

# Guam Environmental Protection Agency

## Title 22, Division 10<sup>1</sup>, Chapter 50 Guam Underground Storage Tank Regulations



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<sup>1</sup> New Division recommended to the Guam Compiler of Laws to be placed under the GARR since these are new regulations not yet codified.

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**Guam Environmental Protection Agency  
Title 22, Division 10<sup>2</sup>, Chapter 50  
Guam Underground Storage Tank Regulations**

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**Subchapter 1. Scope and Prohibition**

**§50101**      **Applicability**  
**§50102**      **Prohibition for deferred UST systems**  
**§50103**      **Definitions**  
**§50104**      **Entry and Inspection of UST Facilities**  
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**§ 50101 Applicability.**

(a) The requirements of this chapter apply to all owners and operators of underground storage tank systems as defined in §50103 except as otherwise provided in paragraphs (b) and (c) of this section. Any UST system listed in paragraph (c) of this section must meet the requirements of §50102.

(1) UST systems that store fuel solely for emergency power generators, wastewater treatment tank systems, airport hydrant fuel distribution systems, and UST systems with field constructed tanks must begin meeting the requirements this Chapter according to the following schedule:

<b>Type of UST system</b>	<b>Subchapter(s)</b>	<b>Effective Date</b>
UST systems that store fuel solely for emergency power generators	5	[Insert Effective Date 1 year after Effective Date]
	2, 3, 4, 6, 7, 8, 9	[Insert Effective Date of Regulation]
Airport hydrant fuel distribution systems; UST systems with field-constructed tanks; and wastewater treatment tank systems	2, 4, 5	[Insert Date 3 years after Effective Date]
	3, 6, 7, 8, 9	[Insert Effective Date of Regulation]

(b) The following UST systems are excluded from the requirements of this chapter:

(1) Any UST system holding hazardous wastes listed or identified under Guam Hazardous Waste Regulations or Subtitle C of the Federal Solid

Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

- (2) Any wastewater treatment UST system that is part of a wastewater treatment facility regulated under section 402 or 307(b) of the federal Clean Water Act.
- (3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.
- (4) Any UST system that contains a *de minimis* concentration of regulated substances.
- (5) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(c) Subchapters 2, 3, 4, 5, 8, and 9 are deferred for the following types of UST systems or components:

- (1) Aboveground components of:
  - (i) Airport hydrant fuel distribution systems
  - (ii) UST systems with field-constructed tanks;
- (2) Any UST systems containing radioactive material that are regulated under the federal Atomic Energy Act of 1954 (42 U.S.C. section 2011 and following); and
- (3) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Federal Nuclear Regulatory Commission under 10 C.F.R. Part 50.

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## **§ 50102. Prohibition for deferred UST systems.**

(a) No person may install an UST system listed in § 50101(c) for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):

- (1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;
- (2) Is cathodically protected against corrosion, constructed of noncorrodible

material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

- (3) Is constructed or lined with material that is compatible with the stored substance.

(b) Notwithstanding paragraph (a) of this section, an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this subsection for the remaining life of the UST system.

[NOTE: The following codes of practice may be used as guidance for complying with paragraph (b) of this section:

- (A) NACE International Recommended Practice RP-02-85, "Corrosion Control of Underground Storage Systems by Cathodic Protection";
- (B) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";
- (C) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;" or
- (D) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Petroleum Storage and Dispensing Systems".]

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### § 50103. Definitions.

"**Aboveground release**" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system..

"**Administrator**" means the Administrator of Guam Environmental Protection Agency.

"**Agency**" means the Guam Environmental Protection Agency.

"**Airport hydrant fuel distribution system**" means an UST system that is a combination of one or more tanks, underground piping, and underground ancillary equipment used to fuel aircraft. Such systems do not have a dispenser at the end of the piping run, but rather have a hydrant (fill stand). If an AST is feeding intermediary tanks, this definition does not include the AST but

does include all underground piping entering and leaving the intermediary tanks. Intermediary tanks are those tanks directly connected to the hydrant piping.

**"Ancillary equipment"** means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

**"Belowground release"** means any release to the subsurface of the land or to ground water. This includes, but is not limited to, releases from the below ground portions of an UST system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST.

**"Beneath the surface of the ground"** means beneath the ground surface or otherwise covered with earthen materials.

**"Beneath the surface of the water"** means beneath the water surface or otherwise covered with water or an aqueous solution.

**"Cathodic protection"** is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

**"Cathodic protection tester"** means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

**"CERCLA"** means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

**"Class A Operator"** means the individual who has primary responsibility to operate and maintain the UST system in accordance with applicable requirements and standards established by the Agency. The Class A operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

**"Class B Operator"** means the individual who has day-to-day responsibility for applicable regulatory requirements and standards established by the Agency. The Class B operator typically implements in-field aspects of operation, maintenance, and associated recordkeeping for the UST system.

**"Class C Operator"** means the employee or employees who are responsible for initially

addressing emergencies presented by a spill or release from an UST system. The Class C operator typically controls or monitors the dispensing or sale of regulated substances.

**"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 the tank system under conditions likely to be encountered in the UST.

**"Complaint"** means any written charge filed with or by the Agency that a person is violating or has violated any provision of Chapter 76, Title 10, Guam Code Annotated, as amended, this chapter, or a permit, variance, order, or field citation issued pursuant to this chapter.

**"Connected piping"** means all underground and aboveground piping including valves, elbows, joints, flanges, and flexible connectors attached to an UST system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

**"Consumptive use"** with respect to heating oil means consumed on the premises where stored.

**"Corrective action"** means those activities carried out in response to any release from an underground storage tank system to minimize or mitigate the impact of the release of regulated substances in order to protect human health and the environment. The term may be used interchangeably with "release response action."

**"Corrosion expert"** means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal UST systems. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal UST systems.

**"Dielectric material"** means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

**"Dispenser system"** means equipment located aboveground that meters the amount of regulated substances transferred to a point of use outside of the UST system, such as a motor vehicle. Such a system includes the equipment necessary to connect the dispenser to the underground storage tank system.

**"Electrical equipment"** means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

**"Excavation zone"** means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

**"Existing UST system"** means an UST system for which installation commenced on or before December 22, 1988.

**"Exposure assessment"** means a determination regarding the extent of exposure of, or potential for exposure of, individuals to regulated substances from a release from an UST system. An exposure assessment shall be based on factors such as the nature and extent of contamination, the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, dermal exposure, soil ingestion, and food chain contamination), the size of the community or communities within the likely pathways of exposure, an analysis of expected human exposure levels with respect to short-term and long-term health effects associated with identified contaminants, and any available recommended exposure or tolerance limits for the contaminants.

**"Farm"** includes fish hatcheries, rangeland, and nurseries with growing operations.

**"Farm tank"** is a tank or tank system located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property and must be used only for farm related purposes.

**"Field citation"** as used in this chapter is a "Field Citation" as referred to in subchapter 10, which includes a Notice of Citation and Field Citation Order, and is valid after an authorized employee of the Agency signs and issues it to an owner or operator. A field citation is an offer to settle an administrative case involving a violation of this chapter and is not an administrative order.

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

**"Free product"** refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water.)

**"Gathering lines"** means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

**"Hazardous substance UST system"** means an UST system that contains a hazardous substance defined in section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act, as amended) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

**"Heating oil"** means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

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

**"Installation"** means the act of installing a UST system or installing an existing UST system at a new location. Installation is considered to have commenced if:

- (1) The owner or operator has obtained all federal approvals, Agency approvals, or permits necessary to begin physical construction of the site or installation of the UST system; and
- (2) (a) Either a continuous on-site physical construction or installation program has begun; or  
(b) The owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for physical construction at the site or installation of the UST system to be completed within a reasonable time as determined by the Agency.

**"Liquid trap"** means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

**"Maintenance"** means the normal operational upkeep to prevent an UST system from releasing product.

**"Motor fuel"** means petroleum or a petroleum-based substance that is typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances (for example: motor gasoline blended with alcohol).

**"Noncommercial purposes"** with respect to motor fuel means not for resale.

**"On the premises where stored"** with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

**"Operate"** means to place or deposit a regulated substance into an UST system, to dispense a regulated substance from an UST system, to close an UST system, to maintain an UST system, and/or to exercise control of or responsibility for an UST system on a daily basis regardless of whether a regulated substance is being actively managed on a daily basis.

**"Operational life"** refers to the period beginning when installation of the UST system has commenced until the time the UST system is properly closed under subchapter 8.

**"Operator"** means any person in control of, or having responsibility for, the daily operation of the UST system.

**"Overfill"** is a release that occurs when an UST is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

**"Owner"** means:

(1) In the case of an UST system in use on November 8, 1984, or brought into use on or after that date, any person who owns an UST system; and

(2) In the case of any UST system in use before November 8, 1984, but no longer in use on or after that date, any person who owned such an UST system immediately before the discontinuation of its use. A UST system shall be considered in use if it stores regulated substances.

**"Permit"** means written authorization from the administrator to install or operate an UST system. A permit authorizes owners or operators to install and operate an UST system in a manner, or to do an act, not forbidden by this chapter, but requiring review by the Agency.

**"Person"** means an individual, trust, estate, firm, joint stock company, corporation (including a government corporation), partnership, association, commission, consortium, joint venture, commercial entity, the state, a county, political subdivision of a state, municipality, the United States government, federal agency, interstate body, or any other legal entity.

**"Petroleum"** means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The term includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

**"Petroleum UST system"** means an underground storage tank system that contains petroleum or a mixture of petroleum with *de minimis* quantities of other regulated substances. Such tanks or tank systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

**"Pipe"** or **"piping"** means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

**"Pipeline facility"** are new and existing pipe rights-of-way (including gathering lines) and any associated equipment, facilities, or buildings.

**"Provider of financial assurance"** means a person that provides evidence of financial responsibility for one or more UST systems.

**"Regulated substance"** means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to human health, welfare, or the environment. The term includes:

(1) Any substance defined in section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act, as amended), and

(2) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils; and

(3) Any other substance as designated by the Agency.

**"Release"** includes, but is not limited to, any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST system or UST.

**"Release detection"** means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

**"Release response action"** means those activities carried out in response to any release to minimize or mitigate the impact of the release of regulated substances in order to protect human health and environment. The term "release response action" may be used interchangeably with "corrective action".

**"Repair"** means to restore a tank, pipe, spill equipment, overfill equipment, corrosion protection equipment, release detection equipment, or other UST system component that has caused a

release or suspected release of product from the UST system or has failed to function properly.

**“Replaced”** means

(1) for an underground storage tank – to remove an underground storage tank and install another underground storage tank

(2) for connected piping – to remove 50 percent or more of connected piping and install other piping, excluding connectors, connected to a single underground storage tank. For underground storage tank with multiple piping runs, this definition applies independently to each piping run.

**"Reportable quantity"** means the quantities of regulated substances that must be reported to the Agency when released to the environment.

**"Residential tank"** is an UST located on property used primarily for dwelling purposes.

**“Secondary Containment”** or “secondarily contained” means a release prevention and release detection system for an underground storage tank and/or piping. These systems have an inner and outer barrier with an interstitial space that is monitored for a leak.

**"Septic tank"** is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

**“State”** is the Government of Guam.

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

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

**"Tank"** is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

**“Training program”** means any program that provides information to and evaluates the knowledge of a Class A, Class B, or Class C operator regarding requirements and standards for UST systems established by the Agency. The evaluation of operator knowledge must be

performed through testing, a practical demonstration, or other tools deemed acceptable to the Agency.

**“Under-dispenser containment”** or **“UDC”** means containment underneath a dispenser system designed to prevent leaks from the dispenser system from reaching soil or groundwater.

**"Underground area"** means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

**"Underground release"** means any belowground and/or below water release.

**"Underground storage tank"** or **"UST"** means any one or combination of tanks (including pipes connected thereto) used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground and/or under water pipes connected thereto) is 10 percent or more beneath the surface of the ground and/or water. This term does not include any:

- (1) Septic tank;
- (2) Pipeline facility (including gathering lines):
  - (A) Which is regulated under Title 49 United States Code chapter 601, or
  - (B) Which is an intrastate pipeline facility regulated under state laws as provided in Title 49 United States Code chapter 601, and
  - (C) Which is determined by the United States Secretary of Transportation to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of the piping;
- (3) Surface impoundment, pit, pond, or lagoon;
- (4) Storm-water or wastewater collection system; or
- (5) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

The term **"underground storage tank"** or **"UST"** does not include any pipes connected to any tank which is described in paragraphs (1) through (9) of this definition.

**"Underground storage tank system"** or **"UST system"** or **"tank system"** means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.

**"Upgrade"** means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overflow controls to improve the ability of an UST system to prevent the release of product.

**"Variance"** means a special written authorization from the administrator to own, install, or

operate an UST system in a manner deviating from, or to do an act that deviates from, the requirements of this chapter that are more stringent than 40 CFR Part 280.

**"Wastewater treatment tank"** means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

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#### **§ 50104. Entry and Inspection of UST Facilities.**

Any owner and operator of a UST system shall, upon request of a duly authorized representative of the Agency, permit the representative to enter the property at all reasonable times as determined by the Agency and including normal operating business hours, to inspect the facilities and equipment or to conduct monitoring and/or sampling activities.

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#### **§ 50105. Notice Requirements.**

1. The Agency shall be given timely notice of any release as required by the statute.
2. An owner or operator is required to give notice of a release from a UST system if the amount of the release equals or exceeds existing reportable limits in any other applicable federal or territory statutes or regulations.
3. To ensure timely notice of release or suspected release from a UST system is received by the Agency, an owner or operator must follow up a verbal notice to the Agency with written notice of the release or suspected within three (3) business days following the date of the initial verbal notice.

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#### **§ 50106. Delivery Prohibition.**

(a) It shall be unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility that has been identified by the Agency as ineligible for fuel delivery or deposit.

(b) (1) In order to prevent the delivery of a regulated substance into an underground storage tank that has been identified by the Agency as ineligible for fuel delivery or deposit, a tamper-proof red tag shall be affixed to the fill pipe of the ineligible underground storage tank.

(2) This affixed red tag shall serve as written notification to the owner, operator,

and the product delivery industry of the delivery prohibition to the underground storage tank.

(c) No owner or operator shall receive any regulated substance into any underground storage tank to which written notification of delivery prohibition (red tag) has been made.

(d) No person selling any regulated substance shall deliver or cause to be delivered a regulated substance into any underground storage tank to which notification of delivery prohibition (red tag) has been made.

(e) It shall be unlawful for any person, other than an authorized representative of the Agency, to remove, tamper with, destroy, or damage a red tag affixed to any underground storage tank.

(f) (1) Pursuant to this section, a red tag shall immediately be affixed upon finding by the Agency of any of the following:

- (A) Required spill prevention equipment is not installed;
- (B) Required overfill protection equipment is not installed;
- (C) Required release detection equipment is not installed; or
- (D) Required corrosion protection equipment is not installed.

(2) The Agency, in its sole discretion, may delay the affixing of a red tag to an underground storage tank for up to one hundred eighty (180) days upon determination that:

- (A) No urgent threat to public health exists; and
- (B) Such an action would jeopardize the availability of, or access to, fuel for the local community.

(g) Pursuant to this section, a red tag shall be affixed to an underground storage tank upon finding by the Agency of any of the following if the owner or operator has been provided a written notice of noncompliance and the owner or operator has failed to comply within the time frame given in the notice:

- (1) Failure to properly operate or maintain release detection equipment;
- (2) Failure to properly operate or maintain spill, overfill, or corrosion protection equipment;
- (3) Failure to protect a buried metal flexible connector from corrosion; or
- (4) Failure to maintain financial responsibility.

(h) (1) In order for an owner or operator of an underground storage tank that has received a delivery prohibition (red tag) to have the tank reclassified by the Agency as eligible to receive delivery of a regulated substance, he or she must provide a written statement to the Agency that the deficiencies listed in the notice of noncompliance have been corrected.

(2) The Agency will determine whether the deficiencies have been corrected as soon as practicable, but no longer than five (5) business days after receipt of the owner's written statement of compliance.

(3) Upon verification of compliance, Agency personnel will reclassify the tank as eligible to receive product by removing the red tag.

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**§§ 50107 to 50110 (Reserved)**

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**Subchapter 2. Design, Construction, and Installation**

<b>§50111</b>	<b>Performance standards for UST systems</b>
<b>§50112</b>	<b>Tank requirements</b>
<b>§50113</b>	<b>Piping requirements</b>
<b>§50114</b>	<b>Spill and overfill prevention equipment</b>
<b>§50115</b>	<b>Installation</b>
<b>§50116</b>	<b>Certification of installation</b>
<b>§50117</b>	<b>Under-dispenser containment</b>
<b>§50118</b>	<b>Upgrading of existing UST systems</b>
<b>§§50119</b>	<b>to 50120 (Reserved)</b>

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**§ 50111. Performance standards for UST systems.**

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of UST systems must meet the requirements of this subchapter.

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**§ 50112. Tank Requirements.**

Each UST must be properly designed, constructed, and installed, and any portion underground and/or under water that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory, as specified below. In addition, all new or replaced tanks or UST systems where installation began after **[ENTER EFFECTIVE DATE OF REGULATIONS]** must be secondarily contained in accordance with §50112(6). All owners and operators of UST systems must meet the following requirements.

- (1) The UST is constructed of fiberglass-reinforced plastic; or

[NOTE: The following codes of practice may be helpful in complying with paragraph (1) of this section:

- A. Underwriters Laboratories Standard 1316, "Glass Fiber Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures"; or
- B. Underwriter's Laboratories of Canada S615, "Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids ".]

- (2) The UST is constructed of steel and cathodically protected in the following manner:

- (A) The UST shall be coated with a suitable dielectric material;
- (B) Field-installed cathodic protection systems are designed by a corrosion expert;
- (C) Impressed current systems shall be designed to allow determination of current operating status as required in §50142; and
- (D) Cathodic protection systems are operated and maintained in accordance with §50142 or according to guidelines established by the Agency; or

[NOTE: The following codes and standards may be helpful in complying with paragraph (2) of this section:

- A. Steel Tank Institute Specification "sti-P3® Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks";
- B. Underwriters Laboratories Standard 1746, "Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks";
- C. Underwriters Laboratories of Canada S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids", and S603.1, "Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids", and S631, "Standard for Isolating Bushings for Steel Underground Tanks Protected with External Protection Systems";
- D. Steel Tank Institute Standard F841, "Standard for Dual Wall Underground

Steel Storage Tanks”; or

- E. NACE International Recommended Practice RP-02-85, "Corrosion Control of Underground Storage Systems by Cathodic Protection", and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids".]

- (3) The UST is constructed of steel and clad with or jacketed with a non-corrodible material; or

[NOTE: The following codes of practice may be helpful in complying with paragraph (3) of this section:

- A. Underwriters Laboratories Standard 1746, "Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks", or
- B. Steel Tank Institute Specification F894, "ACT-100® Specification for External Corrosion Protection of FRP Composite Steel USTs";
- C. Steel Tank Institute Specification F961, "ACT-100-U® Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks"; or
- D. Steel Tank Institute, "Specification for Permatank®".]

- (4) The UST is constructed of metal without additional corrosion protection measures provided that:

- (A) The UST is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and
- (B) The owners and operators maintain records that document and demonstrate compliance with the requirements of subparagraph (4)(A) of this section for the remaining life of the UST; or

- (5) The Agency may determine that the UST construction and corrosion protection are designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the standards provided in paragraphs (1) through (4).

- (6) The tank is secondarily contained. Secondary containment must be periodically tested in accordance with §50147. Secondarily contained tanks must meet the

following:

- (A) Be able to contain regulated substances released from the UST system until they are detected and removed; and
- (B) Be able to prevent the release of regulated substances to the environment at any time during the operational life of the UST system.

[Note: the following codes of practice may be used to comply with paragraph (6) of this section:

- A. Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids";
- B. Underwriters Laboratories Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures";
- C. Underwriters Laboratories Standard 1746, "Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks";
- D. Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks"; or
- E. Steel Tank Institute, "Specification for Permatank®".]

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### **§ 50113. Piping requirements.**

The piping that routinely contains regulated substances and is in contact with the ground and/or water must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below. In addition, except for suction piping that meets the requirements of §50151(e)(2)(B)(i) through (v) and piping associated with field constructed tanks and airport hydrant fuel distribution systems, all new or replaced piping where installation began after [ENTER EFFECTIVE DATE OF REGULATIONS] must be secondarily contained in accordance with §50113(5). When 50 percent or more of a piping run is replaced, the entire piping run must meet the secondary containment requirement. All owners and operators of UST systems must meet the following requirements.

- (1) The piping is constructed of a non-corrodible material; or

[NOTE: The following codes of practice may be helpful in complying with paragraph (1) of this section:

- A. Underwriters Laboratories Standard 971, "Standard for Non-Metallic Underground Piping for Flammable Liquids "; or
  - B. Underwriters Laboratories of Canada Standard S660, "Standard for Non-Metallic Underground Piping for Flammable Liquids".],
- (2) The piping is constructed of steel and cathodically protected in the following manner:
- (A) The piping is coated with a suitable dielectric material;
  - (B) Field-installed cathodic protection systems are designed by a corrosion expert;
  - (C) Impressed current systems are designed to allow determination of current operating status as required in §50142; and
  - (D) Cathodic protection systems are operated and maintained in accordance with §50142 or guidelines established by the Agency; or

[NOTE: The following codes of practice may be helpful in complying with paragraph (2) of this section:

- A. American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";
  - B. Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe";
  - C. Steel Tank Institute recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Petroleum Storage and Dispensing Systems";
  - D. NACE International Standard Practice SP-01-69, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems"; or
  - E. NACE International Recommended Practice RP 0285, "Corrosion Control of Underground Storage Systems by Cathodic Protection".]
- (3) The piping is constructed of metal without additional corrosion protection measures provided that:

- (A) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and
  - (B) The owners and operators maintain records that demonstrate compliance with the requirements of subparagraph (3)(A) of this section for the remaining life of the piping; or
- (4) The Agency may determine that the piping construction and corrosion protection are designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (1) through (3) of this section.
- (5) The piping is secondarily contained. Secondary containment must be periodically tested in accordance with §50147. Secondarily contained piping must meet the following:
- (A) Be able to contain regulated substances released from the UST system until they are detected and removed; and
  - (B) Be able to prevent the release of regulated substances to the environment at any time during the operational life of the UST system.

[Note: the following codes of practice may be used to comply with paragraph (b)(5) of this section:

- A. Underwriters Laboratories Standard 971, "Standard for Non-Metallic Underground Piping for Flammable Liquids"; or
- B. Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe".]

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#### **§ 50114. Spill and overflow prevention equipment.**

- (a) Except as provided in paragraph (b) and (c) of this section, to prevent spilling and overflowing associated with product transfer to the UST system, owners and operators must use the following spill and overflow prevention equipment:
- (1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

- (2) Overfill prevention equipment that will:
  - (A) Automatically shut off flow into the tank when the tank is no more than ninety-five percent full; or
  - (B) Alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level alarm; or
  - (C) Restrict flow 30 minutes prior to overfilling, or alert the operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.
- (b) Owners and operators are not required to use the spill and overfill prevention equipment specified in subsection (a) if:
  - (1) Alternative equipment is used that is determined by the Agency to be no less protective of human health and the environment than the equipment specified in paragraph (a) of this section; or
  - (2) The UST system is filled by transfers of no more than twenty-five gallons at one time.
- (c) Flow restrictors used in vent lines may not be used for overfill prevention when overfill prevention is installed or replaced after **ENTER EFFECTIVE DATE OF RULE**.
- (d) Spill and overfill prevention methods that rely on the use of alarms must have the alarms clearly labeled and located where the delivery person can clearly see or hear the alarm in order to immediately stop delivery of the product.
- (e) Spill and overfill prevention equipment must be periodically tested in accordance with §50146.

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## **§ 50115. Installation**

All USTs and piping must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

[NOTE: UST and piping system installation practices and procedures described in the following codes of practice may be helpful in complying with the

requirements of this section:

- A. American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";
- B. Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";
- C. National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" and Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages".

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## **§ 50116. Certification of installation**

- (a) All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with §50115:
  - (1) The installer has been certified by the tank and piping manufacturers; or
  - (2) The installation has been inspected and certified by a licensed professional engineer with education and experience in UST system installation; or
  - (3) All work listed in the manufacturer's installation checklists has been completed and the checklists maintained; or
  - (4) The owner or operator has complied with another method for ensuring compliance with §50115 that is determined by the Agency to be no less protective of human health and the environment.
- (b) All owners and operators shall certify compliance with subsection (a) by submitting to the Agency a valid installation certification form as described in paragraph (c).
- (c) All installers must apply for and obtain an installation certification from the Agency stating that they meet the requirements of paragraph (a). The installation certification is valid for the time period specified on the certification by the Agency.

## § 50117. Under-dispenser Containment

After **[ENTER EFFECTIVE REGULATION DATE]**, each new dispenser system installed and connected to an UST system must be equipped with under-dispenser containment.

(a) A dispenser system is considered new when both the dispenser and the equipment needed to connect the dispenser to the underground storage tank system are installed at a UST facility. The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the underground piping.

(b) Under-dispenser containment must be liquid-tight on its sides, bottom, and at any penetrations and allow for visual inspection and access to the components in the containment system, or be continuously monitored for leaks from the dispenser system.

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## § 50118. Upgrading of existing UST systems.

(a) Except as described in paragraph (e) of this section for UST systems listed in §50101(a)(1) and where an upgrade is determined to be appropriate by the Agency, owners and operators must permanently close (in accordance with Subchapter 8 of this Chapter) any UST system that does not meet the UST system performance standards in §50111 through §50117 or has not been upgraded in accordance with paragraphs (b) through (d) of this section after **[ENTER EFFECTIVE REGULATION DATE]**. All existing UST systems must comply with one of the following requirements:

- (1) Performance standards established in §50111 through §50117;
- (2) The upgrading requirements in subsections (b) through (d) of this section; or
- (3) Closure requirements under subchapter 8, including applicable requirements for release response actions under subchapter 7.

(b) Steel UST systems must be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

- (1) Tanks upgraded by internal lining must meet the following:
  - (A) The lining was installed in accordance with the requirements of

§50144, and

- (B) Within 10 years after the installation of the lining, and every five years thereafter, the lined UST is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications. If the internal lining is no longer performing in accordance with original design specifications and cannot be repaired in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory, then the lined tank must be permanently closed in accordance with Subchapter 8.
- (2) Tanks upgraded by cathodic protection must meet the requirements of §50112(2)(B), (C), and (D), and the integrity of the UST must have been ensured using one of the following methods:
- (A) The UST was internally inspected and assessed to ensure that the UST was structurally sound and free of corrosion holes prior to installing the cathodic protection system; or
  - (B) The UST had been installed for less than 10 years and is monitored monthly for releases in accordance with §50152; or
  - (C) The UST had been installed for less than 10 years and was assessed for corrosion holes by conducting two tightness tests that meet the requirements of §50152(3). The first tightness test must have been conducted prior to installing the cathodic protection system. The second tightness test must have been conducted between three and six months following the first operation of the cathodic protection system; or
  - (D) The UST was assessed for corrosion holes by a method that is determined by the Agency to prevent releases in a manner that is not less protective of human health and the environment than paragraphs (b)(2)(A) through (C) of this section.
- (3) USTs upgraded by both internal lining and cathodic protection must meet the following:
- (A) The lining was installed in accordance with the requirements of §50144; and
  - (B) The cathodic protection system meets the requirements of

§50112(2)(B) through (D).

[NOTE: The following codes of practice may be helpful in complying with subsection (b):

- A. American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks";
- B. National Leak Prevention Association Standard 631, "Entry, Cleaning, Interior Inspection, Repair and Lining of Underground Storage Tanks";
- C. National Association of Corrosion Engineers Standard RP0285-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"; and
- D. American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems".

The following codes of practice may be used to comply with the periodic lining inspection requirement of this section:

- A. American Petroleum Institute Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";
- B. National Leak Prevention Association Standard 631, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks"; or
- C. Ken Wilcox Associates Recommended Practice, "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera".]

- (c) Metal piping that routinely contains regulated substances and is in contact with the ground and/or water must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of §50113(2)(B), (C), and (D).

[NOTE: The codes of practice listed in the note following §50113(2) may be used to comply with this requirement.]

- (d) To prevent spilling and overfilling associated with product transfer to the UST system, all

existing UST systems must comply with the performance standard for spill and overflow prevention equipment as specified in §50114 no later than **ENTER EFFECTIVE DATE OF REGULATIONS**.

- (e) Upgrade requirements for UST systems listed in §50101(a)(1). UST systems that store fuel solely for emergency power generators, wastewater treatment tank systems, airport hydrant fuel distribution systems, and UST systems with field-constructed tanks where installation commenced on or before **ENTER EFFECTIVE DATE of rule** must meet the following requirements according to the time table in §50101(a)(1) or be permanently closed pursuant to Subchapter 8.

(1) Corrosion protection. UST system components in contact with the ground and/or water that routinely contain regulated substances must meet one of the following:

- (i) The performance standards for UST systems at §50112 and for piping at §50113; or
- (ii) Is constructed of metal and cathodically protected according to a code of practice developed by a nationally recognized association or independent testing laboratory and meets the following:
  - (A) Cathodic protection must meet the requirements of §50112(2)(B), (C), and (D) for tanks and §50113(2)(B), (C), and (D) for piping.
  - (B) Tanks greater than ten years old without cathodic protection must be assessed to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment may be internal inspection or by another method determined by the Agency to adequately assess the tank for structural soundness and corrosion holes.

[Note: The following codes of practice may be used to comply with this section:

- (A) NACE International Recommended Practice RP 0285, "Control of Underground Storage Tank Systems by Cathodic Protection";
- (B) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";
- (C) National Leak Prevention Association Standard 631, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks";  
or

(D) American Society for Testing and Materials Standard G158, “Standard Guide for Three Methods of Assessing Buried Steel Tanks”.]

(2) Spill and overflow prevention equipment. To prevent spilling and overflowing associated with product transfer to the UST system, all UST systems must comply with UST system spill and overflow prevention equipment requirements specified in §50114.

(f) Any UST system that fails to meet any of the requirements of paragraphs (b) through (e) of this section must comply with paragraph (a)(1) or (a)(3) no later than **[ENTER EFFECTIVE DATE OF REGULATIONS]**.

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## §§ 50119 to 50120 (Reserved)

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### SUBCHAPTER 3. NOTIFICATION, PERMITS, AND VARIANCES

§50121	Notification requirements for tanks brought into use before the effective date of these rules
§50122	Notification requirements for tanks brought into use on or after the effective date of these rules
§50123	Permit required
§50124	Application for a permit
§50125	Permit
§50126	Permit renewals
§50127	Action on and timely approval of an application for a permit
§50128	Permit conditions
§50129	Modification to an existing permit and notice change
§50130	Revocation or suspension of permit
§50131	Permit transfers
§50132	Variance applications
§50133	Maintenance of permit or variance
§50134	Fees
§§51035	to 50140 (Reserved)

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#### § 50121. Notification requirements for tanks brought into use before the effective date of these rules.

As to tanks that were brought into use before the effective date of these rules:

(1) Any person who acquires ownership of an UST system that has not been

permanently closed pursuant to subchapter 8 shall, within 30 days of acquiring ownership, submit to the Agency an amendment to the notification submitted by the previous owner. The amendment shall be on the form prescribed by the Agency.

- (2) Within 30 days following a change of operator of an UST system, the owner shall submit to the Agency an amendment to the notification previously submitted. The amendment shall be on the form prescribed by the Agency.
- (3) For any other changes in information submitted to the Agency on the notification form, the owner shall submit an amended notification form within 30 days following the change, except that notifications of permanent closures and changes in service under subchapter 8 must be received by the Agency at least 30 days before commencement of the closure or change in service. The amendment shall be on the form prescribed by the Agency. Such changes in information shall include, but not be limited to:
  - (A) Permanent or temporary closures, including the return to currently-in-use or operating status;
  - (B) Changes in service under subchapter 8;
  - (C) Repairs;
  - (D) Changes in piping;
  - (E) Changes in type of regulated substances stored;
  - (F) Changes in corrosion protection mechanism;
  - (G) Changes in secondary containment;
  - (H) Changes in product dispensing method;
  - (I) Changes in financial responsibility mechanism;
  - (J) Changes in leak detection method or equipment; and
  - (K) Changes in spill or overfill prevention method or equipment.
- (4) Owners must comply with the permit requirements of §50123 through §50130 and §50133 through §50134.

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**§ 50122. Notification requirements for tanks brought into use on or after the effective date of these rules.**

As to tanks that were brought into use on or after the effective date of these rules, the owner may satisfy the notification requirements by complying with the permit requirements of §50123 through §50130 and §50133 through §50134.

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**§ 50123. Permit required.**

- (a) No person shall install or operate an UST system, brought into use after the effective date of these rules, without first obtaining a permit from the Administrator.
- (b) The Administrator shall approve an application for a permit only if the applicant has submitted sufficient information to the satisfaction of the Administrator that the technical, financial, and other requirements of this chapter are or can be met and the installation and operation of the UST system will be done in a manner that is protective of human health and the environment.
- (c) A permit shall be issued by the Agency only in accordance with this chapter, and it shall be the duty of the owner to ensure compliance with the law in the installation and operation of the UST system.
- (d) Issuance of a permit shall not relieve any person of the responsibility to comply fully with all applicable laws.
- (e) Only one permit can be issued for each location which has an UST system requiring a permit under this subchapter. The permit shall be issued to the owner or operator of the UST system.

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**§ 50124. Application for a permit.**

- (a) Every application for a permit shall be submitted to the Agency on forms prescribed by the Agency.
- (b) A permit fee in accordance with §50134 shall accompany each application for a permit.

- (c) The applicant shall submit sufficient information to enable the Administrator to make a decision on the application. Information submitted shall include but not be limited to the following:
- (1) General information on involved parties, including the landowner, owner, and operator; identification of location of the tanks, piping, and other components that comprise the UST system; and basic description of the UST system;
  - (2) Age, size, location, and uses of the UST system;
  - (3) Other information required in forms prescribed by the Agency for the application for a permit; and
  - (4) Other information as determined by the administrator.
- (d) Every application shall be signed by the owner and the operator and shall constitute an acknowledgement that the owner or operator assumes responsibility for the installation and operation of the UST system in accordance with this chapter and the conditions of the permit, if issued. Each signatory shall be:
- (1) In the case of a corporation, a principal executive officer of at least the level of vice president, or a duly authorized representative if that representative is responsible for the overall operation of the UST system;
  - (2) In the case of a partnership, a general partner;
  - (3) In the case of a sole proprietorship, the proprietor; or
  - (4) In the case of a county, state, or federal entity, a principal executive officer, ranking elected official, or other duly authorized employee.

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## **§ 50125. Permit.**

- (a) Upon approval of an application for a permit to install or operate an UST system, the Administrator shall issue a permit for a term of one year except as noted in paragraph (b).
- (b) The owner or operator shall have one year from the issuance of the permit to install an UST system. If the installation is not completed within one year, the permit expires and the owner or operator must apply for a new permit.
- (c) The owner or operator must inform the Agency at least seven days before performing the

actual installation. The information shall include the permit number, name and address of the UST system, the owner and operator, the owner and operator's phone numbers, and date and time of actual installation.

- (d) The owner or operator must notify the Agency within 30 days after the installation of the UST system. The notification shall be submitted on the form prescribed by the Agency.

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**§ 50126. Permit renewals.**

- (a) A permit may be renewed for a term of one year.
- (b) A renewal fee in accordance with §50134 shall accompany each application for renewal of a permit.
- (c) An application for a renewal shall be received by the Agency at least 60 days prior to the expiration of the existing permit and shall be submitted on forms prescribed by the Agency.

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**§ 50127. Action on and timely approval of an application for a permit.**

- (a) The Administrator need not act upon nor consider any incomplete application for a permit. An application shall be deemed complete only when:
  - (1) All required and requested information, including the application form, plans, specifications, and other information required by this subchapter have been submitted in a timely fashion;
  - (2) All fees have been paid as prescribed in section 50134; and
  - (3) The administrator determines that the application is complete.
- (b) The Administrator shall approve, approve with conditions, or deny a complete application for a permit to install and operate an UST system, a permit renewal, a permit modification, or permit transfer and the Administrator shall notify the applicant of the decision within 180 days of receipt of a complete application per subsection (a). Otherwise, the application is deemed approved on the 180th day.

## **§ 50128. Permit Conditions.**

The Administrator may impose conditions on a permit that the Administrator deems reasonably necessary to ensure compliance with this chapter and any other relevant requirement, including conditions relating to equipment, work practice, or operation. Conditions may include, but not be limited to, the requirement that devices for measurement or monitoring of regulated substances be installed and maintained and the results reported to the Administrator. All costs and expenses related to any permit condition imposed by the Administrator shall be borne by the applicant.

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## **§ 50129. Modification to an existing permit and notice of change.**

- (a) The Administrator may modify a permit if there is a change that requires a modification to an existing permit. Changes requiring a modification to an existing permit shall include, but not be limited to:
- (1) Changes in service under subchapter 8;
  - (2) Repairs;
  - (3) Changes in piping;
  - (4) Changes in type of regulated substance stored;
  - (5) Changes in corrosion protection mechanism; and
  - (6) Changes in secondary containment.
- (b) The holder of a permit shall apply to the Agency for a modification to an existing permit if plans to renovate or modify an UST system would cause the holder to be out of compliance with the permit.
- (c) An application for a modification of an existing permit shall be made in writing to the Agency and shall be accompanied by sufficient information on the planned renovation or modification to the UST system to assist the Administrator in making a determination as to whether the application for modification of an existing permit should be denied or granted.
- (d) Applications for a modification of an existing permit shall be received by the Agency no later than 30 days following the occurrence of the event that prompted the application except that applications for permanent closure or change in service must be received by the Agency at least 30 days before the owner or operator begins the closure or change in

service. Applications shall be submitted on forms prescribed by the Agency.

- (e) Owners and operators shall submit a permit application to add UST systems to an existing permit. If the Administrator approves the addition, the existing permit shall be terminated, and a new permit shall be issued which covers the additional UST systems as well as the already permitted UST systems. The term of the new permit shall be for the remaining term of the original permit.

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### **§ 50130. Revocation or suspension of permit.**

The Administrator may revoke or suspend a permit if the Administrator finds any one of the following:

- (1) There is a release, suspected release, or threatened release of regulated substances from the UST system;
- (2) The permittee violated a condition of the permit;
- (3) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
- (4) The owner or operator is not operating the UST system in accordance with this chapter.

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### **§ 50131. Permit Transfers.**

- (a) No permit shall be transferred, unless approved by the Agency. Request for approval to transfer a permit from one owner to another owner must be made by the new owner. Request for approval to transfer a permit from one operator to another operator must be made by the new owner.
- (b) The transferred permit will be effective for the remaining life of the original permit.
- (c) An application for the transfer shall be received by the Agency at least 30 days prior to the proposed effective date of the transfer and shall be submitted on forms prescribed by the Agency.

### § 50132. Variance Applications.

- (a) Every application for a variance shall be submitted to the Agency on forms prescribed by the Agency.
  - (b) A variance fee in accordance with section §50135 shall accompany each application for a variance.
  - (c) Every application shall be signed by the owner and operator and signatories shall be in accordance with §50124(d)(1)-(4).
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### § 50133. Maintenance of Permit or Variance.

- (a) Permits and variances, including application documents, shall be maintained at the location of the UST system for which the permit was issued and shall be made available for inspection upon request of any duly authorized representative of the Agency.
  - (b) No person shall willfully deface, alter, forge, counterfeit, or falsify any permit or variance.
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### § 50134. Fees.

- (a) Every applicant for a permit, a variance, a modification to an existing permit, or a transfer of a permit, shall pay the applicable fees as set forth below.

Type of Application	Fee
Permit Application Fee per Tank (New Installation)	\$500.00
Permit to Operate Fee per Tank (Annual)	\$250.00
Permit to Transfer	\$250.00
Permit to Modify	\$150.00
Permit to Close	\$500.00

Training 8-hours (If Guam EPA provides training)	\$150.00
Training 40-hours (If Guam EPA provides training)	\$550.00
Document Reproduction per sheet (First 10 copies free)	\$0.25
Record Request (FOIA, etc.) – Search & Segregation	\$25.00/30 mins.
Request for Proposal Copy (RFP)	\$25.00
Installer’s Certification (2 years)	\$100.00
Operator’s Certification A & B (2 years)	\$50.00

- (b) Fees shall be submitted with the application and are nonrefundable.
- (c) Fees shall be made payable to the Guam Environmental Protection Agency UST-LUST Fund.
- (d) If more than one type of application is combined, the highest applicable fee will be assessed.

**§§ 50135 to 50140 (Reserved)**

**SUBCHAPTER 4. GENERAL OPERATING REQUIREMENTS**

- §50141 Spill and overfill control**
- §50142 Operation and maintenance of corrosion protection systems**
- §50143 Compatibility**
- §50144 Repairs**
- §50145 Reporting and Recordkeeping**
- §50146 Periodic testing of spill and overfill prevention equipment**
- §50147 Periodic testing of secondary containment**
- §50148 Periodic operation and maintenance walkthrough inspections**
- §§50149 to 50150 (Reserved)**

**§ 50141. Spill and overfill control.**

- (a) Owners and operators must ensure that releases due to spilling or overfilling do not occur. Owners and operators must ensure that the volume available in the UST is greater than the volume of product to be transferred to the UST before the transfer is made and that the transfer operation is monitored constantly to prevent spilling and overfilling.

[NOTE: The transfer procedures described in National Fire Protection Association Standard 385, “Standard for Tank Vehicles for Flammable and Combustible Liquids” or American Petroleum Institute Recommended Practice 1007, “Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles” may be helpful in complying with paragraph (a) of this section. Further guidance on spill and overfill prevention appears in American Petroleum Institute Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets".]

- (b) Owners and operators must report, investigate, and clean up any spills and overfills in accordance with §50164.

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## § 50142. Operation and Maintenance of Corrosion Protection Systems.

- (a) All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented until the UST system is permanently closed or undergoes a change-in-service pursuant to §50182:

- (1) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the UST and piping that routinely contain regulated substances and are in contact with the ground or water.

- (2) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

- (A) *Frequency.* All cathodic protection systems must be tested within six months of installation and at least every three years thereafter; and
    - (B) *Inspection criteria.* The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

[NOTE: The following codes of practice may be used to comply with (a)(2)(A) of this section:

- (A) NACE International Test Method TM 0101, “Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Tank Systems”;

- (B) NACE International Test Method TM0497, “Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems”; or
- (C) Steel Tank Institute Recommended Practice R051, “Cathodic Protecting Testing Procedures for sti-P3 USTs.”

The following codes of practice may be used to comply with (a)(2)(B) of this section:

- (A) NACE International Recommended Practice RP 0285, "Control of Underground Storage Tank Systems by Cathodic Protection"; or
- (B) NACE International Standard Practice SP 0169, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems”.]

(3) UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is operating properly.

(b) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained by the owners and operators in accordance with §50145 to demonstrate compliance with the performance standards in this section. These records must provide the following:

(1) The results of the last three inspections required in paragraph (a)(3) of this section; and

(2) The results of testing from the last two inspections required in paragraph (a)(2) of this section.

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### **§ 50143. Compatibility.**

(a) Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system. At a minimum, all portions of the UST system that may come into contact with regulated substances must be compatible with those regulated substances.

(b) Owners and operators storing a blend of more than ten percent alcohol with one or more regulated substances or any other regulated substance identified by the Agency must

maintain records to demonstrate compatibility of the UST system with the product stored. Owners and operators must maintain these records until the UST system is permanently closed or undergoes a change-in-service pursuant to §50182. Owners and operators may use one or more of the following methods to demonstrate compatibility of UST systems storing these alcohol blends:

- (1) Independent testing laboratory listing, labeling or approval;
  - (2) Manufacturer's approval of the compatibility of UST system components; or
  - (3) Another method determined by the Agency to be no less protective than the methods listed in paragraphs (1) or (2) of this section.
- (c) Owners and operators must maintain records for all new and replaced equipment. Each record must, at a minimum, include the date of installation or replacement, manufacturer and model. Owners and operators must maintain these records for the life of the equipment.

[NOTE: Owners and operators storing alcohol blends may find it helpful to use the following codes to comply with the requirements of this section:

- A. American Petroleum Institute Recommended Practice 1626, "Storing and Handling Ethanol and Gasoline-ethanol Blends at Distribution Terminals and Service Stations".]

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## § 50144. Repairs

- (a) Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion for as long as the UST system is used to store regulated substances.
- (b) UST system repairs must meet the following requirements:
  - (1) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

[NOTE: The following codes of practice may be helpful in complying with paragraph (b)(1) of this section:

- A. National Fire Protection Association Standard 30, "Flammable and

Combustible Liquids Code";

- B. American Petroleum Institute Recommended Practice RP 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines";
- C. American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";
- D. National Fire Protection Association Standard 326, "Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair";
- E. National Leak Prevention Association Standard 631, "Entry, Cleaning, Interior Inspection, Repair and Lining of Underground Storage Tanks";
- F. Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to sti-P3® Tanks";
- G. NACE International Recommended Practice RP 0285, "Control of Underground Storage Tank Systems by Cathodic Protection"; or
- H. Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks".]

- (2) Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.
- (3) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Non-corrodible pipes and fittings may be repaired in accordance with the manufacturer's specifications.
- (4) Repaired tanks and piping must be tightness tested in accordance with §50152(3) and §50153(2) within 30 days following the date of the completion of the repair, except as provided in paragraphs (b)(4)(A) through (b)(4)(C) of this section:
  - (A) The repaired UST is internally inspected in accordance with a code

of practice developed by a nationally recognized association or an independent testing laboratory; or

(B) The repaired portion of the UST or tank system is monitored monthly for releases in accordance with a method specified in §50152(4) through (8); or

(C) UST systems with secondary containment must conduct testing of any repaired interstitial areas as specified in §50147 within 30 days following the completion of any repair. Exception: Tanks using interstitial sensors must conduct interstitial testing in accordance with §50147(a)(1)(B) following any repair.

(5) Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with §50142(a)(2) and (3) to ensure that it is operating properly.

(6) Within 30 days following any repair to spill or overfill prevention equipment, the repaired spill or overfill prevention equipment must be tested in accordance with §50146 to ensure that it is operating properly.

(c) UST system owners and operators must maintain records of each repair for the UST system to demonstrate compliance with the requirements of this section until the UST system is permanently closed or undergoes a change in service pursuant to §50182.

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## **§ 50145. Reporting and Recordkeeping.**

(a) Owners and operators of UST systems must cooperate fully with inspections, monitoring, and testing conducted by the Agency, as well as requests by the Agency for document submission, monitoring and testing by owners or operators.

(b) *Reporting.* Owners and operators must submit the following information to the Agency:

(1) Notification for all UST systems as required by §50121 and §50122. When appropriate, notification shall include certification of installation for UST systems required under §50116;

(2) Reports of all releases including suspected releases as required in §50161, spills and overfills as required in §50164, and confirmed releases as required in §50172;

- (3) Release response actions planned or taken including immediate response actions as required in §50172, posting of signs as required in §50173, corrective actions planned or taken including initial abatement measures and site assessment as required in §50174, initial site characterization as required in §50175, free product removal as required in §50176, soil and ground water investigations as required in §50177, site cleanup as required in §50178, notification of confirmed release as required in §50178.1, corrective action plan as required in §50179, documentation of public participation as required in §50180, and ninety-day report and quarterly progress reports as required in §50180.1; and
- (4) Notification before permanent closure or change-in-service of an UST system as required in §50182.

(c) *Recordkeeping.* Owners and operators must maintain the following information for the remaining operating life of the UST system unless otherwise specified:

- (1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used as allowed for under §50112 and §50113;
- (2) Documentation of operation of corrosion protection equipment as required in §50142;
- (3) Documentation of compatibility for USTs storing alcohol blends greater than ten percent (§50143(b));
- (4) Records for all new and replaced UST system equipment (§50143(c));
- (5) Documentation of UST system repairs as required in §50144(c);
- (6) Documentation of compliance for spill and overfill prevention equipment (§50146);
- (7) Documentation of compliance for tanks, piping and containment sumps using interstitial monitoring (§50147);
- (8) Documentation of periodic walkthrough inspections (§50148);
- (9) Record of compliance with release detection requirements as specified and according to the timeframes in §50154;
- (10) Record of compliance with change-in-service or permanent closure requirements, including results of the site assessment, under subchapter 8,

for at least three years after completion of permanent closure or change-in-service;

- (11) Documentation of operator training in accordance with subchapter 11.
- (12) Documentation of all permits and variances, including all documentation, as specified in §50133; and
- (13) Proof of current financial assurance mechanisms used to demonstrate financial responsibility as required by subchapter 9.

(d) *Availability and Maintenance of Records.* Owners and operators must, until three years after proper closure or change in service of the UST or tank system (unless otherwise specified), keep the records at the following locations:

(1) All documents, except the permanent closure records specified in paragraph (c)(10) of this section, shall be made immediately available for inspection by the Agency by:

(A) Being maintained at the UST site; or

(B) At a readily available alternative site and be provided for inspection by the Agency upon request;

(2) In the case of permanent closure records specified in paragraph (c)(10) of this section and required under §50185, owners and operators may submit closure records to the Agency if they cannot be kept at the site or an alternative site as indicated above.

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## **§ 50146. Periodic testing of spill and overflow prevention equipment.**

(a) Owners and operators of UST systems with spill and overflow prevention equipment must meet the following requirements to ensure the equipment is operating properly and will prevent releases to the environment:

(1) Spill prevention equipment (such as a catchment basin, spill bucket or other spill containment device) must prevent releases to the environment by meeting one of the following:

(A) The spill prevention equipment has two walls and the space between the walls is monitored continuously to ensure the integrity of the inner

and outer walls is maintained.

- (B) The spill prevention equipment is tested at installation and at least once every 12 months to ensure the spill prevention equipment is liquid tight by using vacuum, pressure or liquid testing in accordance with one of the options in the table below:

(i) Requirements developed by the manufacturer (Note: Owners and operators may use this option only if the manufacturer has developed testing requirements);
(ii) Code of practice developed by a nationally recognized association or independent testing laboratory; or
(iii) Requirements determined by the Agency to be no less protective than the requirements in paragraphs (a)(1)(B)(i) or (ii) of this section.

- (2) Overfill prevention equipment must be tested at installation and at least once every three years. At a minimum, testing must ensure that overfill prevention equipment is set to activate at the correct level specified in §50114 and will activate when regulated substance reaches that level. Testing must be conducted in accordance with one of the options listed in the table in (a)(1)(B) of this section:

(b) Owners and operators must begin meeting these requirements as follows:

- (1) For UST systems in use on or before [ENTER the effective date of this rule]:

- (A) not later than [ENTER date one year after effective date of this rule] for spill prevention equipment; and
- (B) not later than [ENTER date three years after effective date of this rule] for overfill prevention equipment.

- (2) For UST systems brought into use after [ENTER the effective date of this rule], these requirements apply at installation.

(c) Owners and operators must maintain the following records for spill and overfill prevention equipment:

- (1) One of the following must be maintained for each spill prevention device:

- (A) A record of the most recent three tests of all spill prevention equipment; or
- (B) Documentation showing that the spill prevention equipment has

two walls and is monitored continuously. Owners and operators must maintain this documentation for as long as 12 month testing is not performed on the spill prevention equipment.

- (2) For overfill prevention equipment, owners and operators must maintain a record of the most recent two tests for each overfill prevention device.

[Note: the following codes of practice may be used to comply with paragraph (a)(1)(B)(ii) and (a)(2) of this section: **ADD STANDARDS**]

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### § 50147. Periodic testing of secondary containment.

- (a) Owners and operators of UST systems with secondary containment using interstitial monitoring must ensure the integrity of all interstitial areas (including all containment sumps used for interstitial monitoring).

- (1) Tanks must meet one of the following:

- (A) The interstitial space is continuously monitored using vacuum, pressure, a liquid-filled interstitial space, or interstitial sensors; or
- (B) The interstitial space is monitored using an interstitial monitoring method not listed in §50146(a)(1)(A) and the integrity of the interstitial space is ensured at least once every three years by using vacuum, pressure or liquid testing in accordance with one of the options the table below:

(i) Requirements developed by the manufacturer (Note: Owners and operators may use this option only if the manufacturer has developed integrity testing requirements);
(ii) Code of practice developed by a nationally recognized association or independent testing laboratory; or
(iii) Requirements determined by the Agency to be no less protective than the requirements in paragraphs (a)(1)(B)(i) or (ii) of this section.

- (2) Piping must meet one of the following:

- (A) The interstitial space is continuously monitored using vacuum, pressure, or a liquid-filled interstitial space; or
- (B) The interstitial space is monitored using an interstitial monitoring method not listed in §280.35(a)(2)(i) and the integrity of the

interstitial space is ensured at least once every three years by using vacuum, pressure or liquid testing in accordance with one of the options listed in the table in (a)(1)(B) of this section.

(3) Containment sumps must meet one of the following:

- (A) The containment sump has two walls and the space between the walls is continuously monitored; or
- (B) The containment sump is tested at least every 3 years to ensure the containment sump is liquid tight by using vacuum, pressure or liquid testing in accordance with one of the options listed in the table in (a)(1)(B) of this section.

(b) Owners and operators of UST systems using interstitial monitoring must begin meeting this requirement as follows:

- (1) For UST systems in use on or before [enter effective date of this rule], not later than [enter date three years after the effective date of this rule].
- (2) For UST systems brought into use after [enter effective date of this rule], these requirements apply at installation.

(c) Owners and operators must maintain one of the following records for each tank, piping and containment sump which uses interstitial monitoring:

- (1) A record of the most recent two interstitial area tests; or
- (2) Documentation demonstrating the tank is using continuous interstitial monitoring with a vacuum, pressure, or liquid-filled interstitial space or interstitial sensors, the piping is using continuous interstitial monitoring with vacuum, pressure, liquid-filled interstitial space; and the containment sump is secondarily contained and uses continuous interstitial monitoring. Owners and operators must maintain this documentation for as long as the tank, piping or containment sump uses one of these continuous methods of interstitial monitoring.

[Note: the following codes of practice may be used to comply with this section:

- A. Steel Tank Institute Recommended Practice R012, “Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks”; or

- B. Fiberglass Tank and Pipe Institute Protocol, “Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space”.]
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**§ 50148. Periodic operation and maintenance of walkthrough inspections.**

- (a) To properly operate and maintain UST systems, owners and operators must meet one of the following:
  - (1) Conduct a walkthrough inspection at least once every 30 days that, at a minimum and as appropriate to the facility, meets the following:
    - (A) Spill Prevention Equipment - open and visually check for any damage; remove any liquid or debris; check each fill cap to make sure it is securely on the fill pipe; and for spill prevention equipment with continuous interstitial monitoring, check for a leak to or from the interstitial area,
    - (B) Sumps - open and visually check for any damage, releases to the containment area or to the environment; remove any liquid or debris; and for sumps with continuous interstitial monitoring, check for a leak to or from the interstitial area,
    - (C) Dispenser Cabinets - open and visually check for any damage, releases to the containment area or to the environment; remove any liquid or debris; and for dispenser sumps with continuous interstitial monitoring, check for a leak to or from the interstitial area,
    - (D) Monitoring/Observation Wells – check covers to make sure they are secured,
    - (E) Cathodic Protection – check to make sure impressed current cathodic protection rectifiers are on and operating; and ensure records of three year cathodic protection testing and sixty day impressed current system inspections are current, and
    - (F) Release Detection Systems – check to make sure the release detection system is on and operating with no alarm conditions or unusual operating conditions present; check any devices such as tank gauge sticks, groundwater bailers and hand-held vapor

monitoring devices for operability and serviceability; and ensure records of release detection testing are current;

(2) Conduct operation and maintenance walkthrough inspections at least once every 30 days according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that are comparable to (a)(1) of this section; or

(3) Conduct operation and maintenance walkthrough inspections developed by the Agency that are comparable to (a)(1) of this section.

(b) Owners and operators must maintain records of the most recent twelve operation and maintenance walkthrough inspections. The record must include a listing of each area checked, whether each area checked was acceptable or needed to have some action taken and a description of any actions taken to correct an issue.

(c) The periodic operation and maintenance walkthrough inspections take effect on **[ENTER effective date of this regulation]**.

[Note: the following code of practice may be helpful in complying with paragraph (a)(1) of this section:

A. Petroleum Equipment Institute Recommended Practice RP 900, “Recommended Practices for the Inspection and Maintenance of UST Systems”.]

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## **§§ 50149 to 50150 (Reserved)**

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### **SUBCHAPTER 5. RELEASE DETECTION**

<b>§50151</b>	<b>General requirements for all UST systems</b>
<b>§50152</b>	<b>Methods of release detection for tanks</b>
<b>§50153</b>	<b>Methods of release detection for piping</b>
<b>§50154</b>	<b>Release detection recordkeeping</b>
<b>§50155</b>	<b>Alternative methods for field-constructed tanks</b>
<b>§50156</b>	<b>Alternative methods for airport hydrant fuel distribution system piping and piping associated with field-constructed tanks greater than 50,000 gallons in capacity</b>
<b>§§50157</b>	<b>to 50160 (Reserved)</b>

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## § 50151. General requirements for all UST systems.

- (a) Owners and operators of UST systems and existing UST systems must provide a method or combination of methods, of release detection that:
- (1) Can detect a release from any portion of the UST and the connected piping that routinely contains product;
  - (2) Is installed and calibrated in accordance with the manufacturer's instructions;
  - (3) Beginning on **[INSERT DATE one year after effective date of regulation]** is operated and maintained, and electronic and mechanical components are tested for proper operation, in accordance with one of the following: manufacturer's instructions; a code of practice developed by a nationally recognized association or independent testing laboratory; or requirements developed by the Agency. A test of the proper operation must be performed at least annually and at a minimum, as applicable to the facility, it must cover the following components and criteria:
    - (A) Automatic tank gauge (ATG) and other controllers: test alarm; verify system configuration; test battery back-up;
    - (B) Probes and sensors: inspect for residual build-up, ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks, bends and breaks; check alarm operability and communication with controller;
    - (C) Line leak detector: test operation to meet criteria in 40 CFR Part 280.44 by simulating a leak; inspect leak sensing o-ring; and
    - (D) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller.
  - (4) Meets the performance requirements in §50152, §50153, §50155, or §50156, as applicable, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. Owners and operators must also provide the Agency with the equipment manufacturer or installer's written documentation of any performance claims and their manner of determination. In addition, the following methods: §50152(2), §50152(3), §50152(4), §50153(1), §50153(2), §50155, §50156 must be capable of detecting the leak rate or quantity specified for that method in the corresponding section of the

regulations with a minimum probability of detection (Pd) of 0.95 and a maximum probability of false alarm (Pfa) of 0.05.

- (b) When a release detection method operated in accordance with the performance standards in §50152, §50153, §50155, or §50156 indicates a release may have occurred, owners and operators must notify the Agency in accordance with subchapter 6.
- (c) Owners and operators of all UST systems must comply with the release detection requirements of this subchapter.
- (d) Owners and operators of any UST system that cannot apply a method of release detection that complies with the requirements of this subchapter must comply with change-in-service or closure procedures in subchapter 8. For UST systems described in §50101(a)(1), this requirement applies after the effective date for release detection described in §50101(a)(1).
- (e) Owners and operators of UST systems must provide release detection for tanks and piping as follows:
  - (1) *Tanks.* New or replaced tanks installed after [Insert Date (effective date of regulation)] must be monitored for releases at least every 30 days in accordance with §50152(5). Tanks installed prior to [Insert Date (effective date of regulation)] s must be monitored at least every 30 days for releases using one of the methods listed in §50152(4) through (8) except that:
    - (A) UST systems that meet the performance standards in subchapter 2, and the monthly inventory control requirements in §50152(1) or (2), must use tank tightness testing (conducted in accordance with §50152(3)) at least every year until 10 years after the tank was installed or upgraded under §50118, whichever is earlier;
    - (B) Tanks with capacity of 550 gallons or less and tanks with a capacity of 551 to 1000 gallons that meet the tank diameter criteria in §50152(2) may use manual tank gauging (conducted in accordance with §50152(2));
    - (C) Field-constructed tanks with capacity of 50,000 gallons or less must meet requirements of §50151(e)(1). Field-constructed tanks greater than 50,000 gallons must meet one of the following:
      - (i) Performance requirements in accordance with §50151(e)(1) (A), (B), or (C); or

(ii) Use an alternative method conducted in accordance with §50155; and

(D) Tanks installed prior to [Insert Date (effective date of regulation)] and that have used either vapor monitoring or ground-water monitoring release detection methods as specified in the federal regulations at 40 C.F.R. Part 280.43(e) or 280.43(f) to monitor for releases since the tank was installed, must begin using one of the methods listed in §50152(4), (5), or (6) not later than [Insert Date (two years after effective date of regulation)].

(E) Hazardous substance tanks installed on or before [Insert Date (effective date of regulation)] must provide release detection that meets the following requirements:

(i) Secondary containment systems must be designed, constructed and installed to:

(a) Contain regulated substances released from the tank system until they are detected and removed;

(b) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(c) Be checked for evidence of a release at least every 30 days.

[Note: The provisions of the federal regulations at 40 CFR Part 265.193, Containment and Detection of Releases, may be used to comply with these requirements.]

(ii) Double-walled tanks must be designed, constructed, and installed to:

(a) Contain a release from any portion of the inner tank within the outer wall; and

(b) Detect the failure of the inner wall.

(iii) External liners (including vaults) must be designed, constructed, and installed to:

- (a) Contain 100 percent of the capacity of the largest tank within its boundary;
  - (b) Prevent the interference of precipitation or ground-water intrusion with the ability to contain or detect a release of regulated substances; and
  - (c) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).
- (iv) For hazardous substance UST systems installed on or before **[Insert Date (effective date of regulation)]** other methods of release detection may be used if owners and operators:
- (a) Demonstrate to the Agency that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in §50152(2)-(6) can detect a release of petroleum;
  - (b) Provide information to the Agency on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and,
  - (c) Obtain approval from the Agency to use the alternate release detection method before the installation and operation of the UST system.

(2) *Piping.* New or replaced underground piping installed after **[Insert Date (effective date of regulation)]**, except as identified in subparagraphs (B) and (C) of this paragraph, that routinely contains regulated substances, must be monitored for releases at least every 30 days in accordance with §50152(5) and underground pressurized piping must have an automatic line leak detector in accordance with §50153(1). Underground piping installed prior to **[Insert Date (effective date of regulation)]** that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(A) *Pressurized piping.* Underground piping that conveys regulated substances under pressure must:

- (i) Be equipped with an automatic line leak detector in accordance

with §50153(1); and

- (ii) Have a line tightness test conducted every 12 months and in accordance with §50153(2) or have monthly monitoring conducted in accordance with §50153(3).

(B) *Suction piping.* Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three years and in accordance with §50153(2), or use a monthly monitoring method conducted in accordance with §50153(3). No release detection is required for suction piping that is designed and constructed to meet the following standards:

- (i) The below-grade piping operates at less than atmospheric pressure;
- (ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
- (iii) Only one check valve is included in each suction line;
- (iv) The check valve is located directly below and as close as practical to the suction pump; and
- (v) A method is provided that allows compliance with clauses (e)(2)(B)(ii) through (iv) to be readily determined.

(C) *Bulk underground piping systems.* Underground piping associated with airport hydrant fuel distribution systems and field-constructed tanks must meet one of the following release detection requirements:

- (i) The requirements in §50151(e)(2); or
- (ii) The alternative requirements in §50156.

(D) *Hazardous substance UST piping systems.* Underground piping installed on or before [enter effective date of rule] must be equipped with secondary containment that satisfies the requirements of paragraph (e)(1)(E) of this section (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with §50151(e)(2)(A).

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## § 50152. Methods of release detection for tanks.

Each method of release detection for tanks used to meet the requirements of §50151, except field-constructed tanks with capacities greater than 50,000 gallons that meet §50155, must be conducted in accordance with the following:

- (1) *Inventory control.* Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:
  - (A) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
  - (B) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
  - (D) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
  - (E) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;
  - (F) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn; and
  - (G) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

[NOTE: Practices described in the American Petroleum Institute Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets" may be helpful, where applicable, in meeting the requirements of paragraph (1) of this section.]

- (2) *Manual tank gauging.* Manual tank gauging must meet the following requirements:

- (A) Tank liquid level measurements are taken at the beginning and

ending of a period of at least 36 hours during which no liquid is added to or removed from the tank. The minimum test duration is defined in the table below;

- (B) The measurements must be made through a drop tube that extends to within one foot of the tank bottom. Level measurements shall be to the nearest one-eighth of an inch and shall be based on the average of two consecutive gauge stick readings at both the beginning and ending of the period;
- (C) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
- (D) A leak is suspected and subject to the requirements of subchapter 6 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

<b>Nominal tank capacity</b>	<b>Minimum duration of test</b>	<b>Weekly standard (one test)</b>	<b>Monthly standard (four test average)</b>
up to 550 gallons	36 hours	10 gallons	5 gallons
551-1,000 gallons (when tank diameter is 64")	44 hours	9 gallons	4 gallons
551-1,000 gallons (when tank diameter is 48")	58 hours	12 gallons	6 gallons
551-1,000 gallons (also requires periodic tank tightness testing)	36 hours	13 gallons	7 gallons
1,001-2,000 gallons (also requires periodic tank tightness testing)	36 hours	26 gallons	13 gallons

- (E) Measurements shall be conducted each week of the month. If the month has five measurement periods, the weekly test with the smallest discrepancy shall not be used in calculating the average.
- (F) Tanks of 550 gallons or less nominal capacity and tanks with a nominal capacity of 551 to 1000 gallons that meet the tank diameter criteria in the table in (2)(D) may use this as the sole method of release detection. All other tanks with a nominal capacity of 551 to 2,000 gallons may use the method in place of manual inventory control in §50152(1). Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this subchapter.

- (3) *Tank tightness testing.* Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.
- (4) *Automatic tank gauging.* Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:
- (A) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product; and
  - (B) The test must be performed with the system operating in one of the following modes:
    - (1) In-tank static testing conducted on a periodic basis; or
    - (2) Continuous in-tank leak detection operating on an uninterrupted basis within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every 30 days.
- (5) *Interstitial monitoring.* Interstitial monitoring between the tank system and a secondary barrier immediately around or beneath it may be used, but only if the monitoring system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:
- (A) For double-walled tank systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product;
  - (B) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.
  - (C) For UST systems using continuous vacuum, pressure or liquid-filled methods of interstitial monitoring, the method must be capable of detecting a breach in both the inner and outer walls of

the tank and/or piping.

(6) *Other methods.* Any other type of release detection method, or combination of methods, can be used if:

- (A) It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or
- (B) The owner and operator demonstrate to the Agency that the method can detect a release of regulated substances before it reaches the environment and is at least as effectively as any of the methods allowed in paragraphs (3) through (6) of this section and the Agency approves the method. In comparing methods, the Agency shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the Agency on its use to ensure the protection of human health and the environment.

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### **§ 50153. Methods of release detection for piping.**

Each method of release detection for piping used to meet the requirements of §50151, except airport hydrant fuel distribution system piping and piping associated with field-constructed tanks that meet §50156, must be conducted in accordance with the following:

- (1) *Automatic line leak detectors.* Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping may be used only if they detect leaks of three gallons per hour at 10 pounds per square inch line pressure within one hour. A test of the operation of the leak detector must be conducted at least once every 12 months in accordance §50151(a)(3).
- (2) *Line tightness testing.* A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.
- (3) *Applicable tank methods.* Except as described in §50151(e)(1), any of the methods in §50152(5) through (6) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

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## **§50154. Release Detection Recordkeeping.**

- (a) All owners and operators maintain records in accordance with §50145 demonstrating compliance with all applicable requirements of this subchapter. These records must include the following:
- (1) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be kept and maintained for the lifetime of the equipment;
  - (2) All results of any sampling, testing, or monitoring must be maintained for at least 3 years from the date of permanent closure of the UST system. This includes, but is not limited to results of tank tightness testing conducted in accordance with §50152(3) and the annual operation tests conducted in accordance with §50151(a)(3). The results of the annual operation tests, at a minimum, must list each component tested, whether each component tested meets criteria in §50151(a)(3) or needed to have action taken and a description of any action taken to correct an issue. These tests shall include all the testing data, not just the pass or fail determination;
  - (3) Written documentation of all calibration, maintenance (including testing required by §50151(a)(2)), and repair of release detection equipment permanently located on-site must be maintained for at least 5 years after the servicing work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for the lifetime of the equipment;
  - (4) Operating manuals for all currently installed leak detection equipment must be maintained for the operating life of the UST system; and
  - (5) Documentation of any site assessment activities, as required by §50152(5)(F) and (6)(G), must be maintained for at least three years after change-in-service or permanent closure of the UST system.

**§ 50155. Alternative methods for field-constructed tanks.**

Owners and operators of field-constructed tanks with a capacity greater than 50,000 gallons may use one or a combination of the following alternative methods of release detection:

- (a) Conduct an annual bulk underground tank tightness test that can detect a 0.5 gallon per hour leak rate;
- (b) Use an automatic tank gauging system to perform release detection at least every 30 days that can detect a leak rate between 0.3 gallon per hour and 1.0 gallon per hour. This method must be combined with a bulk underground tank tightness test that can detect a 0.1 gallon per hour leak rate performed at least every three years;
- (c) Use an automatic tank gauging system to perform release detection at least every 30 days that can detect a leak rate between 1.0 gallon per hour and 2.0 gallons per hour. This method must be combined with a bulk underground tank tightness test that can detect a 0.1 gallon per hour leak rate performed at least every two years; or
- (d) The Agency may approve another method if the owner and operator can demonstrate that the method is no less protective of human health and the environment as any of the methods allowed in paragraphs (a) through (c) of this section. In comparing methods, the Agency shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the Agency on its use to ensure the protection of human health and the environment.

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**§ 50156. Alternative methods for airport hydrant fuel distribution system piping and piping associated with field-constructed tanks greater than 50,000 gallons in capacity.**

Owners and operators of airport hydrant fuel distribution system piping and piping associated with field-constructed tanks greater than 50,000 gallons in capacity may use one or a combination of the following alternative methods of release detection:

- (a) Perform a semi-annual bulk underground line tightness test in accordance with the following table:

<b>Required Minimum Detectable Leak Rate Per Test Section Volume</b>	
<b>Test Section Volume (U.S. Gallons)</b>	<b>Minimum Detectable Leak Rate (Gallons per hour)</b>

< 50,000	1.0
≥50,000 to < 75,000	1.5
≥75,000 to < 100,000	2.0
≥ 100,000	3.0

- (b) Perform continuous interstitial monitoring in accordance with §50152(5), designed to detect a release from any portion of the underground piping that routinely contains product;
- (c) Use an automatic line leak detector which alerts the operator to the presence of a leak by restricting or shutting off flow of regulated substances through piping or triggering an audible or visual alarm. This method may be used only if it can detect a leak of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour or equivalent. When using this method, the following must also be met:
  - (1) Perform interstitial monitoring, designed to detect a release from any portion of the underground piping that routinely contains product, in accordance with §50152(5) at least quarterly; and
  - (2) Conduct an annual test of the operation of the leak detector in accordance with §50151(a)(3); or
- (d) The Agency may approve another method if the owner and operator can demonstrate that the method is no less protective of human health and the environment as any of the methods allowed in paragraphs (a) through (c) of this section. In comparing methods, the Agency shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the Agency on its use to ensure the protection of human health and the environment.

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**§§ 50157 to 50160 (Reserved)**

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**SUBCHAPTER 6.            RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION**

- §50161            Reporting of suspected releases**
- §50162            Investigation of off-site impacts**
- §50163            Release investigation and confirmation steps**
- §50164            Reporting and cleanup of spills and overfills**
- §§50165           to 50170 (Reserved)**

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## **§ 50161. Reporting of suspected releases.**

Owners and operators of USTs systems must notify the Agency within 24 hours, and follow the procedures in §50163, for any of the following conditions:

- (1) The discovery by any person of evidence of regulated substances which may have been released at the UST system site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water). However, owners and operators able to confirm a release from any part of their UST system without further investigation should immediately follow the procedures in §50171 instead of §50163.
- (2) Unusual operating conditions observed or experienced by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, an unexplained presence of water in the tank, or water or product in the interstitial space of secondarily contained systems), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.
- (3) Monitoring results, including alarms, from a release detection method required under §50151, including interstitial monitoring required under §50152(5), that indicates the interstitial space has been compromised, and §50151(e)(1)(E) that indicate a release may have occurred unless:
  - (A) The monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring results do not confirm the initial result; or
  - (B) In the case of inventory control, two consecutive months of data does not confirm the initial result.

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## **§ 50162. Investigation of off-site impacts.**

When required by the Agency, owners and operators of UST systems must follow the procedures in §50163 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that have been observed by the Agency or brought to the Agency's attention by any person.

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## § 50163. Release investigation and confirmation steps.

- (a) Unless release response action is initiated in accordance with subchapter 7, owners and operators must immediately investigate and confirm all suspected releases of regulated substances that require reporting under §50161 within 7 days following the discovery of the suspected release, unless a written request for extension of time is granted by the administrator.
- (b) Investigations and confirmations required in paragraph (a) of this section must use the following steps:
  - (1) *System test.* Owners and operators must conduct tests (according to the requirements for tightness testing in §50152(3) and §50153(2)) to determine whether a leak exists in that portion of the UST that routinely contains product, the attached delivery piping, or a breach of the interstitial space.
    - (A) If the system test confirms a leak, owners and operators must repair, replace, or close the UST system. In addition, owners and operators must begin release response action in accordance with subchapter 7 if the test results for the UST system, tank, or delivery piping indicate that a release exists.
    - (B) Further investigation is not required if the test results for the UST system, tank, and delivery piping do not indicate that a release exists and if the discovery of environmental contamination is not the basis for suspecting a release.
    - (C) Owners and operators must conduct a site check as described in paragraph (b)(2) of this section if the test results for the UST system, tank, and delivery piping do not indicate that a release exists but the discovery of environmental contamination is the basis for suspecting a release.
  - (2) *Site check.* Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST system site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill and surrounding soil, the depth and flow of ground water, and other factors as appropriate for identifying the presence and source of a release.
    - (A) If the test results for the excavation zone or the UST system site indicate that a release has occurred, owners and operators must

begin release response action in accordance with subchapter 7;

- (B) If the test results for the excavation zone or the UST system site do not indicate that a release has occurred, further investigation is not required.
- (C) If it is determined that a release has not occurred, owners and operators must report the results of the investigation in writing to the Agency within 30 days following discovery of the suspected release. The report shall include, but not be limited to, results of the tests pursuant to paragraph (b) of this section as well as performance claims pursuant to §50151(a)(4).

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### **§ 50164. Reporting and cleanup of spills and overfills.**

- (a) Owners and operators of UST systems must contain and immediately clean up all spills and overfills in a manner which is protective of human health and the environment as set forth in §50178.
- (b) Owners and operators must notify the Agency within 24 hours of a spill or overfill and begin release response action in accordance with subchapter 7 in the following cases:
  - (1) Spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons or that causes a sheen on nearby surface waters; and
  - (2) Spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under 49CFR § 172.101 (Appendix A to §172.101 – List of Hazardous Substances and Reportable Quantities).
- (c) If the owners and operators cannot, within 24 hours, contain and complete the cleanup of a spill or overfill of petroleum that is less than 25 gallons, or a spill or overfill of a hazardous substance that is less than the reportable quantity, then the owners and operators must immediately notify the Agency of the incident and continue cleaning up the spill or overfill. Owners and operators must also complete and submit to the Agency a written report of the actions taken in response to the spill or overfill within 48 hours of the spill or overfill.

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### **§§ 50165 to 50170 (Reserved)**

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## **SUBCHAPTER 7. RELEASE RESPONSE ACTION**

<b>§50171</b>	<b>General</b>
<b>§50172</b>	<b>Immediate response actions</b>
<b>§50173</b>	<b>Posting of signs</b>
<b>§50174</b>	<b>Initial abatement measures and site assessment</b>
<b>§50175</b>	<b>Initial site characterization</b>
<b>§50176</b>	<b>Free product removal</b>
<b>§50177</b>	<b>Investigation of soil and ground water contamination</b>
<b>§50178</b>	<b>Site cleanup criteria</b>
<b>§50178.1</b>	<b>Notification of confirmed releases</b>
<b>§50179</b>	<b>Corrective action plan</b>
<b>§50180</b>	<b>Public participation for corrective action plans</b>
<b>§50180.1</b>	<b>Reporting and recordkeeping</b>

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### **§ 50171. General.**

- (a) Owners and operators of UST systems must comply with the requirements of this subchapter in responding to releases of regulated substances from UST systems.
  - (b) For purposes of complying with this subchapter, the date of confirmation of a release shall be as follows:
    - (1) For releases confirmed on or after the effective date of these rules, the date of confirmation shall be the date the release is confirmed in accordance with §50163.
    - (2) For releases confirmed before the effective date of these rules, the date of confirmation shall be the effective date of these rules.
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### **§ 50172. Immediate response actions.**

- (a) Upon confirmation of a release in accordance with §50163, or after a release from the UST system is identified in any other manner, owners and operators must perform the following immediate response actions within the time specified below:
  - (1) Report the release within 24 hours to the Agency and follow up with a written release report to the Agency describing the incident and any initial response within 72 hours;

- (2) Identify and immediately mitigate any safety hazards (such as fire, explosion, or vapor hazards) posed by the release of the regulated substance; and
- (3) Take immediate action to prevent any further release of the regulated substance into the environment, including removal of as much of the regulated substance from the UST system as possible; and
- (4) Take immediate action to minimize the spread of contamination.

(b) Within seven days of confirmation, owners and operators must submit to the Agency a written notice of confirmation. The notice shall include, but not be limited to, the following information: source of the release, method of discovery and confirmation, estimated quantity of substance released, type of substance released, immediate hazards, release impact, migration pathways, and actions taken.

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### **§ 50173. Posting of signs.**

- (a) If the Agency determines that posting of signs is appropriate, owners and operators shall post signs around the perimeter of the site informing passersby of the potential hazards. In this instance, "site" means an area where contamination poses an immediate health risk or an area where contaminated media is exposed to the surface.
  - (b) Signs shall be placed at each entrance to the site and at other locations in sufficient numbers to be seen from any approach to the site.
  - (c) Signs shall be legible and readable from a distance of at least twenty-five feet. The sign legend shall read, "Caution - Petroleum/Hazardous Substance Contamination - Unauthorized Personnel Keep Out". Other sign legends may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the site and that entry onto the site may be dangerous. A contact person and telephone number shall be listed on the sign.
  - (d) The sign may be removed upon determination by the Agency that no further release response action is necessary or that posting of signs is no longer appropriate.
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### **§ 50174. Initial abatement measures and site assessment.**

- (a) After a release has been confirmed, owners and operators must perform the following release abatement and control measures, unless directed to do otherwise by the Agency:
  - (1) Remove as much of the regulated substance from the UST system as is

necessary to prevent further release to the environment;

- (2) Visually inspect the area around the UST system for evidence of any aboveground releases or exposed belowground releases and continue to take necessary actions to minimize the spread of contamination and to prevent further migration of the released substance into surrounding soils, surface water, and ground water;
  - (3) Continue to monitor and mitigate any fire and safety hazards posed by vapors, contamination, or free product that have migrated from the UST or piping excavation zone and entered into subsurface structures (such as sewers or basements) or drinking water supplies;
  - (4) Remedy hazards (such as dust and vapors and the potential for leachate generation) posed by contaminated soils and debris that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities or release response actions undertaken pursuant to this subchapter;
  - (5) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with §50176;
  - (6) Remove or remediate contaminated soil at the site to the extent necessary to prevent the spread of free product;
  - (7) Measure for the presence of a release where contamination is most likely to be present at the UST system site, unless the presence and source of the release have been confirmed in accordance with the site check required by §50163(b)(2) or the site assessment required for change-in-service or permanent UST system closures in §50183. In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill and surrounding soil, depth to and flow of ground water, and other factors as appropriate for identifying the presence and source of a release; and
  - (8) If any of the remedies in this section include treatment or disposal of contaminated soils, owners or operators must comply with all applicable local and federal requirements.
- (b) Within 20 days after release confirmation, or within another reasonable period of time determined by the Agency, owners and operators must submit a report to the Agency summarizing the initial abatement steps taken under paragraph (a) of this section and any resulting information or data.

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**§ 50175. Initial site characterization.**

- (a) While carrying out release response actions under this subchapter, owners and operators must concurrently assemble necessary information about the characteristics of the site and the nature of the release in order to adequately assess the impact or potential impact the release has on human health and the environment.
- (b) The information assembled pursuant to subsection (a) must include, but is not necessarily limited to, the following:
  - (1) Data on the nature and estimated quantity of release;
  - (2) Data from available sources or site investigations or both concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;
  - (3) Results of the site check required under §50174(a)(7);
  - (4) Results of the free product investigations required under §50174(a)(5) to be used by the owners and operators to determine whether free product must be recovered under §50176; and
  - (5) Any other information, as appropriate, which may relate to the impact of the release on human health and the environment.
- (c) Within 45 days of release confirmation or another reasonable period of time determined by the Agency, owners and operators must submit the information collected in compliance with paragraph (b) of this section to the Agency in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the Agency.

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**§ 50176. Free product removal.**

- (a) At sites where investigations indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the Agency, while continuing, as necessary, actions initiated under §50172 through §50175, or preparing for actions required under §50177 through §50179. In meeting the requirement of this section, owners and operators must:

- (1) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local and federal regulations;
- (2) Use abatement of free product migration as a minimum objective for the design of the free product removal system;
- (3) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and
- (4) Prepare and submit to the Agency, within 45 days after confirming a release, a free product removal report that provides at least the following information:
  - (A) The name of the person(s) responsible for implementing the free product removal measures;
  - (B) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;
  - (C) The type of free product recovery system used;
  - (D) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
  - (E) The type of treatment applied to, and the effluent quality expected from, any discharge;
  - (F) The steps that have been or are being taken to remove free product including steps to obtain any necessary permits for any discharges;
  - (G) The disposition of the recovered free product; and
  - (H) Schedule for completion of free product removal.

(b) Owners and operators shall initiate free product removal as soon as practicable but no later than 90 days following confirmation of a release or sooner if directed by the Agency.

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## **§ 50177. Investigation of soil and ground water contamination.**

- (a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the surface water or the ground water, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:
- (1) There is evidence that surface water or ground water wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);
  - (2) Free product is found to need recovery in compliance with §50176;
  - (3) There is evidence that contaminated soils may be in contact with surface water or ground water (e.g., as found during conduct of the initial response measures or investigations required under §50171 through §50176); and
  - (4) The Agency requests an investigation, based on the potential effects of contaminated soil or ground water on nearby surface water and ground water resources.
- (b) Owners and operators must submit the information collected under paragraph (a) of this section as soon as practicable or in accordance with a schedule established by the Agency.
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## **§ 50178. Site cleanup criteria.**

- (a) For releases confirmed in accordance with §50163, owners and operators must remediate soil, water, and materials contaminated by releases from UST systems in a manner which is protective of human health and the environment and achieves cleanup as described in subsection (b).
- (b) Owners and operators must remediate contaminated soil and water at the site to residual levels which meet the following criteria:
- (1) Site-specific action levels as approved by the Agency. Site-specific action levels must take into account the following factors:
    - (A) For systemic toxicants, acceptable levels shall represent concentration levels to which the human population, including sensitive subgroups, may be exposed without adverse effect during

a lifetime or part of a lifetime, incorporating an adequate margin of safety;

- (B) Impacts to ecological receptors; and
- (C) Other applicable requirements, if available;

[NOTE: Owners and operators should consult with the Agency on how the standards in §50178(b) can be met. Owners and operators should also consult the Agency for forms to be used that will be helpful in expediting the Agency's review of reports submitted by the owner or operator.]

- (c) The Agency may require the owners and operators to modify cleanup activities being undertaken at a site if the Agency determines that the activities are not being carried out in accordance with this subchapter, or are not achieving cleanup levels which are protective of human health and the environment. The Agency may impose modifications to cleanup activities by written notice to the owners and operators, and the owners and operators must implement necessary changes to the cleanup activities in response to the Agency's notice by a time schedule established by the Agency.
- (d) A schedule for completion of site cleanup shall be included in the fourth quarter report required pursuant to §50180.1(b).

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### **§ 50178.1. Notification of confirmed releases.**

- (a) Within 45 days following confirmation of a release pursuant to §50163, the owner and operator shall notify those members of the public directly affected by a release and the proposed response to the release. Members of the public directly affected by the release shall include:
  - (1) Persons who own, hold a lease for, or have easements at any property on which the regulated substance released from the UST system was discovered; and
  - (2) Other persons as identified by the administrator.
- (b) The owner and operator shall send a letter to all members of the public directly affected by the release. Model language for the letter shall be provided by the Agency and shall include at least the following information:
  - (1) Name and address of the UST system;

- (2) Statement that a release of regulated substance has been confirmed at the UST system;
  - (3) Name of a contact person at the Agency; and
  - (4) Reference to an attached factsheet pursuant to paragraph (c) of this section.
- (c) The letter to the members of the public directly affected by the release shall include a fact sheet which contains the following information:
- (1) Name and address of the UST system;
  - (2) Name and address of the owner and operator of the UST system;
  - (3) Date of the confirmed release;
  - (4) Nature and extent of the confirmed release;
  - (5) Summary of measures taken to assess the release and extent of contamination; and
  - (6) Summary of the proposed response to the release. The fact sheet shall be updated once every 90 days, or another reasonable timeframe determined by the Agency, and sent to all members of the public directly affected by the release. If additional members of the public directly affected by the release are identified in the course of release response actions, the owner and operator shall provide those persons with all previous and future letters and fact sheets.
- (d) The owner and operator shall include in the 45-day progress report required pursuant to section 50180.1 the following information:
- (1) Copy of the letter pursuant to paragraph (b) of this section;
  - (2) List of the members of the public directly affected by the release and to whom the letter was sent; and
  - (3) Copies of the fact sheet and amended fact sheets pursuant to paragraph (c) of this section.

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### **§ 50179. Corrective action plan.**

- (a) At any point after reviewing the information submitted in compliance with §50171

through §50175, the Agency may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils, surface water, and ground water. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the Agency. Alternatively, owners and operators may, after fulfilling the requirements of §50171 through §50175, choose to submit a corrective action plan for responding to contaminated soil, surface water, and ground water. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the Agency, and must modify their plan as necessary to meet this standard.

(b) The Agency will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the Agency should consider the following factors as appropriate:

- (1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
- (2) The hydrogeologic characteristics of the facility and the surrounding area;
- (3) The proximity, quality, and current and future uses of nearby surface water and ground water;
- (4) The potential effects of residual contamination on nearby surface water and ground water;
- (5) An exposure assessment; and
- (6) Any information assembled in compliance with this subchapter.

(c) Upon approval of the corrective action plan or as directed by the Agency, owners and operators must implement the plan, including modifications to the plan made by the Agency. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the Agency.

(d) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil, surface water, and ground water before the corrective action plan is approved provided that they:

- (1) Notify the Agency of their intention to begin cleanup;
- (2) Comply with any conditions imposed by the Agency, including halting

cleanup or mitigating adverse consequences from cleanup activities; and

- (3) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the Agency for approval.

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## **§ 50180. Public participation for corrective action plans.**

- (a) The Agency shall conduct public participation activities as outlined in paragraphs (e) through (k) where:
  - (1) A corrective action plan required pursuant to §50179 has been submitted and the Agency has made a tentative decision concerning the proposed plan; or
  - (2) Implementation of any previously approved corrective action plan has not achieved the cleanup levels established in the plan and termination of the plan is under consideration by the Agency.
- (b) Costs for all public participation activities described in subsections (e) through (k) shall be borne by the owner and operator of the UST system, including the costs of making copies of materials to the public under subsection (h).
- (c) The Agency will provide notice to the public of the release and the applicable response by means designed to reach those members of the public affected by the release and the cleanup actions planned.
- (d) Members of the public affected by the release shall include the following:
  - (1) Members of the public directly affected by the release as defined in §50178.1(a); and
  - (2) The general public.
- (e) Notice to those individuals defined in paragraph (d)(1) shall be in the form of a letter from the Agency and shall include at least the following information:
  - (1) Name and address of the UST system;
  - (2) Name and address of the owner and operator of the UST system;
  - (3) Summary of the release information and the proposed or previously approved corrective action plan;

- (4) The Agency's tentative decision concerning the proposed corrective action plan or concerning the termination of the previously approved corrective action plan;
  - (5) Announcement that an informational meeting will be held if there is any public interest;
  - (6) Request for comments on the corrective action plan and the Agency's tentative decision; and
  - (7) Availability of information on the release and the Agency's tentative decision.
- (f) Notice to those individuals defined in paragraph (d)(2) shall be in the form of a notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, a publication on the internet, or personal contacts by field staff and shall include at least the same information as in subsection (e).
  - (g) Comments shall be received by the Agency no later than 30 days after the notice provided in subsections (e) and (f) or after the end of the public meeting, if held, pursuant to subsection (i), whichever occurs later.
  - (h) Information on the release, the proposed corrective action plan, and the Agency's tentative decision on the plan shall be made available to the public for inspection upon request.
  - (i) Before approving a corrective action plan, the Agency may conduct a public meeting to provide information and receive comments on the proposed plan. A meeting will be held if there is sufficient public interest or for any other reason determined by the administrator. Public interest shall be indicated by written request to the Agency.
  - (j) Thirty days following the end of the comment period provided for in paragraph (g), the Agency will provide a second notice to the public of the Agency's final decision on the corrective action plan.
  - (k) The second notice shall be provided to those persons defined in subsection (d)(1) and to any persons who have expressed an interest during the public comment period or the public meeting. The notice shall be in the form of a letter and shall include at least the following information:
    - (1) Name and address of the UST system;
    - (2) The final decision by the Agency concerning the corrective action plan;

- (3) Any changes in the final corrective action plan from the proposed or previously approved version; and
  - (4) Response to comments received.
- (1) The Agency must ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.
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**§ 50180.1. Reporting and recordkeeping.**

- (a) No later than 90 days following the confirmation of a release in accordance with §50163, owners and operators must submit to the Agency a written report of:
    - (1) All release response actions taken pursuant to this subchapter during the first 90 days following confirmation of a release; and
    - (2) A plan for future release response actions to be taken.
  - (b) Beginning one hundred eighty (180) days following confirmation of a release, owners and operators must submit written progress reports at least once every 90 days to the Agency. These reports shall be referred to as 90-day progress reports and they must describe the following:
    - (1) All response actions taken pursuant to this subchapter after the last report date;
    - (2) A plan for future release response actions to be taken; and
    - (3) Information required pursuant to §50178.1.
  - (c) A 90-day progress report is not required if:
    - (1) Response actions have met the requirements of §50178; and
    - (2) A final 90-day progress report has been submitted.
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**SUBCHAPTER 8. CLOSURE AND CHANGE-IN-SERVICE**

- §50181 Temporary closure**
- §50182 Permanent closure and change-in-service**
- §50183 Site assessment**

<b>§50184</b>	<b>Previously-closed UST systems</b>
<b>§50185</b>	<b>Closure records</b>
<b>§§50186</b>	<b>to 50190 (Reserved)</b>

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## **§ 50181. Temporary closure.**

- (a) An UST system is considered temporarily closed if the owner and operator does not deposit regulated substances into the UST system or dispense regulated substances from the UST system during a time period of at least 12 months.
- (b) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of any corrosion protection system in accordance with §50142, and any release detection in accordance with subchapter 5. However, release detection is not required if the UST system is empty. The UST system is empty when all materials have been removed using practices commonly recognized and employed by the industry so that no more than 2.5 centimeters (one inch) of residue, or residue that is no more than 0.3 percent by weight of the total capacity of the UST system, remain in the UST system.
- (c) Owners and operators must comply with subchapters 6 and 7 if a release is suspected or confirmed.
- (d) When an UST system is temporarily closed for 3 months or more, owners and operators must also comply with the following requirements:
  - (1) Leave vent lines open and functioning;
  - (2) Cap and secure all other lines, pumps, manways, and ancillary equipment; and
  - (3) Empty the UST system.
- (e) When an UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system if it does not meet the performance standards in §5011 through §50118. Owners and operators who fail to meet such requirements or who maintain an UST system in temporarily closed status for more than 60 months must permanently close the UST system. Permanent closure must be conducted in accordance with §50182 through §50185, unless the Agency grants an extension of the 12 month temporary closure period. Owners and operators must complete a site assessment in accordance with §50183 before such an extension can be requested.
- (f) An UST system that is in temporarily closure must be integrity tested in accordance with

a code of practice approved by the Agency prior to bringing the UST system back into service or enacting a change-in-service.

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## **§ 50182. Permanent closure and change-in-service.**

- (a) At least 30 days before beginning either permanent closure or a change-in-service under paragraphs (c) and (d) of this section, owners and operators must notify the Agency in writing of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action. The required assessment of the excavation zone under §50183 must be performed after notifying the Agency but before completion of the permanent closure or a change-in-service.
- (b) At least ten days before a permanent closure or change-in-service action, owners or operators must notify the Agency of the exact date(s) that the activity will occur.
- (c) To permanently close a tank system, owners and operators must:
  - (1) Empty the UST system by removing all liquids and accumulated sludges;
  - (2) Remove the UST system from the ground; and
  - (3) Conduct a site assessment in accordance with §50183.
- (d) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must:
  - (1) Empty the and clean the UST system by removing all liquid contents and accumulated sludges; and
  - (2) Conduct a site assessment in accordance with §50183.

[NOTE: The following cleaning and closure procedures may be helpful in complying with this section:

- A. American Petroleum Institute Recommended Practice RP 1604, "Closure of Underground Petroleum Storage Tanks";
- B. American Petroleum Institute Standard 2015, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks";
- C. American Petroleum Institute Recommended Practice 2016,

"Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks";

- D. American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks," may be used as guidance for compliance with this section; and
- E. National Fire Protection Association Standard 326, "Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"; and
- F. The National Institute for Occupational Safety and Health Publication 80-106 "Criteria for a Recommended Standard... Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.]

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### **§ 50183. Site assessment.**

- (a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release of regulated substances where contamination is most likely to be present at the UST system site.
- (b) In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the types of backfill and surrounding soil, the depth to and flow of ground water, and other factors appropriate for identifying the presence of a release.
- (c) If a release of regulated substances, contaminated soils, contaminated ground water, or free product as a liquid or vapor is discovered in carrying out the requirements of this section, or by any other means, owners and operators must respond to the release in accordance with the requirements of subchapter 7.

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### **§ 50184. Previously-closed UST systems.**

- (a) Owners and operators of UST systems which have been permanently closed or removed before [Insert Date (effective date of regulation)], or were left in-place but have not been in operation on or after [Insert Date (effective date of regulation)], must comply with the requirements of this subchapter, and subchapter 7 if contaminated soil, contaminated ground water, or free product as a vapor or liquid is discovered by any means in or around the location or former location of the UST system.

- (b) When directed by the Agency, the owner and operator of an UST system permanently closed before **Insert Date (effective date of regulation)** must assess the excavation zone and close the UST system in accordance with this subchapter if releases from the UST may, in the judgment of the Agency, pose a current or potential threat to human health and the environment.

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### **§ 50185. Closure records.**

- (a) Owners and operators permanently closing or changing the service of an UST system must submit to the Agency a revised written notification form pursuant to §50221.
- (b) Owners and operators must keep and maintain records in accordance with §50145. These records must be capable of demonstrating compliance with the requirements of this subchapter.
- (c) Records of compliance with permanent closure or change-in-service requirements, including the results of the site assessment required in section 50183, must be kept and maintained for at least three years after completion of permanent closure or change-in-service. These results must be kept and maintained in one of the following ways:
- (1) By the owners and operators who permanently closed or changed the service of the UST system;
  - (2) By the current owners and operators of the UST system site; or
  - (3) By submitting these records to the Agency if they cannot be maintained at the closed facility or site.

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### **§§ 50186 to 50190 (Reserved)**

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## **SUBCHAPTER 9. FINANCIAL RESPONSIBILITY**

<b>§50191</b>	<b>Applicability</b>
<b>§50192</b>	<b>(Reserved)</b>
<b>§50193</b>	<b>Definition of terms</b>
<b>§50194</b>	<b>Amount and scope of required financial responsibility</b>
<b>§50195</b>	<b>Allowable mechanisms and combination of mechanisms</b>
<b>§50196</b>	<b>Financial test of self-insurance</b>

<b>§50197</b>	<b>Guarantee</b>
<b>§50198</b>	<b>Insurance and risk retention group coverage</b>
<b>§50199</b>	<b>Surety bond</b>
<b>§50200</b>	<b>Letter of credit</b>
<b>§50201</b>	<b>Trust fund</b>
<b>§50202</b>	<b>Standby trust fund</b>
<b>§50203</b>	<b>Local government bond rating test</b>
<b>§50204</b>	<b>Local government financial test</b>
<b>§50205</b>	<b>(Reserved)</b>
<b>§50206</b>	<b>Local government guarantee</b>
<b>§50207</b>	<b>Local government fund</b>
<b>§50208</b>	<b>Substitution of financial assurance mechanisms by owner or operator</b>
<b>§50209</b>	<b>Cancellation or nonrenewal by a provider of financial assurance</b>
<b>§50210</b>	<b>Reporting by owner or operator</b>
<b>§50211</b>	<b>Recordkeeping</b>
<b>§50212</b>	<b>Drawing on financial assurance mechanisms</b>
<b>§50213</b>	<b>Release from financial responsibility</b>
<b>§50214</b>	<b>Bankruptcy or other incapacity of owner or operator or provider of financial assurance</b>
<b>§50215</b>	<b>Replenishment of guarantees, letters of credit, or surety bonds</b>
<b>§§50216</b>	<b>to 50220 (Reserved)</b>

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### **§ 50191. Applicability.**

- (a) This subchapter applies to all owners and operators of petroleum USTs or tank systems except as otherwise provided in this section.
- (b) (Reserved)
- (c) Guam and federal government entities whose debts and liabilities are the debts and liabilities of the United States, Government of Guam, or any other state, are exempt from the requirements of this subchapter.
- (d) The requirements of this subchapter do not apply to owners and operators of any UST or tank system described in §50101(b) or (c).
- (e) If owners and operators of a petroleum UST or tank system are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance. (Imp: 40 C.F.R. §280.90)

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### **§ 50192 (Reserved)**

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## § 50193 Definition of terms.

When used in this subchapter, the following terms have the meanings given below:

**"Accidental release"** means any sudden or nonsudden release of petroleum from an UST or tank system that results in a need for release response action, compensation for bodily injury or property damage, or both, neither expected nor intended by UST or tank system owners or operators.

**"Bodily injury"** shall have the meaning given to this term by applicable 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.

**"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.

**"Controlling interest"** means direct ownership of at least 50 percent of the voting stock of another entity.

**"Corrective action"** or **"release response action"** means those activities carried out in response to any release from an underground storage tank or tank system to minimize or mitigate the impact of the release of regulated substances in order to protect human health and the environment.

**"Financial reporting year"** means the latest consecutive 12 month period for which any of the following reports used to support a financial test is prepared:

- (1) A 10-K report submitted to the U.S. Securities and Exchange Commission;
- (2) An annual report of tangible net worth submitted to Dun and Bradstreet; or
- (3) Annual reports submitted to the federal Energy Information Administration or the federal Rural Electrification Administration.

**"Financial reporting year"** may thus comprise a fiscal or a calendar year period.

**"GUSTR"** means the Guam Underground Storage Tank Regulations, Chapter 50.

**"Legal defense cost"** is any expense that owners or operators or providers of financial assurance incur in defending against claims or actions brought:

- (1) By the U.S. EPA or Guam to require release response action or to recover the costs of release response action;
- (2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or
- (3) By any person to enforce the terms of a financial assurance mechanism.

**"Local government"** means Government of Guam.

**"Occurrence"** means an accident, including continuous or repeated exposure to conditions, which results in a release from an UST or tank system. This definition is intended to assist in the understanding of these rules and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

**"Owner or operator"** when owners or operators are separate parties, refers to the party that is obtaining or has obtained financial assurances.

**"Petroleum marketing facilities"** include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

**"Petroleum marketing firms"** are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs or tank systems as well as petroleum marketing facilities are considered to be petroleum marketing firms.

**"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 response actions associated with releases from USTs or tank systems which are covered by the policy.

**"Provider of financial assurance"** means a person that provides evidence of financial responsibility to an owner or operator of an UST or tank system through one of the financial mechanisms listed in section 50196 through section 50202, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a Guam-required mechanism, or a state.

**"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 UST or tank system 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 and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

**"Termination"** under section 50198(b)(1) and section 50198(b)(2) means only those changes that could result in a gap in coverage such as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy. (Imp: 40 C.F.R. §280.92)

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## **§ 50194 Amount and scope of required financial responsibility.**

- (a) Owners or operators of petroleum USTs or tank systems must demonstrate financial responsibility for taking release response action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs or tank systems in at least the following per-occurrence amounts:
  - (1) For owners or operators of petroleum USTs or tank systems that are located at petroleum marketing facilities, or that handle an average of more than ten thousand gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million.
  - (2) For all other owners or operators of petroleum USTs or tank systems; \$500,000.
- (b) Owners or operators of petroleum USTs or tank systems must demonstrate financial responsibility for taking release response action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs or tank systems in at least the following annual aggregate amounts:

- (1) For owners or operators of one to one hundred petroleum USTs, one million dollars; and
  - (2) For owners or operators of one hundred one or more petroleum USTs, two million dollars.
- (c) For the purposes of subsections (b) and (f) only, "a petroleum "UST" means a single containment unit and does not mean combinations of single containment units.
- (d) Except as provided in subsection (e), if an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:
- (1) Taking release response action;
  - (2) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or
  - (3) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsections (a) and (b).
- (e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum USTs or tank systems, the annual aggregate required shall be based on the number of USTs or tank systems covered by each such separate mechanism or combination of mechanisms.
- (f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum USTs or tank systems are acquired or installed. If the number of petroleum USTs or tank systems for which assurance must be provided exceeds one hundred, the owner or operator shall demonstrate financial responsibility in the amount of at least two million dollars of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least two million dollars of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.
- (g) The amounts of assurance required under this section exclude legal defense costs.
- (h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator. (Imp: 40 C.F.R. §280.93)

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## **§ 50195 Allowable mechanisms and combinations of mechanisms.**

- (a) Subject to the limitations of subsections (b) and (c):
- (1) An owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in §50196 through §50202 to demonstrate financial responsibility under this subchapter for one or more USTs or tank systems; and
  - (2) A local government owner or operator may use any one or combination of the mechanisms listed in §50203 through §50207 to demonstrate financial responsibility under this subchapter for one or more USTs or tank systems.
- (b) An owner or operator may use a guarantee under §50197 or surety bond under §50199 to establish financial responsibility only if the state attorney general has submitted a written statement to the administrator that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in the State.
- (c) 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. (Imp: 40 C.F.R. §280.94)

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## **§ 50196 Financial test of self-insurance.**

- (a) An owner or operator, or guarantor or both may satisfy the requirements of §50194 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, or guarantor or both, must meet the criteria of subsection (b) or (c) based on year-end financial statements for the latest completed fiscal year.
- (1)The owner or operator, or guarantor or both, must have a tangible net worth of at least ten times:
- (i) The total of the applicable aggregate amount required by §50194, based on the number of USTs or tank systems for which a financial test is used to demonstrate financial responsibility to the Guam Environmental Protection Agency;
  - (ii) The sum of the corrective action cost estimates, the current closure and post closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to

U.S. EPA under 40 Code of Federal Regulations 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147; or to the Guam Environmental Protection Agency approved by EPA under 40 CFR Part 281:

- (b) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to the U.S. EPA under 40 Code of Federal Regulations 144.63 or to the Guam Environmental Protection Agency when the Guam's underground storage tank program is authorized by the U.S. EPA under 40 Code of Federal Regulations 145.
  - (1) The owner or operator, or guarantor or both, must have a tangible net worth of at least 10 million dollars.
  - (2) The owner or operator, or guarantor or both, must have a letter signed by the chief financial officer worded as specified in subsection (d).
  - (3) The owner or operator, or guarantor or both, must either:
    - (A) File financial statements annually with the U.S. Securities and Exchange Commission, the federal Energy Information Administration, or the federal Rural Electrification Administration; or
    - (B) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.
  - (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.
- (c) (1) The owner or operator, or guarantor or both, must meet the financial test requirements of §50147(f)(1) substituting the appropriate amounts specified in §50194(b)(1) and (b)(2) for the "amount of liability coverage" each time specified in that section.
  - (2) The fiscal year-end financial statements of the owner or operator, or guarantor or both, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.
  - (3) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
  - (4) The owner or operator, or guarantor or both must have a letter signed by the

chief financial officer, worded as specified in subsection (d).

(5) If the financial statements of the owner or operator, or guarantor or both, are not submitted annually to the U.S. Securities and Exchange Commission, the federal Energy Information Administration or the federal Rural Electrification Administration, the owner or operator, or guarantor, or both, must obtain a special report by an independent certified public accountant stating that:

- (A) The accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, or guarantor or both, with the amounts in such financial statements; and
- (B) In connection with that comparison, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.

(d) To demonstrate that it meets the financial test under subsection (b) or (c), the chief financial officer of the owner or operator, or guarantor, must sign, within 120 days of the close of each financial reporting year, as defined by the 12 month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

#### Letter from Chief Financial Officer

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

Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator" or "guarantor" or both]:

[List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant 40 Code of Federal Regulations Part

280.22 or in the permit applications submitted under §50124 and §50126.

A [insert: "financial test" or "guarantee" or both] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other U.S. Environmental Protection Agency regulations or state programs authorized by the U.S. Environmental Protection Agency under 40 CFR Parts 271 and 145:

	AMOUNT
EPA Regulations:	
Closure (§§264.143 and 265.143)	\$ _____
Post-Closure Care (§§264.145 and 265.145)	\$ _____
Liability Coverage (§§264.147 and 265.147)	\$ _____
Corrective Action (§264.101(b))	\$ _____
Plugging and Abandonment (§144.63)	\$ _____
Authorized Guam's Programs:	
Closure	\$ _____
Post-Closure Care	\$ _____
Liability Coverage	\$ _____
Corrective Action	\$ _____
Plugging and Abandonment	\$ _____
TOTAL	\$ _____

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

[Fill in the information for Alternative I if the criteria of §50196(b), are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of §50196(c), are being used to demonstrate compliance with the financial test requirements.]

### ALTERNATIVE I

1. Amount of annual UST aggregate coverage being assured by a financial test, or guarantee or both \$ \_\_\_\_\_

2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, or guarantee or both, \$\_\_\_\_\_
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 dollars? Yes No
8. Is line 6 at least 10 times line 3? Yes No
9. Have financial statements for the latest fiscal year been filed with the U.S. Securities and Exchange Commission? Yes No
10. Have financial statements for the latest fiscal year been filed with the federal Energy Information Administration? Yes No
11. Have financial statements for the latest fiscal year been filed with the federal Rural Electrification Administration? Yes No
12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] Yes No

## ALTERNATIVE II

- |  | Amount  |
|--|---------|
| 1. Amount of annual UST aggregate coverage being assured by a financial test, or guarantee or both,  | \$_____ |
| 2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, or guarantee or both, | \$_____ |

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 ninety per cent of assets are located in the U.S.] \$\_\_\_\_\_
8. Is line 6 at least 10 million dollars? Yes No
9. Is line 6 at least six times line 3? Yes No
10. Are at least 90 per cent of assets located in the U.S.? [If "No," complete line 11] Yes No
11. Is line 7 at least six times line 3? Yes No  
[Fill in either lines 12-15 or lines 16-18:]
12. Current assets \$\_\_\_\_\_
13. Current liabilities \$\_\_\_\_\_
14. Net working capital [subtract line 13 from line 12] \$\_\_\_\_\_
15. Is line 14 at least six times line 3? Yes No
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 U.S. Securities and Exchange Commission, the federal Energy Information Administration, or the federal Rural Electrification Administration? Yes No  
[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

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

I hereby certify that the wording of this letter is identical to the wording specified in §50196(d) of the GUSTR, as such rules were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(e) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(f) The Administrator may require reports of financial condition at any time from the owner or operator, or guarantor or both. If the administrator finds, on the basis of such reports or other information, that the owner or operator, or guarantor or both, no longer meets the financial test requirements of §50196(b) or (c) and (d), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(g) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the Administrator that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Administrator of such failure within 10 days. (Imp: 40 C.F.R. §280.95)

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## **§ 50197. Guarantee.**

(a) An owner or operator may satisfy the requirements of §50194 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

(1) A firm that

- (A) Possesses a controlling interest in the owner or operator;
- (B) Possesses a controlling interest in a firm described under paragraph (a)(1)(A);
- (C) Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

(2) A firm engaged in a substantial business relationship with the owner or

operator and issuing the guarantee as an act incident to that business relationship.

- (b) Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of §50196 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in §50196(d) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the administrator notifies the guarantor that it no longer meets the requirements of the financial test of either §50196(b) or (c), and (d), the guarantor must notify the owner or operator within 10 days of receiving such notification from the administrator. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in §50210(c).
- (c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### GUARANTEE

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

#### *Recitals.*

- (1) Guarantor meets or exceeds the financial test criteria of §50196(b) or (c) and (d) of the GUSTR, and agrees to comply with the requirements for guarantors as specified in §50197(b) of the GUSTR.
- (2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 Code of Federal Regulations section 280.22 or in the permit applications submitted under §50124 and §50126 of the GUSTR, and the name and address of the facility.] This guarantee satisfies the requirements of subchapter 9 of the GUSTR for assuring funding for [insert: "taking

corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

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

In the event that [owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Administrator of the Guam Environmental Protection Agency has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Administrator of the Guam Environmental Protection Agency, shall fund a standby trust fund in accordance with the provisions of §50208 of the GUSTR, in an amount not to exceed the coverage limits specified above.

In the event that the Administrator of the Guam Environmental Protection Agency determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above identified tank(s) in accordance with subchapter 7 of the GUSTR, the guarantor upon written instructions from the Administrator of the Guam Environmental Protection Agency shall fund a standby trust in accordance with the provisions of §50208 of the GUSTR, 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" or "nonsudden" or both] 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 Administrator of the Guam Environmental Protection Agency, shall fund a standby trust in accordance with the provisions of §50208 of

the GUSTR, 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 §50196 (b) or (c) and (d) of the GUSTR, guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.
- (5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.
- (6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to the GUSTR.
- (7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of subchapter 9 of the GUSTR, for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.
- (8) The guarantor's obligation does not apply to any of the following:
  - (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
  - (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
  - (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
  - (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or

operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of §50194 of the GUSTR.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Guam Environmental Protection Agency, 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 §50197(c) of the GUSTR, as such rules 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: \_\_\_\_\_

(d) An owner or operator who uses a guarantee to satisfy the requirements of §50194 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Administrator of the Guam Environmental Protection Agency under §50208. This standby trust fund must meet the requirements specified in §50202. (Imp: 40 C.F.R. §280.96)

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## **§ 50198. Insurance and risk retention group coverage.**

(a) An owner or operator may satisfy the requirements of §50194 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an

endorsement to an existing insurance policy.

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

(1) ENDORSEMENT

Name: [name of each covered location]

\_\_\_\_\_

Address: [address of each covered location]

\_\_\_\_\_

\_\_\_\_\_

Policy Number: \_\_\_\_\_

Period of Coverage: [current policy period]

\_\_\_\_\_

Name of [Insurer or Risk Retention Group]:

\_\_\_\_\_

\_\_\_\_\_

Address of [Insurer or Risk Retention Group]:

\_\_\_\_\_

\_\_\_\_\_

Name of Insured: \_\_\_\_\_

Address of Insured:

\_\_\_\_\_

\_\_\_\_\_

Endorsement:

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

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted, 40 Code of Federal Regulations section 280.22 or in the permit applications submitted under §50124 and §50126 of the GUSTR, and the name and address of the facility.]

for [insert: "taking corrective action", and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(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 underground storage tanks or locations, indicate the amount of coverage for each type of coverage, and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this paragraph are hereby amended to conform with subsections (a) through (e);
  - a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.
  - b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of

mechanisms as specified in §50196 through §50201 of the GUSTR.

- c. Whenever requested by the Administrator of the Guam Environmental Protection Agency, the ["Insurer" or "Group"] agrees to furnish to the Administrator of the Guam Environmental Protection Agency 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, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

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

I hereby certify that the wording of this instrument is identical to the wording in §50198(b)(1) of the GUSTR, 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 "Guam"].

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

[Name of person signing]

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

[Address of Representative]

(2) *CERTIFICATE OF INSURANCE*

Name: [name of each covered location]

\_\_\_\_\_

Address: [address of each covered location]

\_\_\_\_\_

\_\_\_\_\_

Policy Number: \_\_\_\_\_

Endorsement (if applicable): \_\_\_\_\_

Period of Coverage: [current policy period]

\_\_\_\_\_

Name of [Insurer or Risk Retention Group]:

\_\_\_\_\_

\_\_\_\_\_

Address of [Insurer or Risk Retention Group]:

\_\_\_\_\_

\_\_\_\_\_

Name of Insured: \_\_\_\_\_

Address of Insured:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Certification:

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

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted, 40 Code of Federal Regulations section 280.22 or in the permit applications submitted under §50124 and §50126 of the GUSTR, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(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 underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 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 §50196 through §50201 of the GUSTR.

- c. Whenever requested by the Administrator of the Guam Environmental Protection Agency, the ["Insurer" or "Group"] agrees to furnish to the administrator 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, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

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

I hereby certify that the wording of this instrument is identical to the wording in §50198(b)(2) of the GUSTR, 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 Guam"].

[Signature of authorized representative of Insurer]

[Type Name]

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

[Address of Representative]

- (c) Each insurance policy must 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 Guam. (Imp: 40 C.F.R. §280.97)

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**§ 50199. Surety bond.**

- (a) An owner or operator may satisfy the requirements of §50194 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.
- (b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed: \_\_\_\_\_

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 the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 Code of Federal Regulations section 280.22 or in the permit applications submitted under §50124 and §50126 of the GUSTR, and the name and address of the facility. List the coverage guaranteed by the

bond: "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or both either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:

Per occurrence \$ \_\_\_\_\_

Annual aggregate \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Guam Environmental Protection Agency, 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 subchapter 9 of the GUSTR to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with subchapter 7 of the GUSTR, and the Administrator of the Guam Environmental Protection Agency instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified

in subchapter 9 of the GUSTR, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (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 §50194 of the GUSTR.

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 Administrator of the Guam Environmental Protection Agency that the Principal has failed to ["take corrective action, in accordance with subchapter 7 of the GUSTR, and the Administrator of the Guam Environmental Protection Agency instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with the GUSTR, and the Administrator of the Guam Environmental Protection Agency instructions," or "third-party liability compensation" or both] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Administrator of the Guam Environmental Protection Agency under §50208 of the GUSTR.

Upon notification by the Administrator of the Guam Environmental Protection Agency that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Administrator of the Guam Environmental Protection Agency 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 Administrator of the Guam Environmental Protection Agency under §50208 of the GUSTR.

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

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

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

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

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in §50199(b) of the GUSTR, as such rules were constituted on the date this bond was executed.

*PRINCIPAL*

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal ]

*CORPORATE SURETY (IES)*

[Name and address]

State of Incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

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

Bond premium: \$ \_\_\_\_\_

- (c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.
- (d) The owner or operator who uses a surety bond to satisfy the requirements of §50194 must 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 Administrator under §50208. This standby trust fund must meet the requirements specified in §50202. (Imp: 40 C.F.R. §280.98)

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**§ 50200. Letter of credit.**

- (a) An owner or operator may satisfy the requirements of §50194 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in Guam where used and whose letter-of-credit operations are regulated and examined by a federal or Guam.
- (b) The letter of credit must be worded as follows, except that instructions in brackets are to

be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

[Name and address of Administrator of the Guam Environmental Protection Agency]

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 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 authority of chapter 50.

This letter of credit may be drawn on to cover [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or both either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 Code of Federal Regulations section 280.22 or in the permit applications submitted under §50124 and §50126 of the GUSTR, and the name and address of the facility.]

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

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (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 §50194 of the GUSTR.

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

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

We certify that the wording of this letter of credit is identical to the wording specified in §50200(b) of the GUSTR, as such rules were constituted on the date shown immediately below.

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

[Date]

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

- (c) An owner or operator who uses a letter of credit to satisfy the requirements of §50194 must 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 administrator will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Administrator under §50208. This standby trust fund must meet the requirements specified in §50202.
  - (d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt. (Imp: 40 C.F.R. §280.99)
- 

### **§ 50201. Trust fund.**

- (a) An owner or operator may satisfy the requirements of §50194 by establishing a trust fund that conforms to the requirements of this section. The trustee must 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 Guam.
  - (b) The wording of the trust agreement must be identical to the wording specified in §50202(b)(1), and must be accompanied by a formal certification of acknowledgment as specified in §50202(b)(2).
  - (c) The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.
  - (d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the administrator for release of the excess.
  - (e) If other financial assurance as specified in this subchapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the administrator for release of the excess.
  - (f) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (d) or (e), the administrator will instruct the trustee to release to the owner or operator such funds as the administrator specifies in writing. (Imp: 40 C.F.R. §280.102)
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## § 50202. Standby trust fund.

- (a) An owner or operator using any one of the mechanisms authorized by §50197, §50199, or §50200 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must 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 Guam.
- (b) (1)The standby trust agreement, or trust agreement, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

### TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the State of \_\_\_\_"or" a national bank"], the "Trustee."

Whereas, the Guam Environmental Protection Agency has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standby trust agreement.

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.)];

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

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

#### Section 1. Definitions.

As used in this Agreement:

- (a) The term "**Grantor**" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "**Trustee**" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism.

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

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Guam Environmental Protection Agency. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the administrator of Guam Environmental Protection Agency instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Guam Environmental Protection Agency.

Section 4. Payment for ["Corrective Action" or "Third-party Liability Claims" or both].

The Trustee shall make payments from the Fund as the Administrator of the Guam Environmental Protection Agency shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or both either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

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

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (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 §50194,.

The Trustee shall reimburse the Grantor, or other persons as specified by the Administrator of the Guam Environmental Protection Agency, from the Fund for corrective action expenditures or third-party liability claims or both, in such amounts as the administrator shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the administrator 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 or her 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:

- (i) 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 federal 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 Government of Guam;
- (ii) 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 Government of Guam; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. *Commingling and Investment.*

The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the federal 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 Government of Guam; 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 certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Administrator of the Guam Environmental Protection Agency to the Trustee shall be in writing, signed by the administrator, 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 administrator hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor or the administrator or both, 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 Administrator of the Guam Environmental Protection Agency 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, 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 Administrator of the Guam Environmental Protection Agency, 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 Administrator of the Guam Environmental Protection Agency 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 Guam or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this

Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (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 §50202(b)(1) of the GUSTR, as such rules were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

- (2) The standby trust agreement, or trust agreement, must be accompanied by a formal certification of acknowledgment similar to the following:

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 she/he

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

[Signature of Notary Public]

[Name of Notary Public]

- (c) The Administrator will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Administrator determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.
- (d) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule. (Imp: 40 C.F.R. §280.103)

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### **§ 50203. Local government bond rating test.**

- (a) A general purpose local government owner or operator, or local government, or both, serving as a guarantor may satisfy the requirements of §50194 by having a currently outstanding issue or issues of general obligation bonds of one million dollars or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard and Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.
- (b) A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and does not have the legal authority to issue general obligation bonds may satisfy the requirements of §50194 by having a currently outstanding issue or issues of revenue bonds of one million or more, excluding refunded issues and by also having a Moody's rating of Aaa, Aa, A, or Baa, or A Standard & Poor's rating of AAA, AA, A or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

- (c) The local government owner or operator, or guarantor or both, must maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.
- (d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator, or guarantor or both, must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

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

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

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

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency*

\*[Moody's or Standard & Poor's]

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

of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in §50203(d) of the GUSTR, as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

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

#### Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage" or both] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or both] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

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

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

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency*

\*[Moody's or Standard & Poor's]

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

I hereby certify that the wording of this letter is identical to the wording specified in §50203(e) of the GUSTR, as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

- (f) The Administrator may require reports of financial condition at any time from the local government owner or operator, or local government guarantor, or both. If the Administrator finds, on the basis of such reports or other information, that the local government owner or operator, or guarantor or both, no longer meets the local government bond rating test requirements of §50203, the local government owner or operator must obtain alternative coverage within 30 days after notification of such a finding.
- (g) If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator must obtain alternative coverage within 150 days of the change in status. (Imp: 40 C.F.R. §280.104)

## **§ 50204. Local government financial test.**

- (a) A local government owner or operator may satisfy the requirements of §50194 by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator must 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 must meet the criteria of paragraphs (b)(2) and (b)(3) based on year-end financial statements for the latest completed fiscal year.
- (b) (1)The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year:
  - (A) 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.
  - (B) 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).
  - (C) Local Revenues: Consists of total revenues (as defined in subparagraph (b)(1)(A)) minus the sum of all transfers from other governmental entities, including all monies received from federal,

state, or local government sources.

- (D) Debt Service: Consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest-bearing warrants. Excludes payments on noninterest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.
- (E) 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.
- (F) Population consists of the number of people in the area served by the local government.

(b)(2) 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.

(b)(3) The local government owner or operator must have a letter signed by the chief financial officer worded as specified in subsection (c).

(c) To demonstrate that it meets the financial test under subsection (b), the chief financial officer of the local government owner or operator, must sign, within 120 days of the close of each financial reporting year, as defined by the 12 month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or

operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage" or both] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or both] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating [an] underground storage tank[s].

Underground storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 40 Code of Federal Regulations section 280.22 or in the permit applications submitted under §50124 and §50126 of the GUSTR.]

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

WORKSHEET FOR MUNICIPAL FINANCIAL TEST

*PART I: BASIC INFORMATION*

1. Total Revenues

- a. Revenues (dollars Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. \_\_\_\_\_)
- b. Subtract interfund transfers (dollars)
- c. Total Revenues (dollars)

2. Total Expenditures

- a. Expenditures (dollars)  
Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.
- b. Subtract interfund transfers (dollars)
- c. Total Expenditures (dollars)

3. Local Revenues

- a. Total Revenues (from 1c) (dollars)
- b. Subtract total intergovernmental transfers (dollars)
- c. Local Revenues (dollars)

4. Debt Service

- a. Interest and fiscal charges (dollars)
- b. Add debt retirement (dollars)
- c. Total Debt Service (dollars)

5. Total Funds (Dollars) \_\_\_\_\_

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

6. Population (Persons)

*PART II: APPLICATION OF TEST*

7. Total Revenues to Population

- a. Total Revenues (from 1c)
  - b. Population (from 6)
  - c. Divide 7a by 7b
  - d. Subtract 417
  - e. Divide by 5,212
  - f. Multiply by 4.095
8. Total Expenses to Population
- a. Total Expenses (from 2c)
  - b. Population (from 6)
  - c. Divide 8a by 8b
  - d. Subtract 524
  - e. Divide by 5,401
  - f. Multiply by 4.095
9. Local Revenues to Total Revenues
- a. Local Revenues (from 3c)
  - b. Total Revenues (from 1c)
  - c. Divide 9a by 9b
  - d. Subtract 0.695
  - e. Divide by 0.205
  - 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 0.068
- e. Divide by 0.259
- 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 0.899
- 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 0.891

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 0.866

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 §50204(c) of the GUSTR, as such rules were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

- (d) If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.
- (e) The Administrator may require reports of financial condition at any time from the local government owner or operator. If the Administrator 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 subsections (b) and (c), the owner or operator must obtain.
- (f) If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within 30 days of notification by the Administrator that it no longer meets the requirements of the financial test, the owner or operator must notify the Administrator of such failure within 10 days. (Imp: 40 C.F.R. §280.105)

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**§ 50205. (Reserved)**

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**§ 50206. Local government guarantee.**

- (a) A local government owner or operator may satisfy the requirements of §50194 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be a local government having a "substantial governmental relationship" with the owner or operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor must:
  - (1) Demonstrate that it meets the bond rating test requirements of §50203 and deliver a copy of the chief financial officer's letter as contained in §50203(c) to the local government owner or operator;
  - (2) Demonstrate that it meets the worksheet test requirements of §50204 and

deliver a copy of the chief financial officer's letter as contained in §50204(c) to the local government owner or operator; or

- (3) Demonstrate that it meets the local government fund requirements of §50207(a) or §50207(b) or §50207(c), and deliver a copy of the chief financial officer's letter as contained in §50207 to the local government owner or operator.
- (b) If the local government guarantor is unable to demonstrate financial assurance under any of §50203, §50204, §50207(a), §50207(b), or §50207(c), at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in §50214(c).
- (c) The guarantee agreement must be worded as specified in subsection (d) or (e), depending on which of the following alternative guarantee arrangements is selected:
- (1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the Administrator, the guarantee shall be worded as specified in subsection (d).
  - (2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the Administrator for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in subsection (e).
- (d) If the guarantor is a local government, the local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

#### Local Government Guarantee with Standby Trust Made By a Local Government

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of Guam, herein referred to as guarantor, to the Guam Environmental Protection Agency 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 §50203 of the GUSTR, the local government financial test requirements of §50204 of the GUSTR, or the local government fund under §50207(a), §50207(b) or §50207(c) of the GUSTR.]

- (2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 Code of Federal Regulations section 280.22 or in the permit applications submitted under §50124 and §50126 of the GUSTR, and the name and address of the facility.] This guarantee satisfies subchapter 9 of the GUSTR, requirements for assuring funding for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or both either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.
- (3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Guam Environmental Protection Agency and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Administrator of the Guam Environmental Protection Agency has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the administrator shall fund a standby trust fund in accordance with the provisions of §50212 of the GUSTR, in an amount not to exceed the coverage limits specified above.

In the event that the Administrator 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 subchapter 7 of the GUSTR, the guarantor upon written instructions from the administrator shall fund a standby trust fund in accordance with the provisions of §50212 of the GUSTR, 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" or "nonsudden" or both] 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 administrator, shall fund a standby trust in accordance with the provisions of §50212 of the GUSTR, to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

- (4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.
- (5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 {Bankruptcy}, U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.
- (6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 50.
- (7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of subchapter 9 of the GUSTR, for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.
- (8) The guarantor's obligation does not apply to any of the following:
  - (a) Any obligation of [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 owner, rented, loaded to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
  - (e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of §50194 of the GUSTR.
- (9) Guarantor expressly waives notice of acceptance of this guarantee by the Guam Environmental Protection Agency, 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 §50206 of the GUSTR, as such rules were constituted on the effective date shown immediately below.

Effective date: \_\_\_\_\_

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

\_\_\_\_\_

- (e) If the guarantor is a local government, the local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee without Standby Trust Made by a Local Government

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of Guam, herein referred to as guarantor, to the Guam Environmental Protection Agency 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 §50203 of the GUSTR, the local government financial test requirements of §50204 of the GUSTR, or the local governmental fund under §50207(a), §50207(b) or §50207(c), of the GUSTR.
- (2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address (es) of the facility (ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 Code of Federal Regulations §280.22 or in the permit applications submitted under §50124 and §50126 of the GUSTR, and the name and address of the facility.] This guarantee satisfies subchapter 9 of the GUSTR, requirements for assuring funding for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or both either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.
- (3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Guam Environmental Protection Agency and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Administrator of the Guam Environmental Protection Agency has determined or suspects that a release has occurred

at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the Administrator 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 Administrator 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 subchapter 7 of the GUSTR, the guarantor upon written instructions from the Administrator 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" or "nonsudden" or both] 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 administrator, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

- (4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.
- (5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.
- (6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to the GUSTR.
- (7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of subchapter 9 of the GUSTR, for the above identified tank(s), except that guarantor may cancel this

guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. 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 a petroleum underground storage tank;
  - (e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of §50194 of the GUSTR.
- (9) Guarantor expressly waives notice of acceptance of this guarantee by the Guam Environmental Protection Agency, 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 §50206 of the GUSTR, as such rules 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:

(Imp: 40 C.F.R. § 280.106)

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### **§ 50207. Local government fund.**

A local government owner or operator may satisfy the requirements of §50194 by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in subsection (b), 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:

(a) 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 petroleum underground storage tanks or tank systems and is funded for the full amount of coverage required under section 50194, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or

(b) 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 petroleum underground storage tanks or tank systems, and is funded for five times the full amount of coverage required under §50194, 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 §50194, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund; or

(c) 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 petroleum underground storage tanks or tank systems. A payment is made to the fund once every year for seven years until the fund is

fully-funded. This seven year period is hereafter referred to as the "pay-in-period." The amount of each payment must be determined by this formula:

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

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

- (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 petroleum underground storage tanks or tank systems, or
  - (2) The local government owner or operator has a letter signed by the 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 must also state that prior voter approval is not necessary before use of the bonding authority.
- (d) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator, or guarantor or both must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

#### LETTER FROM CHIEF FINANCIAL OFFICER

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

Underground storage tanks at the following facilities are assured by this local government fund mechanism: (List for each facility: the name and address of the facility where tanks are assured by the local government fund).

[Insert: "The local government fund is funded for the full amount of coverage required under §50194 of the GUSTR, 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 10 times the full amount of coverage required under §50194 of the GUSTR, or funded for part of the required amount of coverage and used in conjunction 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 owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by Guam's Attorney General stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority"].

The details of the local government fund are as follows:

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

[If fund balance is incrementally funded as specified in §50207(c) of the GUSTR, 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 §50207 of the GUSTR, as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

(Imp: 40 C.F.R. §280.107)

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**§ 50208. Substitution of financial assurance mechanisms by owner or operator.**

- (a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subchapter, provided that at all times the owner or operator maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of §50194.
- (b) After obtaining alternate financial assurance as specified in this subchapter, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance. (Imp: 40 C.F.R. §280.108)

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**§ 50209. Cancellation or nonrenewal by a provider of financial assurance.**

- (a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.
  - (1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
  - (2) Termination of insurance or risk retention coverage, except for non-payment or misrepresentation by the insured, may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
- (b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in §50214, the owner or operator must obtain alternate coverage as specified in this subchapter within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the administrator of such failure and submit:
  - (1) The name and address of the provider of financial assurance;

- (2) The effective date of termination; and
- (3) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with §50207(b). (Imp: 40 C.F.R. §280.109)

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## **§ 50210. Reporting by owner or operator.**

- (a) An owner or operator must submit the appropriate forms listed in §50211(b) documenting current evidence of financial responsibility to the Administrator:
  - (1) Within 30 days after the owner or operator identifies a release from an UST or tank system required to be reported under §50164 or §50172;
  - (2) If the owner or operator fails to obtain alternate coverage as required by this subchapter, within 30 days after the owner or operator receives notice of:
    - (A) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,
    - (B) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,
    - (C) Failure of a guarantor to meet the requirements of the financial test,
    - (D) Other incapacity of a provider of financial assurance; or
  - (3) As required by §50196(g) and §50209(b).
- (b) An owner or operator must certify compliance with the financial responsibility requirements of this subchapter as specified in the notification form submitted pursuant to §50221, or the permit applications under §50124 and §50126 when notifying the Administrator of the installation of an UST system.
- (c) The Administrator may require an owner or operator to submit evidence of financial assurance as described in §50211(b) or other information relevant to compliance with this subchapter at any time. (Imp: 40 C.F.R. §280.110)

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## **§ 50211. Recordkeeping.**

- (a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subchapter for an UST or tank system until released from the requirements of this subchapter under §50213. An owner or operator must maintain such evidence at the UST or tank system site or the owner's or operator's place of work. Records maintained off-site must be made available upon request of the Administrator.
- (b) An owner or operator must maintain the following types of evidence of financial responsibility:
  - (1) An owner or operator using an assurance mechanism specified in §50196 through §50200, §50201, or §50203 through §50207, must maintain a copy of the instrument worded as specified.
  - (2) An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.
  - (3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
  - (4) A local government owner or operator using a local government guarantee under §50206(d) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
  - (5) A local government owner or operator using the local government bond rating test under §50203 must maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.
  - (6) A local government owner or operator using the local government guarantee under §50206, where the guarantor's demonstration of financial responsibility relies on the bond rating test under §50203 must maintain a copy of the guarantor's bond rating published within the last 12 months by Moody's or Standard & Poor's.

- (7) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.
- (8) An owner or operator using a local government fund under §50207 must maintain the following documents:
  - (A) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund, and
  - (B) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under §50207 using incremental funding backed by bonding authority, the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.
  - (C) If the fund is established under §50207 using incremental funding backed by bonding authority, the owner or operator must also maintain documentation of the required bonding authority, including either the results of a voter referendum (under §50207, or attestation by Guam's Attorney General as specified under §50207).
- (9) A local government owner or operator using the local government guarantee supported by the local government fund must 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.
- (10) (A) An owner or operator using an assurance mechanism specified in §50196 through §50207 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Financial Responsibility

[Owner or operator] hereby certifies that it is in compliance with the requirements of subchapter 9 of the GUSTR.

The financial assurance mechanism(s) used to demonstrate financial responsibility under subchapter 9 of the GUSTR, is (are) as follows:

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

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

- (B) The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s). (Imp: 40 C.F.R. §280.111)

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## **§ 50212. Drawing on financial assurance mechanisms.**

(a) Except as specified in subsection (d), the Administrator shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Administrator, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

- (1) (A) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

- (B) The Administrator determines or suspects that a release from an UST or tank system covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the Administrator pursuant to subchapter 6 or 7 of a release from an UST or tank system covered by the

mechanism; or

- (2) The conditions of paragraph (b)(1) or subparagraphs (b)(2)(A) or (b)(2)(B) are satisfied.

(b) The administrator may draw on a standby trust fund when:

- (1) The Administrator makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted release response action as required under subchapter 7; or
- (2) The Administrator has received either:
  - (A) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### Certification of Valid Claim

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

\$\_[\_\_\_\_].

[Signatures]

Owner or Operator

Attorney for Owner or Operator  
(Notary)

Date

[Signatures]

Claimant(s)

Attorney(s) for Claimant(s)

(Notary)

Date

Or,

(B) 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 underground storage tank or tank system covered by financial assurance under this subchapter and the administrator determines that the owner or operator has not satisfied the judgment.

(c) If the Administrator determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection (b) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The Administrator shall pay third-party liability claims in the order in which the Administrator receives certifications under subparagraph (b)(2)(A), and valid court orders under subparagraph (b)(2)(B).

(d) A governmental entity acting as guarantor under §50206(e), the local government guarantee without standby trust, shall make payments as directed by the Administrator under the circumstances described in §50212(a), (b), and (c). (Imp: 40 C.F.R. §280.112)

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### **§ 50213. Release from financial responsibility.**

An owner or operator is no longer required to maintain financial responsibility under this subchapter for an UST or tank system after the UST or tank system has been properly and permanently closed or, if release response action is required, after the release response action has been completed and the UST or tank system has been properly and permanently closed as required by subchapter 8. (Imp: 40 C.F.R. §280.113)

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## **§ 50214. Bankruptcy or other incapacity of owner or operator or provider of financial assurance.**

- (a) Within 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 must notify the Administrator by certified mail of such commencement and submit the appropriate forms listed in §50211(b) documenting current financial responsibility.
- (b) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in §50197.
- (c) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the administrator by certified mail of such commencement and submit the appropriate forms listed in §50211(b) documenting current financial responsibility.
- (d) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in §50206.
- (e) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit. The owner or operator must obtain alternate financial assurance as specified in this subchapter within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, the owner or operator must notify the administrator. (Imp: 40 C.F.R. §280.114)

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## **§ 50215. Replenishment of guarantees, letters of credit, or surety bonds.**

- (a) If at any time after a standby trust is funded upon the instruction of the administrator 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:

- (1) Replenish the value of financial assurance to equal the full amount of coverage required, or
- (2) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by §50194. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms. (Imp: 40 C.F.R. §280.115)

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## §§ 50216 to 50220 (Reserved)

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### SUBCHAPTER 10. FIELD CITATIONS

§50221	Purpose
§50222	Applicability
§50223	Issuance and contents of a field citation
§50224	Notice of citation
§50225	Expedited enforcement compliance order and settlement agreement
§50226	Correcting violations; paying the settlement amount; and signing the settlement agreement
§50227	Methods of payment
§50228	Field citation penalty amounts for settlement
§§50229	to 50230 (Reserved)

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#### § 50221. Purpose.

The purpose of this subchapter is to create a field citation program that facilitates the effective and expeditious settlement of easily verifiable violations of this chapter. This subchapter presents the expedited enforcement compliance order and settlement agreement process also known as the field citation enforcement program.

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### **§ 50222. Applicability.**

- (a) The rules of this subchapter shall apply to those violations of this chapter and Chapter 76, Title 10 G.C.A., that the Agency, in its discretion, deems appropriate for resolution through the issuance of an expedited enforcement compliance order and settlement agreement or field citation.
  - (b) The field citation is an offer to settle an administrative case that the Agency shall withdraw if the owner, operator, product delivery person, or other person declines to accept the Agency's offer to settle, in which case the Agency may pursue other enforcement options.
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### **§ 50223. Issuance and contents of a field citation.**

- (a) In addition to any other remedy provided by law, any person who violates any provision of this chapter may be subject to a field citation.
  - (b) Any authorized employee of the Agency may issue a field citation.
  - (c) A field citation issued pursuant to this section must:
    - (1) Be in the form prescribed by the Agency; and
    - (2) Contain a notice of citation.
  - (d) The expedited enforcement compliance order and settlement agreement is not effective unless it is signed by the person(s) to whom it was issued and by the administrator. Approval by the administrator is in the administrator's sole discretion.
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### **§ 50224. Notice of citation.**

- (a) The notice of citation shall:
  - (1) Identify the provision alleged to have been violated;
  - (2) Contain a brief description of the alleged violation;
  - (3) Set forth the settlement amount; and
  - (4) Be signed by the Agency's employee who issues the field citation and the person(s) to whom it was issued or their representative.

- (b) A penalty amount for settlement, specified in §50228, may be imposed for a violation of any of the provisions set forth in that section.
- 

**§ 50225. Expedited enforcement compliance order and settlement agreement.**

- (a) By signing the settlement agreement, the person to whom it was issued agrees not to challenge the field citation and accepts the settlement agreement. Subsequent signature by the administrator constitutes acceptance by the administrator of the settlement agreement.
  - (b) By signing the settlement agreement, the person to whom it was issued waives the right to a contested case hearing.
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**§ 50226. Correcting violations; paying the settlement amount; and signing the settlement agreement.**

- (a) In order to settle the field citation, the person to whom it was issued must correct the violations, pay the settlement amount, and sign and return the settlement agreement within the time period specified by the Agency.
  - (b) If the person to whom the field citation was issued does not correct the violations, pay the settlement amount, and sign and return the settlement agreement within the time period specified by the Agency, the field citation is automatically withdrawn and the Agency may pursue other enforcement options.
  - (c) Failure to return the settlement agreement and pay the settlement amount within the time allowed does not relieve the person to whom it was issued of the responsibility to comply fully with the provisions of this chapter, including correcting the violations that have been specifically identified in the field citation.
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**§ 50227. Methods of payment.**

- (a) Payment of a settlement penalty amount imposed pursuant to section 5125 must be made as specified by the Agency. All payments shall be deposited into the Underground Storage Tank Management Fund as established in Chapter 76, Title 10 G.C.A., under section 76114.
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## **§ 50228. Field citation penalty amounts for settlement.**

The penalties that may be assessed for settlement of a field citation shall be determined by the Agency.

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## **§§ 50229 to 50230 (Reserved)**

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## **SUBCHAPTER 11. OPERATOR TRAINING**

<b>§50231</b>	<b>General Requirements for all UST systems</b>
<b>§50232</b>	<b>Designation of operators</b>
<b>§50233</b>	<b>Requirements for operator training</b>
<b>§50234</b>	<b>Timing of operator training</b>
<b>§50235</b>	<b>Retraining</b>
<b>§50236</b>	<b>Documentation</b>
<b>§§50237</b>	<b>to 50240 (Reserved)</b>

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## **§ 50231. General requirement for all UST systems.**

Not later than **[Insert Date – three years after the effective date of regulations]**, all owners and operators must ensure they have designated Class A, Class B, and Class C operators that meet requirements of this subchapter.

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## **§ 50232. Designation of operators.**

UST system owners or operators must designate Class A, Class B, and Class C operators, as follows:

- (a) At least one Class A and one Class B operator for each UST or group of USTs at a facility.
  - (b) Each individual who meets the definition of Class C operator at the UST facility must be designated as a Class C operator. Class C operators must be employees of the UST system owner or operator.
-

## **§ 50233. Requirements for operator training.**

Class A, Class B, and Class C operators must meet the requirements of this section. Any individual designated for more than one operator class must successfully complete the required training program or comparable examination for each operator class the individual is designated.

(a) Class A operators. Each designated Class A operator must either be trained in accordance with paragraphs (a)(1) and (a)(2) of this section or pass a comparable examination in accordance with paragraph (d) of this section. Class A operators must receive training from an independent trainer not affiliated with the facility where the Class A or Class B operates USTs.

(1) At a minimum, the training program for the Class A operator must train and evaluate the knowledge of Class A operators, as applicable, on the purpose for, methods of, and function of:

- (i) Spill and overfill prevention;
- (ii) Release detection;
- (iii) Corrosion protection;
- (iv) Emergency response;
- (v) Product and equipment compatibility;
- (vi) Financial responsibility;
- (vii) Notification and storage tank registration requirements;
- (viii) Temporary and permanent closure requirements;
- (ix) Related reporting and recordkeeping requirements;
- (x) Environmental and regulatory consequences of releases; and
- (xi) Identify the training requirements for the Class B and Class C operators.

(2) At a minimum, the training program for the Class A operator must be designed to provide information to the Class A operator and evaluate his or her ability to make informed decisions regarding compliance and ability to determine whether appropriate individuals are fulfilling the operation, maintenance, and recordkeeping requirements and standards of the Agency.

(b) Class B operators. Each designated Class B operator must either receive training in accordance with paragraphs (b)(1) and (b)(2) of this section or pass a comparable examination, in accordance with (d) of this section. Class B operators must receive training from independent trainers not affiliated with the facility where the Class A or B operates USTs.

(1) At a minimum, the training program for the Class B operator must cover either: general requirements, which encompass all regulatory requirements and standards and typical equipment used at UST facilities; or site-specific requirements which addresses only the regulatory requirements and standards and equipment specific to the facility. In addition to the operation and maintenance requirements, at a minimum, the training program must train and evaluate the knowledge of the Class B operator, as applicable, on the purpose for, methods of, and function of:

- (i) Operation and maintenance requirements;
- (ii) Spill and overflow prevention;
- (iii) Release detection and related reporting requirements;
- (iv) Corrosion protection and related testing;
- (v) Emergency response;
- (vi) Product and equipment compatibility;
- (vii) Reporting and recordkeeping requirements;
- (viii) Environmental and regulatory consequences of releases; and
- (ix) Identify the training requirements for the Class C operator.

(2) At a minimum, the training program for the Class B operator must be designed to provide information to the Class B operator and evaluate his or her ability to implement applicable UST regulatory requirements and standards in the field on the components of typical UST system(s) or as applicable, site-specific equipment used at the UST facility.

(c) Class C operators. Each designated Class C operator must meet one of the following: be trained by a Class A or Class B operator in accordance with paragraphs (c)(1) and (c)(2) of this section; complete a training program in accordance with paragraphs (c)(1) and (c)(2) of this section; or pass a comparable examination, in accordance with paragraph (d) of this section.

(1) At a minimum, the training program for the Class C operator must train and evaluate the knowledge of Class C operators to take appropriate actions in response to:

- (i) Emergencies; and
- (ii) Alarms caused by spills or releases from the UST system.

(2) At a minimum, the training program for the Class C operator must be designed to provide information to the Class C operator and evaluate his or her ability to take appropriate action in response to emergencies (including situations posing an immediate danger or threat to the public or to the environment and that require immediate action) or alarms caused by spills or releases from an underground storage tank system.

(d) Comparable Examination. Comparable examinations must, at a minimum, test the knowledge of the Class A, Class B, and Class C operators in accordance with the requirements of §50233(a), §50233(b), and §50233(c), as applicable. The examination must be developed and administered by one of the following:

- (1) An independent accreditation organization; or
- (2) The Agency or delegated authority.

(e) Training program. Any training program must meet the minimum requirements of this section. The training must be developed and administered by one of the following:

- (1) An independent training organization; or
- (2) The Agency or delegated authority.

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### **§ 50234. Timing of operator training.**

- (a) An owner or operator must ensure that designated Class A, Class B and Class C operators meet requirements in §50233 [INSERT DATE one year after effective date of regulation].
  - (b) New Class A and Class B operators designated after the applicable effective date indicated in paragraph (a) must be trained within 30 days of assuming duties.
  - (c) New Class C operators designated after the applicable effective date indicated in paragraph (a) must be trained before assuming duties of a Class C operator.
-

## **§ 50235. Retraining.**

Class A and Class B operators must be retrained in accordance with this section if the Agency determines that an UST system that they operate is out-of-compliance. Operators must meet one of the following:

(a) The Class A and Class B operators complete retraining in the manner and on the area(s) specified by the Agency. At a minimum, the retraining must cover those areas determined to be in noncompliance. Class A and Class B operators must complete training pursuant to this section no later than 30 days from the date the Agency determines noncompliance.

(c) Retraining is not required for Class A and B operators that take annual refresher training. Refresher training for Class A and Class B operators must cover all applicable requirements in §50233.

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## **§ 50236. Documentation.**

Owners and operators of underground storage tank systems must prepare and maintain a list of designated Class A, Class B, and Class C operators and maintain a record, verifying that training has been completed, in accordance with §50235 as follows:

(a) The list must:

(1) identify all current Class A, Class B and Class C operators for the UST facility since the last compliance inspection;

(2) identify all Class A, Class B and Class C operators at the facility over the last three years; and

(3) include names, class of operator trained, date assumed duties, the date each completed initial training and any retraining.

(b) Records verifying completion of training must be in hard-copy or electronic format for the Class A, Class B, and Class C operators. The record, at a minimum, must identify name of trainee, date trained, and the specific area(s) of training that were completed. The following requirements also apply to the following types of training:

(1) The record from in-class or in-the-field training programs or a comparable examination must, at a minimum, be signed by the trainer or examiner and list printed name of trainer or examiner and the company name, address and phone number.

(2) The record from computer-based training must, at a minimum, indicate the name of the training program and web address if Internet-based.

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**§§ 50237 to 50240 (Reserved)**

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**SUBCHAPTER 12. CONFIDENTIALITY**

<b>§50241</b>	<b>Request for confidentiality</b>
<b>§50242</b>	<b>Submission procedures</b>
<b>§50243</b>	<b>Prerequisite for protection</b>
<b>§50244</b>	<b>Acceptability of information</b>
<b>§50245</b>	<b>Security</b>
<b>§§50246</b>	<b>to 50250 (Reserved)</b>

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**§50241. Request for confidentiality**

- (1) Any information submitted to the Agency may be claimed as confidential.
  - (2) Any such claim must be asserted at the time of submission.
  - (3) No information shall be eligible for protection as confidential information under §50245 unless it is submitted in accordance with the provisions of this chapter.
  - (4) If no claim of confidentiality is made at the time of submission, the Agency may make the information available to the public without further notice.
  - (5) If a claim of confidentiality is asserted at the time of submission, the Administrator shall make a determination of eligibility for protection as confidential information in accordance with §50243.
- 

**§50242. Submission procedures**

- (a) Any person claiming information as confidential under the provisions of §50241 shall:
  - (1) Clearly mark each page containing such information with the word “CONFIDENTIAL”; and
  - (2) Submit an affidavit setting forth the reasons that the person believes the information is entitled to protection as a trade secret.

- (b) Any information submitted to the Agency for which a claim of confidentiality is made shall be submitted in a sealed envelope marked “CONFIDENTIAL” and addressed to the Administrator. The information shall be submitted in two (2) separate parts as follows:
  - (1) The first part shall contain all information which is not deemed by the submitter to be confidential and shall include appropriate cross references to the second part; and
  - (2) The second part shall contain data, words, phrases, paragraphs or pages and appropriate affidavits containing or relating to the information which is claimed to be confidential.

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### **§50243. Prerequisite for protection**

- (a) No information shall be protected as confidential unless:
  - (1) It is submitted in accordance with the provision of this chapter; and
  - (2) The Administrator finds that the information would constitute a trade secret under Guam law.
- (b) If the Administrator determines that the information which is properly submitted does not constitute a trade secret, then the information shall be kept confidential in accordance with §50245.

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### **§50244. Acceptability of information**

- (a) The Administrator shall give written notice to any person submitting information for which confidentiality is claimed of his or her decision on whether the information has been accepted as confidential.
- (b) All information which the Administrator determines is entitled to protection shall be marked with the term “ACCEPTED” and shall be protected in accordance with §50245.
- (c) If the Administrator finds that the information submitted does not meet the requirements of §50243, he or she shall promptly notify the person submitting the information of this findings. The Administrator shall give the person reasonable opportunity to further justify his or her claim that the information deserved protection as a trade secret or to limit the scope of information for which the request for protection is made.

- (d) If the person fails to satisfactorily demonstrate to the Administrator that the information submitted meets the criteria of §50243, the information shall be marked with the term “REJECTED” and promptly returned to the person submitting the information.
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### **§50245. Security**

- (a) All information which is accepted by the Administrator as confidential shall be stored in locked filing cabinets.
  - (b) No person shall have access to confidential information unless the person requires such access in order to carry out his or her responsibilities under the Underground Storage of Regulated Substances Act or this Regulation.
  - (c) No person shall disclose any confidential information except in accordance with applicable Guam law.
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### **§§50246 to 50250 (Reserved)**

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## **SUBCHAPTER 13. APPENDICES**