financial Test

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] aboveground storage tank(s) (ASTs)].

ASTs at the following facilities are assured by this financial test:

List for each Facility: the name and address of the Facility where ASTs assured by this Local Government financial test are located, and indicate which ASTs are assured by this Local Government financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the ASTs at this Facility, list each AST assured by this financial test by the AST identification number provided in the registration form submitted pursuant to Part A of these Regulations this regulation.

AST Facility I.D. Number: _____ (as listed on DNREC registration certificate)

Facility Name: _____

Facility Street: _____

Facility City: _____ **Facility Zip Code:** _____

AST ID# (from AST registration form)	AST size (in gallons)	AST contents	Covered by this Local Government Financial Test? Y/N

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 4d) _____

- b. Population (from 6) _____
- c. Divide 10a by 10b _____
- d. Subtract 51 _____
- e. Divide by 1,038 _____
- f. Multiply by -1.866 _____

11. Debt Service to Total Revenues

- a. Debt Service (from 4d) _____
- b. Total Revenues (from 1c) _____
- c. Divide 11a by 11b _____
- d. Subtract .068 _____
- e. Divide by .259 _____
- f. Multiply by -3.533 _____

12. Total Revenues to Total Expenses

- a. Total Revenues (from 1c) _____
- b. Total Expenses (from 2c) _____
- c. Divide 12a by 12b _____
- d. Subtract 910 _____
- e. Divide by .899 _____
- f. Multiply by 3.458 _____

13. Funds Balance to Total Revenues

- a. Total Funds (from 5) _____
- b. Total Revenues (from 1c) _____
- c. Divide 13a by 13b _____
- d. Subtract .891 _____
- e. Divide by 9.156 _____
- f. Multiply by 3.270 _____

14. Funds Balance to Total Expenses

- a. Total Funds (from 5) _____
- b. Total Expenses (from 2c) _____
- c. Divide 14a by 14b _____
- d. Subtract .866 _____
- e. Divide by 6.409 _____
- f. Multiply by 3.270 _____

15. Total Funds to Population

- a. Total Funds (from 5) _____
- b. Population (from 6) _____
- c. Divide 15a by 15b _____
- d. Subtract 270 _____
- e. Divide by 4,548 _____
- f. Multiply by 1.866 _____

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

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in Part D, Section 32.0 Form L of the Delaware *Regulations Governing Aboveground Storage Tanks*, as such Regulations were constituted on the date shown immediately below.

Signature: _____

Name: _____

Print legibly or type

Title: _____

Print legibly or type

Date: _____

Print legibly or type

20 DE Reg. 815 (04/01/17)

Section 33. Form M - AST Local Government Guarantee With Standby Trust Made by a State

Guarantee made this [date] by [name of State], herein referred to as Guarantor, to Delaware 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 aboveground storage tanks (ASTs) covered by this guarantee:

List for each Facility: the name and address of the Facility where ASTs assured by this Guarantee are located, and indicate which ASTs are assured by this Guarantee. List each AST by the AST identification number provided in the registration form submitted pursuant to Part A of ~~these Regulations~~ this regulation.

AST Facility I.D. Number: _____ (as listed on DNREC registration certificate)

Facility Name: _____

Facility Street: _____

Facility City: _____ **Facility Zip Code:** _____

AST ID# (from AST registration form)	AST size (in gallons)	AST contents	Covered by this Local Government Guarantee? Y/N

This guarantee satisfies PART D, 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 ASTs or locations, indicate the type of coverage applicable to each AST or location] arising from operating the above-identified AST(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 ~~sixty (60) Days~~ 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 AST covered by this guarantee, the Guarantor, upon instructions from the Department shall fund a standby trust fund in accordance with the provisions of Part D, Section §18.0 in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [*Local Government Owner or Operator*] has failed to perform Corrective Action for Releases arising out of the operation of the above-identified tank(s) in accordance with Part E of this regulation the Guarantor upon written instructions from the Department shall fund a standby trust fund in accordance with the provisions of PART D, Section 18.0 in an amount not to exceed the coverage limits specified above.

If [*Owner or Operator*] fails to satisfy a judgment or award based on a determination of liability for Bodily Injury or Property Damage to third parties caused by [*"sudden" and/or "nonsudden"*] Accidental Releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Department, shall fund a standby trust in accordance with the provisions of PART D, Section 18.0 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~~ 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 Aboveground 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 D for the above identified ASTs, except that Guarantor may cancel this guarantee by sending notice by certified mail to [*Owner or Operator*], such cancellation to become effective no earlier than ~~one hundred twenty (120) Days~~ 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, 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 AST;
- (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 D, Section 3.0.

(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 Part D, Section 33.0, Form M of the Delaware *Regulations Governing Aboveground Storage Tanks* as such Regulations were constituted on the Effective Date shown immediately below.

Effective Date: _____

Name of Guarantor: _____
Print legibly or type

Authorized signature for Guarantor: _____

Name of Person signing: _____
Print legibly or type

Title of Person signing: _____

Print legibly or type

Signature of witness or notary: _____

Date: _____

20 DE Reg. 815 (04/01/17)

Section 34. Form N - AST Local Government Guarantee With Standby Trust Made by a Local Government

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

Recitals

- (1) Guarantor meets or exceeds [select one: the Local Government bond rating test requirements of PART D, Section 11.0, the Local Government financial test requirements of PART D, Section 12.0, or the Local Government fund under PART D, Section 14.0].
- (2) [Local Government Owner or Operator] owns or operates the following aboveground storage tank(s) (ASTs) covered by this Guarantee:

List for each Facility: the name and address of the Facility where ASTs assured by this Guarantee are located, and indicate which ASTs are assured by this Guarantee. List each AST by the AST identification number provided in the registration form submitted pursuant to Part A of ~~these Regulations~~ this regulation.

AST Facility I.D. Number: _____ (as listed on DNREC registration certificate)

Facility Name: _____

Facility Street: _____

Facility City: _____ **Facility Zip Code:** _____

AST ID# (from AST registration form)	AST size (in gallons)	AST contents	Covered by this Local Government Guarantee? Y/N

This guarantee satisfies PART D 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 ASTs or locations, indicate the type of coverage applicable to each AST or location] arising from operating the above-identified AST(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 that:

In the event that [Local Government Owner or Operator] fails to provide alternative coverage within ~~sixty (60) Days~~ 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 AST covered by this guarantee, the Guarantor, upon instructions from the Department shall fund a

standby trust fund in accordance with the provisions of PART D, Section 18.0, 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 AST(s) in accordance with PART E of ~~these Regulations~~ this regulation, the Guarantor upon written instructions from the Department shall fund a standby trust fund in accordance with the provisions of PART D, Section 18.0 in an amount not to exceed the coverage limits specified above.

If [*Owner or Operator*] fails to satisfy a judgment or award based on a determination of liability for Bodily Injury or Property Damage to third parties caused by [*"sudden" and/or "nonsudden"*] Accidental Releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Department, shall fund a standby trust in accordance with the provisions of PART D, Section 18.0 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 ~~one hundred twenty (120) Days~~ 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 ~~ten (10) Days~~ 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 D for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [*Owner or Operator*], such cancellation to become effective no earlier than ~~one hundred twenty (120) Days~~ 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, 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 AST;
- (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 D, Section 3.0.

(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 D, Section 30.0, Form N of the Delaware *Regulations Governing Underground Storage Tanks* 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: _____

20 DE Reg. 815 (04/01/17)

Section 35. Form O - AST Local Government Guarantee Without Standby Trust Made by a State

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

Recitals

(1) Guarantor is a State.

(2) [Local Government Owner or Operator] owns or operates the following aboveground storage tank(s) (ASTs) covered by this guarantee:

List for each Facility: the name and address of the Facility where ASTs assured by this Guarantee are located, and indicate which ASTs are assured by this Guarantee. List each AST by the AST identification number provided in the registration form submitted pursuant to Part A of ~~these Regulations~~ this regulation.

AST Facility I.D. Number: _____ (as listed on DNREC registration certificate)

Facility Name: _____

Facility Street: _____

Facility City: _____ **Facility Zip Code:** _____

AST ID# (from AST registration form)	AST size (in gallons)	AST contents	Covered by this Local Government Guarantee? Y/N

This guarantee satisfies PART D 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 ASTs or locations, indicate the type of coverage applicable to each AST or location] arising from operating the above-identified AST(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 ~~sixty (60) Days~~ 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 AST 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 AST(s) in accordance with PART E of Delaware's *Regulations Governing Aboveground 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 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 AST(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 ~~ten (10) Days~~ 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 D for the above identified ASTs, 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 ~~one hundred twenty (120) Days~~ 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 AST;
- (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 D, Section 3.0.

(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, PART D, Section 35.0, Form O of the Delaware *Regulations Governing Aboveground Storage Tanks* as such Regulations were constituted on the Effective Date shown immediately below.

Effective Date: _____

Name of Guarantor: _____
Print legibly or type

Authorized signature for Guarantor: _____

Name of Person signing: _____
Print legibly or type

Title of Person signing: _____
Print legibly or type

Signature of witness or notary: _____

20 DE Reg. 815 (04/01/17)

Section 36. Form P - AST Local Government Guarantee Without Standby Trust Made by a Local Government

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

Recitals

- (1) Guarantor meets or exceeds [select one: the Local Government bond rating test requirements of PART D, Section 11.0, the Local Government financial test requirements of PART D, Section 12.0, the Local Government fund under PART D, Section 14.0.]
- (2) [Local Government Owner or Operator] owns or operates the following aboveground storage tank(s) (ASTs) covered by this guarantee:

List for each Facility: the name and address of the Facility where ASTs assured by this Guarantee are located, and indicate which ASTs are assured by this Guarantee. List each AST by the AST identification number provided in the registration form submitted pursuant to Part A of ~~these Regulations~~ this regulation.

AST Facility I.D. Number: _____ (as listed on DNREC registration certificate)

Facility Name: _____

Facility Street: _____

Facility City: _____ **Facility Zip Code:** _____

AST ID# (from AST registration form)	AST size (in gallons)	AST contents	Covered by this Local Government Guarantee? Y/N

This guarantee satisfies PART D 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 ASTs or locations, indicate the type of coverage applicable to each ASTs or location] arising from operating the above-identified AST(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 ~~sixty (60) Days~~ 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 AST 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 ASTs in accordance with PART E of this regulation, 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 ASTs, 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 ~~one hundred twenty (120) Days~~ 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 ~~ten (10) Days~~ 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 D for the above identified ASTs, 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 ~~one hundred twenty (120) Days~~ 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, 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 AST;
- (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 D.

(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 D, Section 36.0, Form P of the Delaware *Regulations Governing Aboveground Storage Tanks* as such Regulations were constituted on the Effective Date shown immediately below.

Effective Date: _____

Name of Guarantor: _____
Print legibly or type

Authorized signature for Guarantor: _____

Name of Person signing: _____
Print legibly or type

Title of Person signing: _____
Print legibly or type

Signature of witness or notary: _____

20 DE Reg. 815 (04/01/17)

Section 37. Form Q - AST Local Government Fund Mechanism

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) aboveground storage tank(s) (ASTs).

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

List for each Facility: the name and address of the Facility where ASTs assured by this Local Government fund mechanism are located, and indicate which ASTs are assured by this Local Government fund mechanism. List each AST by the AST identification number provided in the registration form submitted pursuant to Part A of ~~these Regulations~~ this regulation.

AST Facility I.D. Number: _____ (as listed on DNREC registration certificate)

Facility Name: _____

Facility Street: _____

Facility City: _____ **Facility Zip Code:** _____

AST ID# (from AST registration form)	AST size (in gallons)	AST contents	Covered by this Local Government Fund Mechanism? Y/N

[Insert: "The Local Government fund is funded for the full amount of coverage required under Part D, Section 3.0, 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 D, Section 3.0, funded for part of the required amount of coverage and used in combination with other mechanism(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) 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 PART D, subsection 14.1.1.3 insert:

Amount added to fund in the most recently completed fiscal year: _____

Number of years remaining in the pay-in period: _____]

A copy of the State constitutional provision, or Local Government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in PART D, Section 37.0, Form Q of the Delaware *Regulations Governing Aboveground Storage Tanks* as such Regulations were constituted on the date shown immediately below.

Signature: _____

Name: _____
Print legibly or type

Title: _____
Print legibly or type

Date: _____
Print legibly or type

20 DE Reg. 815 (04/01/17)

PART E LEAK REPORTING AND CORRECTIVE ACTION REQUIREMENTS FOR ABOVEGROUND STORAGE TANKS

1.0 General Requirements for Leaks Inside Secondary Containment

1.1 Leaks into Secondary Containment

- 1.1.1 No person shall knowingly allow any leak of a regulated substance from an AST into secondary containment to continue.
- 1.1.2 A leak of a regulated substance inside secondary containment in any quantity that cannot be cleaned up within ~~(7) 7~~ days shall be reported to the **[Tank Management Section Department]** as soon as possible, but in no instance shall reporting exceed ~~(7) seven~~ 7 days from the time of discovery. Reporting may be made in person or by telephone or by electronic mail.
- 1.1.3 Documentation of the leak and the calculations of how the leak amount was determined shall be maintained by the Owner and Operator at the Facility for the operational life of the AST.
- 1.1.4 Actions to prevent a reoccurrence of the leak and actions to mitigate evidence of the leak shall be completed within ~~(30) thirty~~ 30 days. These actions shall include ~~but are not limited to:~~
 - 1.1.4.1 Repairing or replacing defective equipment, or;
 - 1.1.4.2 Modifying operating procedures, or;
 - 1.1.4.3 Retraining employees.
- 1.1.5 Evidence of a leak on secondary containment surfaces other than soil, shall be mitigated by mechanical and/or chemical means that do not compromise the impermeability of the secondary containment and which permit potential future Leaks to be readily discernible from evidence of previous Leaks, in accordance with PART E, subsection 1.1.4.
- 1.1.6 Evidence of a leak on secondary containment surfaces comprised of soil, that cannot be eliminated by surficial scraping, shall be eliminated by excavating all impacted soils or a means by which a new stain is easily detectable and which does not compromise the impermeability of the secondary containment, in accordance with PART E of this regulation, subsection.1.4. Any area that is excavated shall be backfilled with a material of equal or superior impermeability.
- 1.1.7 The Department must be notified in person or by telephone, within ~~five (5)~~ 5 days of any excavation activities within secondary containment.
- 1.1.8 Staining that extends through the impermeable secondary containment surface is considered a release and a hydrogeologic investigation must be completed in accordance with the requirements specified in DERBCAP, the HIG, and PART E of this regulation, subsection 4.2.

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2.0 Reporting Requirements

2.1 Indicated Releases from ASTs

- 2.1.1 Indicated releases are signs that an AST, or the secondary containment are failing or could potentially fail to contain a regulated substance. Indicated releases are releases that are not observable and are not directly attributable to another source. Observable releases must refer to PART E of this regulation, subsection 4.2. Indicated releases include, but are not limited to, the following:
 - 2.1.1.1 Stained soils or soils that emit characteristic odors of regulated substance compounds which are exposed during activities including ~~[but not limited to]~~ digging, boring or excavation activities, retrofit of ASTs, removal of an AST or collection of soil samples around an AST that is permanently closed in place, or results from an Phase I or Phase II environmental site assessment; or
 - 2.1.1.2 Water from supply wells, public or private, that exhibit a decrease in water quality, which is shown by subsequent analysis to result from the presence of a regulated substance; or
 - 2.1.1.3 The appearance of characteristic odors of a regulated substance in basements or other enclosed spaces; or
 - 2.1.1.4 The appearance of a sheen on a surface water body; or
 - 2.1.1.5 The appearance of a sheen or measurable NAPL in a supply well, monitoring well, or observation tube; or
 - 2.1.1.6 Failure of a tank, piping or vapor recovery test; or
 - 2.1.1.7 A laboratory report that indicates a sample collected from or near an AST excavation, soil boring, monitor well or observation tube contains a regulated substance; or
 - 2.1.1.8 Notification from the State Emergency **[Prevention and]** Response **[Section Branch]** or another State or Federal agency of the discovery of a release of uncontained regulated substances or compounds; or
 - 2.1.1.9 Documentation on a tank inspection report that the AST integrity may have been compromised which includes but is not limited to:

- 2.1.1.9.1 Holes in the AST; or
- 2.1.1.9.2 Thinning of AST structural material below the minimum design standard; or
- 2.1.1.9.3 Cracks in welds or steel plates.
- 2.1.1.10 Abnormal operating conditions include but are not limited to the following:
 - 2.1.1.10.1 The sudden loss of product from any portion of the AST;
 - 2.1.1.10.2 Inventory control discrepancies over a consecutive two month period;
 - 2.1.1.10.3 A signal from any release detection device or method that indicates a release may have occurred;
 - 2.1.1.10.4 The unexplained presence of water in the AST;
 - 2.1.1.10.5 Evidence of a release of a regulated substance noted during a routine inspection.

2.2 Reporting Requirements for Indicated Releases

- 2.2.1 Any indication of a release of a regulated substance from an AST that was not witnessed, is not immediately quantifiable, and has impacted soil, surface water, or groundwater, and is discovered by any person, including ~~but not limited to~~ environmental consultants, environmental contractors, utility companies, financial institutions, real estate transfer companies, or AST Owners or Operators shall be reported within 48 hours to:
 - 2.2.1.1 ~~The DNREC Tank Management Section by calling 302-395-2500 during normal business hours, which are 8am to 4pm, Monday through Friday, excluding state holidays or emergency state office closures. Reporting to the Tank Management Section does not release any person from complying with the requirements of 7 Del.C. Ch. 60 and the Regulations promulgated there under as amended and if an imminent threat to human health, safety or the environment exists. The Department by calling 302-395-2600 during normal business hours; and~~
 - 2.2.1.2 If the phone numbers listed in these Regulations are not valid it is the responsibility of the Owner and Operator to take all reasonable steps to ascertain a valid phone number. The Department's 24-hour Release Hot Line by calling 800-662-8802, when required in accordance with 7 Del.C. Ch. 60 and the Regulations promulgated thereunder as amended.
- 2.2.2 The Department may require that the AST be taken out of service and emptied until the cause of the indicated release is determined, if the Department deems such action necessary to protect human health, safety or the environment.
- 2.2.3 Abnormal operating conditions, mechanical abnormalities, or equipment issues that indicate that a release of a regulated substance has occurred, may be occurring, or has the potential to occur must be investigated in accordance with PART E, Section 3.0 of this regulation.

2.3 Reporting Requirements for Releases

- 2.3.1 Owners and Operators shall not knowingly allow any release of a regulated substance from an AST to continue. Owners and Operators shall take immediate action to contain any release so as to minimize the environmental impact of the release and to immediately identify and mitigate fire, explosion and vapor hazards.
- 2.3.2 Any release of a regulated substance from an AST in excess of the reportable quantities specified in the regulations promulgated pursuant to 7 Del.C. Ch. 60, §6028, the *Delaware Regulations Governing the Reporting of a Discharge of a Pollutant or an Air Contaminant*, as amended, that is discovered by any person, including ~~but not limited to~~ environmental consultants or contractors, utility companies, financial institutions or real estate transfer companies, shall be reported within 24 hours to:
 - 2.3.2.1 The Department's 24-hour Release Hot Line by calling 800-662-8802, and
 - 2.3.2.2 ~~The DNREC Tank Management Section by calling 302-395-2500,~~ Department by calling 302-395-2600 during normal business hours, which are 8am to 4pm, Monday through Friday, excluding state holidays or emergency state office closures.
 - 2.3.2.3 ~~If the phone numbers listed in these Regulations are not valid it is the responsibility of the Owner and Operator to take all reasonable steps to ascertain a valid phone number.~~
- 2.3.3 Owners and Operators shall immediately contain the release and shall complete the release response, investigation and remedial action requirements of PART E of this regulation, as required.
- 2.3.4 Owners and Operators shall comply with the release notification requirements of any and all state, federal or municipal agencies.
- 2.3.5 Any release of a regulated substance in a quantity less than the reportable quantity specified in the regulations promulgated pursuant to Title 7 Del.C. Ch. 60, §6028, the *Delaware Regulations Governing the Reporting of a Discharge of a Pollutant or an Air Contaminant*, as amended, shall be documented at the time of discovery on the routine in-service inspection report. If the commencement of cleanup activities

cannot begin within 24 hours or cannot be completed within ~~seven (7)~~ 7 days the ~~Tank Management Section Department~~ shall be notified in person or via fax, electronic mail, or by telephone on the eighth day, and the requirements of PART E, subsection 4.2 of this regulation shall apply.

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3.0 Indicated Release Investigation Requirements

3.1 General Requirements for Indicated Release Investigation

- 3.1.1 If at any point in the indicated release investigation it is determined that a release of a regulated substance from an AST in excess of the reportable quantities specified in the regulations promulgated pursuant to 7 Del.C. Ch. 60, §6028, the *Delaware Regulations Governing the Reporting of a Discharge of a Pollutant or an Air Contaminant*, as amended, has occurred, the Department must be notified immediately and Release Response actions in accordance with PART E of this regulation, subsection 4.2, must begin.
- 3.1.2 Unless remedial action is immediately initiated in accordance with the requirements of PART E of this regulation, subsection 6.1.3, Owners and Operators shall investigate and confirm, within ~~seven (7)~~ 7 days, any indication of a release of a regulated substance including ~~but not limited to~~ those listed in PART E of this regulation, subsection 2.1.1.

3.2 Indicated Release Investigation Procedures

3.2.1 Upon discovery of an indication of a release Owners and Operators shall:

- 3.2.1.1 Within ~~twenty-four (24)~~ 24 hours initiate an investigation to determine the cause of any abnormal operating condition; and
- 3.2.1.2 Within ~~twenty-four (24)~~ 24 hours initiate an investigation, for completion within ~~seven (7)~~ 7 days, to determine the presence or absence of a release by:
 - 3.2.1.2.1 Conducting inspection and testing of the AST and secondary containment as necessary to conclusively determine the presence or absence of a release; or
 - 3.2.1.2.2 Measuring for the presence of a release where contamination is most likely to be present at the AST site. In selecting sample types, sample locations and measurement methods, the type of initial indication of contamination, type of backfill and soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release shall be considered; or
 - 3.2.1.2.3 Other procedures as directed by the Department.
- 3.2.1.3 When the abnormal operating condition is the result of an equipment failure or malfunction, Owners and Operators shall repair or replace all faulty equipment in accordance with these Regulations.
- 3.2.1.4 When the release investigation determines that a release has occurred, Owners and Operators shall comply with the hydrogeologic investigation and remedial action requirements ~~of in accordance with the requirements specified in DERBCAP, the HIG, and~~ PART E, subsection 4.2 of this regulation.

3.2.2 If a release is confirmed or a repair is required, the Department must be notified within ~~thirty (30)~~ 30 days of the completion of any repairs and indicated release investigation. Owners and Operators and AST contractors shall submit documentation to the Department including, ~~but not limited to~~, the following:

- 3.2.2.1 Repair completion documentation; and
- 3.2.2.2 Sampling results; and
- 3.2.2.3 Test results as required by the Department.

3.2.3 If following the indicated release investigation, it is confirmed that a release from an AST has not occurred, documentation of the indicated release investigation must be maintained for the life of the AST.

3.2.4 Results of the indicated release investigation must be submitted to the Department if requested by the Department.

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4.0 Release Response Requirements

4.1 Department Authority to Assume Control of Releases

- 4.1.1 The Department shall give written notice to the Owner and Operator if the owner and operator are not meeting the requirements and timeframes found in Part E subsection 3.2 or Part E subsection 4.2 of this regulation. If the Owner and Operator fail to respond to the actions and timeframes described in the notice, the Department reserves the right to assume control of any release or indicated release situation. In such

cases all liability, including payment to the Department of response costs, will remain with the Owner and Operator.

- 4.1.2 To protect human health, ~~safety~~ safety, and the environment the Department reserves the right for the Department or its contractors to enter and take appropriate actions on affected properties to investigate, abate and remediate contamination.

4.2 Initial Release Response Requirements

- 4.2.1 In response to a release from an AST, the Owner and Operator shall promptly take the following steps:

- 4.2.1.1 If a faulty AST component is determined to be the cause of a release, the component or, if necessary, the entire AST system, shall be taken out of service and shall not be returned to service until the AST is functioning in compliance with all applicable portions of ~~these Regulations~~ this regulation; and

- 4.2.1.2 At the Department's direction a hydrogeologic investigation in accordance with the requirements specified in DERBCAP, the HIG, and PART E, Section 5.0 of this regulation, shall be conducted to determine an estimate of the amount and type of regulated substance released; and

- 4.2.1.3 Owners and Operators shall implement the following to contain the release:

- 4.2.1.3.1 If NAPL is present, NAPL Corrective Action shall be immediately initiated in accordance with PART E, subsection 4.3 of this regulation; and,

- 4.2.1.3.2 Nearby receptors shall be protected from impacts of regulated substances by preventing free and mobile NAPL migration through recovery and containment, and the Department shall be notified of all such activities; and

- 4.2.1.3.3 All flammable material shall be properly handled and vapors shall be mitigated to prevent fires, explosions and impacts to receptors.

4.3 NAPL Corrective Action Requirements

- 4.3.1 At sites where there is a release of NAPL, the Owners and Operators shall remove and remediate the NAPL to the maximum extent practicable following the requirements established in PART E, Section 4.0 of this regulation, while continuing, as necessary, the release confirmation steps and the investigation required in PART E, Section 5.0 of this regulation.

- 4.3.2 The Owners and Operators shall formulate a NAPL Conceptual Site Model (NCSM) to determine the most efficient and environmentally protective remedial approach for addressing the release.

- 4.3.3 The Owners and Operators shall verbally communicate a preliminary NCSM to the Department within ~~forty-eight (48)~~ 48 hours of the discovery of a release of NAPL. The preliminary NCSM shall address as many of the criteria listed in PART E, subsection 4.3.4 of this regulation as possible.

- 4.3.4 The NCSM shall at a minimum address the following factors with regard to the NAPL Release:

- 4.3.4.1 The feasibility and necessity of an immediate response; and

- 4.3.4.2 Direct and potential impacts to human health and the environment; and

- 4.3.4.3 The type and estimated volume of the NAPL released; and

- 4.3.4.4 The evidence, or occurrence, of the NAPL release (mobile NAPL, free NAPL in a well, residual NAPL discovered during an investigation); and

- 4.3.4.5 The potential recoverability of all NAPL phases; and

- 4.3.4.6 The geometry of the NAPL body; and

- 4.3.4.7 The estimated age and duration of the NAPL release; and

- 4.3.4.8 The characteristics of the subsurface soils;

- 4.3.4.9 The chemical and physical properties of the NAPL; and

- 4.3.4.10 Groundwater classification for the area such as wellhead protection areas, excellent recharge areas, or source water protection areas.

- 4.3.5 Owners and Operators shall base all short and long term remedial action decisions upon the information in the NCSM, which shall be updated, in writing, at a minimum of once every ~~three (3)~~ 3 calendar months, or on a schedule approved by the Department.

- 4.3.6 NAPL removal shall be conducted in a manner that minimizes the spread of contamination, including dissolved and vapor phases, into previously uncontaminated areas by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery by-products in accordance with all applicable local, state and federal requirements.

- 4.3.7 If NAPL recovery is not practicable, and does not support site remedial action objectives as determined by the Department, Owners and Operators may submit a written request for Department approval to discontinue NAPL recovery. The request shall at a minimum include the following:

- 4.3.7.1 Technical feasibility of other proven groundwater and soil treatment techniques to further reduce NAPL at the site; and
 - 4.3.7.2 Costs, time frames, and resources involved to further reduce NAPL levels employing the current and alternative method(s) proposed; and
 - 4.3.7.3 A demonstration that the remaining NAPL body is not contributing to any unstable daughter plumes such as a dissolved plume and vapor migration; and
 - 4.3.7.4 A demonstration that remaining NAPL does not pose any risk to human health, safety, and the environment; and
 - 4.3.7.5 An assessment of the persistence and fate of the NAPL in the subsurface; and
 - 4.3.7.6 A description of the individual site characteristics, including natural rehabilitative processes; and
 - 4.3.7.7 Statements regarding current versus future land use of the site.
- 4.3.8 The Department may require Owners and Operators to follow any applicable guidance or industry referenced standards in order to create a sound NCSM, from which optimal remedial action decisions can be made.

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5.0 Hydrogeologic Investigation Requirements

5.1 General Requirements for Hydrogeologic Investigation

- 5.1.1 After a release is confirmed, the Owner and Operator shall conduct a hydrogeologic investigation as the first step in the corrective action process unless directed to do otherwise by the Department.
- 5.1.2 The investigation shall at a minimum include the following:
 - 5.1.2.1 Determine the nature of the release, including the chemical compounds present, their concentrations, quantity released and their physical and chemical characteristics related to potential human health and environmental impacts and cleanup procedures; and
 - 5.1.2.2 Determine the extent of the release, both horizontal and vertical, including whether the contaminant is distributed homogeneously or heterogeneously; and
 - 5.1.2.3 Determine the physical characteristics of the site, including characteristics affecting the occurrence, distribution, and movement of the released contaminant and characteristics affecting access to the site, both horizontal and vertical, which may influence the feasibility of various investigatory and remediation procedures; and
 - 5.1.2.4 Evaluate, in accordance with the ~~Delaware Risk-Based Corrective Action Program (DERBCAP) or other Department approved procedure~~ requirements specified in DERBCAP and the HIG, the potential risks posed by the release including identification of environmentally sensitive receptors, and estimate the impacts to human health and the environment that may occur as a result of the release.
- 5.1.3 The results of the hydrogeologic investigation shall be organized in report form and be signed by a professional geologist or professional engineer registered in the State of Delaware as required in 24 **Del.C.** Ch. 36 and the Delaware Board of Registration of Geologists Regulations and 24 **Del.C.** Ch. 28.
- 5.1.4 The Department shall receive the results of the hydrogeologic investigation no later than ~~one hundred and twenty (120)~~ 120 days after the release was reported and confirmed. Upon receiving the hydrogeologic investigation report, the Department shall review the report and either accept the conclusions and recommendations of the report, require additional information to be submitted, or require that the Owner and Operator submit a remedial action work plan as required by PART E, Section 7.0 of this regulation.
- 5.1.5 At any point after reviewing the information contained in the hydrogeologic investigation report, the Department may require the Owner and Operator to submit additional information or to develop and submit a remedial action work plan to address contaminated soils, surface water or groundwater.
- 5.1.6 Additional investigation information or remedial action work plans requested by the Department shall be submitted within ~~ninety (90)~~ 90 days or other Department approved schedule.
- 5.1.7 Owners and Operators may submit investigation reports for a site separately or as part of a proposed long term remedial action work plan in accordance with the requirements of PART E, Section 7.0 of this regulation.

5.2 Quality Assurance and Quality Control Requirements

- 5.2.1 Owners and Operators shall develop and implement a site specific Quality Assurance/Quality Control (QA/QC) plan for the activities to be carried out during the hydrogeologic investigation. The QA/QC plan shall be submitted to the Department upon the request of the Department.

5.3 Site Safety Requirements

5.3.1 Owners and Operators shall develop and implement a site specific health and safety plan that covers all hydrogeologic investigation tasks. The health and safety plan shall address the site worker protection levels, protection of persons living near the site and site access control during the investigation. The health and safety plan shall be submitted to the Department upon the request of the Department.

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6.0 Administrative Option for Remedial Action

6.1 Requirements for Administrative Option for Remedial Action

6.1.1 The Department may waive the requirement of a hydrogeologic investigation when the Owner and Operator has taken the appropriate initial response steps to eliminate imminent dangers and to prevent any further release and the Owner and Operator chooses to submit a remedial action work plan (RAWP) to remediate contaminated soil, ground water and/or surface water.

6.1.2 If the Department determines that the implementation of remedial actions are not achieving adequate protection of human health and the environment, the Department may require additional responses to be taken.

6.1.3 The Owner and Operator may, in the interest of minimizing environmental contamination and promoting more effective corrective action, begin remediation of soil and ground water before the remedial action work plan (RAWP) is approved provided that they:

6.1.3.1 Notify the Department of their intention to begin remediation; and,

6.1.3.2 Comply with any conditions imposed by the Department, including halting remediation or mitigating adverse consequences from cleanup activities; and,

6.1.3.3 Incorporate these self-initiated remediation measures in the remedial action work plan that is submitted to the Department for approval pursuant to PART E, Section 7.0 of this regulation; and,

6.1.3.4 Recognize that any actions taken by the Owner and Operator without prior Department approval is at the risk of the Owner and Operator and does not absolve the Owner and Operator of the obligation to comply with the remedial action requirements of PART E, Section 7.0 of this regulation.

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7.0 Remedial Action Work Plan Requirements

7.1 General Remedial Action Requirements

7.1.1 At any point after reviewing the information contained in the hydrogeologic investigation report, the Department may require the Owner and Operator to submit additional information or to develop and submit a RAWP for responding to contaminated soils, surface water and groundwater in accordance with the requirements specified in DERBCAP and the HIG.

7.1.2 The RAWP shall address the contamination of soils, groundwater and surface water, including all occurrences of NAPL resulting from a release, and shall be submitted to the Department in a timeframe specified by the Department. The RAWP shall provide for adequate protection of human health, safety and the environment, and shall establish cleanup goals for the site.

7.1.3 The Owner and Operator shall modify any RAWP that does not provide for adequate protection of human health, welfare, safety and the environment, as necessary to meet the requirements of PART E, Section 8.0 of this regulation.

7.1.4 The RAWP shall include sufficient design information that demonstrates that the remedial technology shall meet the cleanup goals approved by the Department and shall include an estimated time to cleanup completion for the remediation method proposed in the RAWP.

7.1.5 A RAWP shall propose a remedial action method for the site that shall:

7.1.5.1 Reduce the contaminant levels at the site to meet the cleanup goals proposed in the remedial action work plan and approved by the Department; or

7.1.5.2 Reduce the contaminant levels to achieve the cleanup goals established by the Department; or

7.1.5.3 Monitor the site over time to provide technically based assurance that the site contamination is controlled under natural conditions and that those conditions will not now, or at some future time, adversely impact human health, safety or the environment.

7.1.6 The Department shall approve the RAWP when satisfied that implementation of the RAWP provides for measures considered adequate to protect human health, safety, and the environment.

- 7.1.7 The RAWP shall be organized in report form and signed by a professional geologist or professional engineer registered in the State of Delaware as required in 24 **Del.C.** Ch. 36 and the Delaware Board of Registration of Geologists Regulations and 24 **Del.C.** Ch. 28.
- 7.1.8 The RAWP shall be of ~~site-specific~~ site-specific design and shall be based on the results of the hydrogeologic investigation, or contain appropriate investigatory steps if submitted without a prior hydrogeologic investigation having been completed.
- 7.1.9 The RAWP may propose a phased approach to site remediation. If data can justify site closure, Owner and Operator may request site closure in accordance with the requirements of PART E, Section 8.0 of this regulation. Remedial action will be considered complete only upon the Department's evaluation and approval of a satisfactory closure request.
- 7.1.10 The RAWP shall include a summary of past efforts and a description of any new or continued efforts to effectively remove NAPL as described in PART E, Section 4.0 of this regulation.
- 7.2 Quality Assurance and Quality Control Requirements
- 7.2.1 Owners and Operators shall develop and implement a ~~site-specific~~ site-specific Quality Assurance/Quality Control (QA/QC) plan for the activities to be carried out during implementation of the RAWP and the QA/QC plan shall be included in the RAWP submitted to the Department.
- 7.3 Site Safety Requirements
- 7.3.1 Owners and Operators shall develop a site-specific health and safety plan which shall be included in the RAWP and shall cover all remedial action tasks. The health and safety plan shall, at a minimum, address site worker protection levels, protection of persons living near the site, and site access control during the remediation.
- 7.4 Implementation and Reporting Schedule
- 7.4.1 Upon approval of the RAWP by the Department, the Owners and Operators shall implement the RAWP, including any modifications to the RAWP made by the Department, within the timeframe approved by the Department.
- 7.4.2 Owners and Operators shall monitor, evaluate and report to the Department the results of implementing the remedial action at a minimum of once every ~~three (3)~~ 3 calendar months, or within the time schedule approved in the RAWP. Copies of all records documenting the transport and disposal of any free product, contaminated water and soil, or other waste that is generated at the site while investigation and remedial action work is being performed shall be included in each report.
- 7.4.3 Owners and Operators shall submit a remedial action progress report to the Department once every ~~twelve (12)~~ 12 calendar months that includes an evaluation of the effectiveness of the remedial action to determine whether additional measures must be implemented to meet the cleanup goals established in the RAWP. The evaluation shall include an estimate of time to remedial action completion.
- 7.4.4 Owners and Operators shall submit recommendations for optimization and improvement as needed to achieve the cleanup goals established in the RAWP, as part of each remedial action progress report.
- 7.5 Post Remedial Monitoring
- 7.5.1 Upon completion of remedial action activities the Owners and Operators shall perform ~~four (4)~~ 4 consecutive quarters of groundwater sampling or other sampling schedule as approved by the Department to ensure the contaminant plume is stable and shrinking and that rebounding does not occur.

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8.0 No Further Action [Requirements]

- 8.1 Request for No Further Action Determination
- 8.1.1 After all RAWP goals have been achieved, the ~~Owner and Operator shall~~ Responsible Parties may submit a written request to the Department ~~for site~~ to obtain a No Further Action (NFA) determination for project closure. Closure documentation The Responsible Parties shall include ~~but is not limited to~~ the following as applicable:
- 8.1.1.1 ~~A demonstration that~~ Documentation indicating the site does not threaten human health, safety and the environment based on current land use of the site and surrounding area; and
- 8.1.1.2 Documentation indicating that NAPL does not exist or has been addressed in accordance with the requirements specified in DERBCAP and PART E, subsection 4.3 of this regulation; and
- 8.1.1.3 ~~Contaminant~~ Documentation indicating that contaminant levels have been reduced to levels at or below the cleanup goals specified in DERBCAP, the RAWP, and approved by the Department.

8.1.1.4 Institutional Controls when required by the Department, including the placement of an Environmental Covenant (EC) on a Facility, as provided for in 7 Del.C. §§7907-7920, the Uniform Environmental Covenants Act (UECA) have been established.

8.1.1.5 The request for no further action shall be signed by a professional geologist or professional engineer registered in the State of Delaware as required in 24 Del.C. Ch. 36 and the ~~[Delaware Board of Registration of Geologists~~ Delaware Board of Registration of Geologists Regulations] and 24 Del.C. Ch. 28, when requested by the Department.

~~8.1.2 8.1.1.6 Owners and Operators shall submit all documents, permits, certificates, approvals, etc. relating to the transportation of impacted environmental media and materials from the site including ASTs, soils, regulated substances, and water that has not been previously submitted to the Department. Documentation shall include tipping fees, waste receipts, bills of lading or any other documentation verifying that all waste has been properly disposed. Verification that all waste has been properly disposed by submitting:~~

~~8.1.1.6.1 Permits, certificates, approvals, tipping fees, waste receipts, bills of lading, etc., relating to the transportation of impacted environmental media; and~~

~~8.1.1.6.2 Permits, certificates, approvals, tipping fees, waste receipts, bills of lading, etc., relating to the transportation of impacted materials from the site including ASTs, soils, regulated substances, and water.~~

8.2 Department Response to a Request for No Further Action Determination

~~8.2.1 The Department shall issue a letter requiring no further action (NFA) and documenting that site cleanup objectives have been met. The closure approval does not absolve the Owner and Operator from previously incurred or potential future liability to the Responsible Parties after receipt of all necessary documentation required in accordance with subsection 8.1 indicating that no further action is required for the site.~~

~~8.2.2 The NFA letter issued by the Department only applies to site conditions at the time that the closure request was made. If the risk posed by the site changes in the future, due to land use Should future changes at the site or surrounding area or due to other reasons, the Owner and Operator pose a risk to human health, safety or the environment, the Responsible Parties shall perform additional remedial action as at the direction of the Department, necessary to eliminate the risk to human health, safety and the environment.~~

~~8.2.3 Any person disturbing any residual contamination at the site by digging, boring, excavating, dewatering, or other means, shall submit a contaminated material management plan to the Department for approval prior to work commencing.~~

~~8.2.3 The Department shall release Responsible Parties from performing additional Corrective Action measures associated with an AST System only after all following conditions have been met:~~

~~8.2.3.1 The Department has issued any type of NFA letter, either with conditions for future management or without conditions for future management after the Removal or Closure In Place of the AST System;~~

~~8.2.3.2 The AST System was located on a residential property; and~~

~~8.2.3.3 The Tank associated with the AST System contained Consumptive Use Heating Fuel used for Consumptive Use On the Premises.~~

~~8.2.4 Possession of a NFA letter does not absolve the Responsible Parties from previously incurred or potential future liability.~~

8.3 Future Earth Disturbing Activities

~~8.3.1 A contaminated material management plan is required to be submitted to and approved by the Department, prior to any earth disturbing activities and the disturbance of any residual contamination at the site, including digging, boring, excavation, or dewatering.~~

~~8.3.2 As per Delaware Code Title 26, Chapter 8, Subchapter 1: Underground Utility Damage Prevention and Safety, any Person disturbing any residual contamination at the site by digging, boring, excavating, dewatering, or other means, shall contact Miss Utility prior to activities to arrange for markout of all subsurface utilities, shall submit a contaminated material management plan to the Department for approval prior to work commencing, and shall be financially responsible for implementing it.~~

7 DE Reg. 1765 (06/01/04)

8 DE Reg. 1167 (02/01/05)

17 DE Reg. 750 (01/01/14)

20 DE Reg. 815 (04/01/17)

27 DE Reg. 536 (01/01/24) (Final)