

1301:7-9-05

**Financial responsibility for petroleum underground storage tank systems.****(A) Purpose.**

For the purpose of prescribing rules pursuant to division (B) of section 3737.882 of the Revised Code, the fire marshal hereby adopts this rule to establish financial responsibility requirements for underground storage tank systems containing petroleum. This rule is adopted by the fire marshal in accordance with Chapter 119. of the Revised Code and shall not be considered a part of the "Ohio Fire Code."

**(B) Applicability.**

- (1) Except as otherwise provided in paragraphs (B)(2) to (B)(3)(k) of this rule, owners and operators of all petroleum UST systems within this state shall comply with this rule by the applicable date established in paragraphs (D) to (D)(5) of this rule.
- (2) Federal government entities whose debts and liabilities are the debts and liabilities of the United States are exempt from the requirements of this rule.
- (3) The requirements of this rule do not apply for any of the following petroleum UST systems.
  - (a) Any UST system holding hazardous wastes listed or identified under Chapter 3745-51 of the Administrative Code, or a mixture of such hazardous waste and petroleum;
  - (b) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 402 or 307(b) of the Federal Water Pollution Control Act (33 U.S.C.A. 1251 and following);
  - (c) Equipment or machinery that contains petroleum for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
  - (d) Any petroleum UST system whose capacity is one hundred ten gallons or less;
  - (e) Any UST system that contains a de minimus concentration of petroleum;
  - (f) Any emergency spill or overflow petroleum containment UST system that is expeditiously emptied after use;

- (g) Wastewater treatment tank systems containing petroleum;
  - (h) Any petroleum UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C.A. 2011 and following);
  - (i) Any petroleum UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the United States nuclear regulatory commission under 10 C.F.R. Part 50, Appendix A;
  - (j) Airport hydrant fuel distribution systems; and
  - (k) Petroleum UST systems with field-constructed tanks.
- (C) If the owner and operator of a petroleum UST system are separate persons, only one of such persons is required to obtain and demonstrate financial responsibility for that particular petroleum UST system; however, both persons are liable in event of noncompliance. Regardless of which person complies, the date for compliance with this rule regarding a particular petroleum UST system as set forth in paragraphs (D) to (D)(5) of this rule shall be determined by the characteristics of the owner.

(D) Compliance dates.

Owners and operators of petroleum UST systems shall comply with the requirements of paragraph (G)(1) of this rule upon the effective date of this rule. Owners and operators of petroleum UST systems shall comply with all other requirements of paragraph (G)(2) of this rule by the following dates:

- (1) November 1, 1990, if the owner of the petroleum UST system is a petroleum marketer owning one hundred or more petroleum UST systems within this state or if the owner of the petroleum UST system reports a tangible net worth of twenty million dollars or more to the United States securities and exchange commission (SEC), Dun and Bradstreet, the United States energy information administration, the United States rural electrification administration, or the Ohio department of commerce.
- (2) December 1, 1990, if the owner of the petroleum UST system is a petroleum marketer which owns from thirteen to ninety-nine petroleum UST systems within this state at more than one facility;
- (3) December 31, 1990, if owner of the petroleum UST system is not described in

paragraph (D)(1) or (D)(2) of this rule and the owner owns seven or more petroleum UST systems within this state; or

- (4) December 31, 1993, if the owner of the petroleum UST system owns six or fewer petroleum UST systems within this state and is not the state nor a political subdivision; or
- (5) February 18, 1994, if the owner of the petroleum UST system is the state or a political subdivision.

(E) Definitions.

For the purposes of this rule:

- (1) "Accidental release" means any sudden or nonsudden release of petroleum that was neither expected nor intended by the owner or operator of the applicable UST system and that results in the need for corrective action OR compensation for bodily injury or property damage.
- (2) "Chief financial officer", in the case of state or a political subdivision owner or operator, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the state or political subdivision.
- (3) "Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:
  - (a) A 10-K report submitted to the United States securities and exchange commission; or
  - (b) An annual report of tangible net worth submitted to Dun and Bradstreet; or
  - (c) Annual reports of tangible net worth submitted to the United States energy information administration, the United States rural electrification administration, or the Ohio department of commerce; or
  - (d) A special report by an independent certified public accountant pursuant to paragraphs (L)(4)(c) to (L)(4)(c)(ii) of this rule.

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

- (4) "Fund" is the petroleum underground storage tank financial assurance fund created by division (A) of section 3737.91 of the Revised Code.
- (5) "Fund deductible" is the deductible amount for the fund established pursuant to division (E) of section 3737.91 of the Revised Code.
- (6) "Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought by the following:
  - (a) United States environmental protection agency or the state to require corrective action or to recover the costs of corrective action;
  - (b) A third party for bodily injury or property damage caused by an accidental release or by any person on behalf of such a third party; or
  - (c) A person to enforce the terms of a financial assurance mechanism.
- (7) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from a petroleum UST system. As used in this rule, the definition of "occurrence" is intended to clarify the scope of coverage under this rule 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".
- (8) "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.
- (9) "Petroleum marketers" are all persons owning petroleum marketing facilities. Persons owning other types of facilities with petroleum UST systems as well as petroleum marketing facilities are considered to be petroleum marketers.
- (10) "Political subdivision" shall include indian tribes. The term is generally intended to include:
  - (a) Counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state law or constitution; and

- (b) Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.
- (11) "Property damage" includes, without limitation, liability for corrective actions associated with releases from petroleum UST systems.
- (12) "Provider of financial assurance" means a person that provides financial assurance to an owner or operator of a petroleum UST system through one of the mechanisms listed in paragraphs (L) to (R)(5) of this rule including a guarantor, insurer, risk retention group, surety, or issuer of a letter of credit.
- (13) "Reduced fund deductible" is the reduced deductible amount for the fund established pursuant to division (F) of section 3737.91 of the Revised Code.
- (14) "Substantial governmental relationship" means the extent of a governmental relationship necessary under Ohio law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST release such as conterminous 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.
- (15) "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 person as a result of past transactions.

(F) Amount and scope of required financial responsibility.

- (1) Owners and operators of petroleum UST systems shall obtain and demonstrate for each of the petroleum UST systems within this state which they own or operate financial responsibility both for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the petroleum UST systems in the amount of one million dollars per occurrence.
- (2) Owners and operators of petroleum UST systems shall obtain and demonstrate for each of the petroleum UST systems within this state which they own or operate financial responsibility for both taking corrective action and for

compensating third parties for bodily injury and property damage caused by accidental releases from the petroleum UST systems in at least the following annual aggregate amounts:

- (a) For owners or operators of one to one hundred tanks within this state which comprise petroleum UST systems, one million dollars; and
  - (b) For owners or operators of one hundred one or more tanks within this state which comprise petroleum UST systems, two million dollars.
- (3) The amounts of assurance required under paragraphs (F) to (F)(2)(b) of this rule exclude legal defense costs.
- (4) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

(G) The fund.

- (1) Owners and operators of petroleum UST systems shall obtain and demonstrate a valid certificate of coverage in the fund from the petroleum underground storage tank release compensation board pursuant to division (D) of section 3737.91 of the Revised Code for each tank within this state comprising a petroleum UST system.
- (2) Owners and operators of petroleum UST systems within this state shall obtain and demonstrate financial responsibility for each such petroleum UST system so as to comply with the deductible coverage requirements described in paragraphs (H) to (H)(2) of this rule.

(H) Deductible coverage requirements.

- (1) Subject to the limitations and requirements of paragraphs (I) to (J)(3) of this rule, and in addition to participation in the fund, owners and operators of petroleum UST systems shall obtain and demonstrate financial responsibility for each petroleum UST system within this state using one of the mechanisms listed in paragraphs (L) to (V)(1)(d) of this rule in an amount equal to the following applicable per-occurrence amount:
  - (a) If the owner or operator has paid for the year the annual petroleum underground storage tank financial assurance fee established pursuant to division (B) of section 3737.91 of the Revised Code for the tanks comprising the petroleum UST system, the fund deductible; and

(b) If the owner or operator has paid for the year the additional fee established pursuant to division (F) of section 3737.91 of the Revised Code for the tanks comprising the petroleum UST system, the reduced fund deductible.

(2) The financial responsibility required by paragraphs (H) to (H)(1)(b) of this rule shall include responsibility both for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental release from petroleum UST systems.

(I) Combination of allowable mechanisms.

(1) Each allowable mechanism described in paragraphs (L) to (V)(1)(d) of this rule which is used by an owner or operator to comply with paragraphs (H) to (H)(1)(b) of this rule shall include responsibility both for taking corrective action and for compensating third parties for bodily injury and property damage caused by any accidental release from petroleum UST systems.

(2) In complying with paragraphs (H)(1) to (H)(1)(b) of this rule, owners and operators shall use only one of the mechanisms described in paragraphs (L) to (V)(1)(d) of this rule for any single petroleum UST system. A single allowable mechanism may specify more than one petroleum UST system for which the mechanism provides coverage.

(3) If an owner or operator uses different allowable mechanisms for different petroleum UST systems within this state to comply with paragraphs (H) to (H)(2) of this rule, each such different mechanism shall comply with paragraphs (H) to (H)(2) of this rule.

(J) Aggregate amounts for self-insurance, insurance, and risk retention group coverage.

(1) If an owner or operator uses the self-insurance mechanism described in paragraphs (L) to (L)(9) of this rule to comply with paragraphs (H) to (H)(2) of this rule for any petroleum UST system within this state, the owner or operator shall, in computing the financial test described in paragraphs (L) to (L)(9) of this rule, use the applicable annual aggregate from the following table:

Number of tanks covered by mechanism	Per occurrence amount <sup>a</sup>	Annual aggregate
1-6	reduced fund deductible	reduced fund deductible

1-100	fund deductible	fund deductible
101-200	fund deductible	2 x fund deductible
201-300	fund deductible	3 x fund deductible
301 or more	fund deductible	4 x fund deductible

<sup>a</sup> the per-occurrence amount for the tanks covered required by paragraphs (H) to (H)(1)(b) of this rule.

- (2) If an owner or operator uses the insurance or risk retention group coverage described in paragraphs (N) to (N)(5) of this rule to comply with paragraphs (H) to (H)(2) of this rule for any petroleum UST system within this state, the owner or operator shall obtain and demonstrate such coverage in at least the applicable annual aggregate amount from the following table:

Number of tanks covered by mechanism	Per occurrence amount <sup>a</sup>	Annual aggregate
1-6	reduced fund deductible	2 x reduced fund deductible
1-100	fund deductible	2 x fund deductible
101-200	fund deductible	3 x fund deductible
201-300	fund deductible	4 x fund deductible
301 or more	fund deductible	5 x fund deductible

<sup>a</sup> the per-occurrence amount for the tanks covered required by paragraphs (H) to (H)(1)(b) of this rule.

- (3) If an owner or operator uses any mechanism described in paragraphs (M)(1) to (M)(5) or (O) to (R)(5) of this rule to comply with paragraphs (H) to (H)(2) of this rule for any petroleum UST system within this state, the annual aggregate amount of coverage provided by the mechanism shall be at least equal to the per-occurrence amount for the tanks required by paragraphs (H) to (H)(1)(b) of this rule.

**(K) New installations or new acquisitions.**

- (1) If additional tanks comprising petroleum UST systems are installed, the owner and operator shall obtain and demonstrate a valid certificate of coverage in



the fund from the petroleum underground storage tank release compensation board pursuant to division (D) of section 3737.91 of the Revised Code for each additional tank prior to introducing petroleum into the tank. In addition, the owner and operator shall obtain and demonstrate financial responsibility in compliance with paragraphs (H) to (H)(2) of this rule for each additional tank prior to introducing petroleum into the tank.

- (2) If additional existing tanks comprising petroleum UST systems are acquired, the owner and operator shall obtain and demonstrate a valid certificate of coverage in the fund from the petroleum underground storage tank release compensation board pursuant to division (D) of section 3737.91 of the Revised Code for each additional tank prior to bringing the tank into operation. In addition, the owner and operator shall obtain and demonstrate financial responsibility in compliance with paragraphs (H) to (H)(2) of this rule for each additional tank prior to bringing the tank into operation.
- (3) If an owner or operator is using self-insurance, insurance, or risk retention group coverage to comply with paragraphs (H) to (H)(2) of this rule, and if the number of additional tanks comprising petroleum UST systems within this state installed or acquired results in such a number of tanks so as to require a greater annual aggregate amount of coverage pursuant to paragraphs (J) to (J)(2) of this rule, the amount of such additional annual aggregate coverage necessary to comply with paragraphs (J) to (J)(2) of this rule shall be obtained and demonstrated by the owner and operator by the first-occurring effective date anniversary of the self-insurance, insurance, or risk retention group coverage used to provide coverage.

(L) Financial test of self-insurance.

- (1) An owner or operator may satisfy the requirements of paragraphs (H) to (H)(2) to this rule by passing a financial test as specified in paragraphs (L)(2) to (L)(9) of this rule. To pass the financial test of self-insurance, the owner or operator shall meet the criteria of paragraphs (L)(2) to (L)(9) of this rule based on year-end financial statement for the latest completed fiscal year.
- (2) The owner or operator shall have a tangible net worth of at least ten times the sum of the following:
  - (a) The applicable annual aggregate required by paragraph (J)(1) of this rule;
  - (b) The total of the applicable aggregate amount required by 40 C. F. R. 280.93 based on the number of USTs located in states other than Ohio for which a financial test is used to demonstrate financial responsibility

to the United States environmental protection agency under 40 C.F.R. 280.95 or to another state implementing agency under a state program approved by the United States environmental protection agency under 40 C.F.R. Part 281;

- (c) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to the United States environmental protection agency under 40 C. F. R. 264.101, 264.143, 264.145, 265.143, 165.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by the United States environmental protection agency under 40 C.F.R. Part 271 including, without limitation, the Ohio environmental protection agency under Chapter 3745 of the Administrative Code; and
  - (d) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to the United States environmental protection agency under 40 C.F.R. 144.63 or to a state implementing agency under a state program authorized by the United States environmental protection agency under 40 C.F.R. Part 145 including, without limitation, the Ohio environmental protection agency under Chapter 3734 of the Administrative Code and the Ohio department of natural resources under Chapter 1501:9 of the Administrative Code.
- (3) The owner or operator shall maintain a letter signed by the chief financial officer worded as specified in paragraph (L)(6) of this rule.
- (4) The owner or operator shall comply with at least one of the following:
- (a) File financial statements annually with the United State securities and exchange commission, the United States energy information administration, the United States rural electrification administration, or the Ohio department of commerce; or
  - (b) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet shall have assigned the firm a financial strength rating of 4A or 5A; or
  - (c) Have an independent certified public accountant conduct an audit or a review of the fiscal year-end financial statements of the owner or operator and prepare a special report wherein the independent certified public accountant states both of the following:

- (i) He has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator with the amounts in such financial statements; and
- (ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

This special report shall be maintained by the owner or operator with the letter required by paragraph (L)(3) of this rule.

- (5) The owner's or operator's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- (6) To demonstrate that it meets the financial test under this rule, the chief financial officer of the owner or operator, shall sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

"Letter from chief financial officer.

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the financial test of self-insurance to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases in the amount of at least [insert: applicable dollar amount from paragraphs (H)(1) to (H)(1)(b) of rule 1301:7-9-05 of the Ohio Administrative Code] per occurrence and [insert: applicable dollar amount from paragraph (J)(1) of rule 1301:7-9-05 of the Ohio Administrative Code] 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,"]: [list for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms are being used to assure any of the tanks at this facility, describe each tank assured by this financial test.]

A [insert: "financial test " and/or "guarantee"] is also used by this [insert:

"owner" or "operator"] to demonstrate evidence of financial responsibility in the following amounts under United States environmental protection agency regulations or state programs authorized by the United States environmental protection agency under 40 C. F. R. Parts 281, 271, and 145:

Appropriate aggregate amount required for USTs in other states by the United States Environmental Protection Agency under 40 C.F.R. 280.93; . . . . .	\$_____
Appropriate aggregate amount required for USTs in other states by another state implementing program authorized by the United States Environmental Protection Agency under 40 C.F.R. Part 281; . . . . .	\$_____
Closure amounts required by the United States Environmental Protection Agency under 40 C.F.R. 264.143 and 265.143; . . . . .	\$_____
Post-closure care amounts required by the United States Environmental Protection Agency under 40 C.F.R. 264.145 and 265.145; . . . . .	\$_____
Liability coverage amounts required by the United States Environmental Protection Agency under 40 C.F.R. 264.147 and 265.147; . . . . .	\$_____
Corrective action amounts required by the United States Environmental Protection Agency under 40 C.F.R. 264.101 (B); . . . . .	\$_____
Plugging and abandonment amounts required by the United States Environmental Protection Agency under 40 C.F.R. 144.63; . . . . .	\$_____
Closure amounts required by all state implementing agencies under state programs authorized by the United States Environmental Protection Agency under 40 C.F.R. Part 271; . . . . .	\$_____
Post-closure care amounts required by all state implementing agencies under state programs authorized by the United States Environmental Protection Agency under 40 C.F.R. Part 271; . . . . .	\$_____
Liability coverage amounts required by all state implementing agencies under state programs authorized by the United States Environmental Protection Agency under 40 C.F.R. Part 271; . . . . .	\$_____
Corrective action amounts required by all state implementing agencies under state programs authorized by the United States Environmental Protection Agency under 40 C.F.R. Part 271; . . . . .	\$_____
Plugging and abandonment amounts required by all state implementing agencies under state programs authorized by the United States Environmental Protection Agency under 40 C.F.R. Part 145 . . . . .	\$_____

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

[Fill in the applicable information below.]

1.	Amount of annual UST aggregate coverage being assured in Ohio by a financial test .....	\$_____
2.	Amount of corrective action, closure and post-closure care costs, liability coverage, plugging and abandonment costs, and UST financial responsibility liabilities in all other states .....	\$_____
3.	Sum of lines 1 and 2 .....	\$_____
4.	Total tangible assets .....	\$_____
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] .....	\$_____
6.	Tangible net worth [subtract line 5 from line 4]. ....	\$_____

		Yes	No
7.	Is line 6 at least ten times line 3? .....	_____	_____
8.	Have financial statements for the latest fiscal year been filed with the United States securities and exchange commission? .....	_____	_____
9.	Have financial statements for the latest fiscal year been filed with the United States energy information administration? .....	_____	_____
10.	Have financial statements for the latest fiscal year been filed with the United States rural electrification administration? .....	_____	_____
11.	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.] . . . . .		
12.	Have financial statements for the latest fiscal year been filed with the Ohio department of commerce?. . . . . .....	_____	_____

[If lines 8 through 12 are all answered "no", please attach the report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4 through 7 above and the financial statements for the latest fiscal year.]

[Complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in paragraph (L)(6) of rule 1301:7-9-05 of the Ohio Administrative Code as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]"

- (7) Within one hundred twenty days of the end of each subsequent financial reporting year, owners and operators using the self-insurance mechanism shall evaluate whether they meet the financial test described in paragraphs (L)(2) to (L)(9) of this rule. If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator shall obtain and demonstrate alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.
- (8) The fire marshal may require reports of financial condition at any time from the owner or operator. If the fire marshal determines, on the basis of such reports or other information, that the owner or operator no longer meets the financial test requirements of paragraphs (L)(2) to (L)(9) of this rule, the owner or operator shall obtain and demonstrate alternate coverage in compliance with this rule within thirty days after notification of such a determination by the fire marshal.
- (9) If the owner or operator fails to obtain alternate assurance within one hundred

fifty days of the end of the financial reporting year after finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within thirty days of notification by the fire marshal that he or she no longer meets the requirements of the financial test, the owner or operator shall notify the fire marshal of such failure within ten days.

(M) Guarantee.

- (1) An owner or operator may satisfy the requirements of paragraphs (H) to (H)(2) of this rule by obtaining a guarantee that conforms to the requirements of paragraphs (M)(2) to (M)(5) of this rule.
- (2) The guarantor shall be in compliance with all applicable sections of Title XXXIX of the Revised Code.
- (3) An owner or operator who uses a guarantee to satisfy the requirements of paragraphs (H) to (H)(2) of this rule shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the fire marshal. This standby trust fund shall meet the requirements specified in paragraphs (R) to (R)(5) of this rule.
- (4) The guarantee shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

"Guarantee.

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], and in compliance with all applicable sections of Title 39 of the Ohio Revised Code, herein referred to as Guarantor, to the Ohio Fire Marshal and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

(1) [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, describe the tanks covered and list the name and address of the facility.] This guarantee satisfies rule 1301:7-9-05 of the Ohio Administrative Code requirements for assuring funding for taking corrective action and compensating third parties for bodily

injury and property damage caused by accidental releases from the above-identified underground storage tank(s) in the amount of [insert applicable dollar amount required under paragraphs (H)(1) to (H)(1)(b) of this rule] per occurrence and [insert applicable dollar amount required under paragraph (J)(3) of this rule] annual aggregate.

(2) On behalf of [owner or operator], Guarantor guarantees to the Ohio Fire Marshal and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Ohio Fire Marshal has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the Guarantor, upon instructions from the Ohio Fire Marshal, shall fund a standby trust fund in accordance with the provisions of paragraphs (AA) to (AA)(3) of rule 1301:7-9-05 of the Ohio Administrative Code, in an amount not to exceed the coverage limits specified above.

In the event that the Ohio Fire Marshal determines that [owner or operator] has failed to perform corrective action for releases from the above-identified tank(s) in accordance with section 3737.88 or 3737.882 of the Ohio Revised Code or Chapter 1301:7-9 of the Ohio Administrative Code, the Guarantor, upon written instructions from the Ohio Fire Marshal, shall fund a standby trust in accordance with the provisions of paragraphs (AA) to (AA)(3) of rule 1301:7-9-05 of the Ohio Administrative Code, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by accidental releases from 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 Ohio Fire Marshal, shall fund a standby trust in accordance with the provisions of paragraphs (AA) to (AA)(3) of rule 1301:7-9-05 of the Ohio Administrative Code to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(3) Guarantor agrees that if, at any time, the Guarantor fails to meet any of the applicable sections of Title 39 of the Ohio Revised Code, Guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate one hundred twenty days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a



voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming Guarantor as debtor, within ten days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to Chapter 1301:7-9 of the Ohio Administrative Code.)

(6) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of rule 1301:7-9-05 of the Ohio Administrative Code for the above-identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

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

(a) any obligation of [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 paragraphs (H) to (H)(2) of rule 1301:7-9-05 of the Ohio Administrative Code.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Ohio Fire Marshal, by any or all third parties, or by [owner or operator].

I hereby certify that [name of Guarantor] is in compliance with all applicable sections of Title 39 of the Ohio Revised Code.

I hereby certify that the wording of this guarantee is identical to the wording

specified in paragraph (M)(4) of rule 1301:7-9-05 of the Ohio Administrative Code as such regulations were constituted on the effective date shown immediately below.

Effective date:

\_\_\_\_\_

[Name of Guarantor].

[Authorized signature for Guarantor].

[Name of person signing].

[Title of person signing].

Signature of witness or notary:"

- (5) The owner or operator shall maintain an original of the guarantee worded as specified in paragraph (M)(4) of this rule.

(N) Insurance and risk retention group coverage.

- (1) An owner or operator may satisfy the requirements of paragraphs (H) to (H)(2) of this rule by obtaining liability insurance that conforms to the requirements of paragraphs (N)(2) and (N)(3) of this rule from a insurer or risk retention group in compliance with Title XXXIX of the Revised Code. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

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

"(a) Endorsement.

Name: [name of each covered location].

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Address: [address of each covered location].

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Policy number: \_\_\_\_\_

Period of Coverage: [current policy period].

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Name of [Insurer or Risk Retention Group]:

---

---

Address of [Insurer or Risk Retention Group]:

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Name of Insured:

---

Address of Insured:

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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, describe the tanks covered and list the name and address of the facility.]

For taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the applicable dollar amount from paragraphs (H)(1) to (H)(1)(b) of this rule] per-occurrence and [insert applicable dollar amounts from paragraph (J)(2) of this rule] aggregate [if the amount of coverage is different for different underground storage tanks or locations, indicate the amount of coverage 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 2 are hereby amended to conform with subsections (A) through (E);

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

B. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the Insured for any such payment made by the ["Insurer" or "Group"].

C. Whenever requested by the Ohio Fire Marshal, the ["Insurer" or "Group"] agrees to furnish to the Ohio Fire Marshal a signed duplicate original of the policy and all endorsements. The ["Insurer" or "Group"] agrees to furnish to the Ohio Fire Marshal copies of all payments made under this policy within ten days of making payment.

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 sixty days after a copy of such written notice is received by the Insured. Cancellation for non-payment of premium or misrepresentation by the Insured will be effective only upon written notice and only after

expiration of a minimum of ten days after a copy of such written notice is received by the Insured.

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 the cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this instrument is identical to the wording in paragraph (N)(2) of rule 1301:7-9-05 of the Ohio Administrative Code and that the ["Insurer" or "Group"] is in compliance with all applicable sections of Title 39 of the Ohio Revised Code.

[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]."

"(b) Certificate of Insurance.

Name: [name of each covered location].

\_\_\_\_\_  
\_\_\_\_\_

Address: [address of each covered location].

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Policy number: \_\_\_\_\_

Endorsement (if applicable):

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Period of Coverage: [current policy period].

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Name of [Insurer or Risk Retention Group]:

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Address of [Insurer or Risk Retention Group]:

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Name of Insured:

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Address of Insured:

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Certification:

1. [Name of Insurer of 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, describe the tank covered and list the name and address of the facility.]

For taking corrective action and compensating third parties for bodily injury

and property damage caused by accidental releases, in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy, arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert applicable dollar amount from paragraphs (H)(1) to (H)(1)(b) of this rule] per-occurrence and [insert applicable dollar amount from paragraph (J)(2) of this rule] annual aggregate [if the amount of coverage is different for different underground storage tanks or locations, indicate the amount of coverage 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"].

C. Whenever requested by the Ohio Fire Marshal, the ["Insurer" or "Group"] agrees to furnish to the Ohio Fire Marshal a signed duplicate original of the policy and all endorsements. The ["Insurer" or "Group"] agrees to furnish to the Ohio Fire Marshal copies of all payments made under this policy within ten days of making payment.

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 sixty days after a copy of such written notice is received by the Insured. Cancellation for non-payment of premium or misrepresentation by the Insured will be effective only upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is received by the Insured.

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 nonrenewal 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 paragraph (N)(2) of rule 1301:7-9-05 of the Ohio Administrative Code and that the ["Insurer" or "Group"] is in compliance with all applicable sections of Title 39 of the Ohio Revised Code.

[Signature of authorized representative of Insurer].

[Type name].

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

[Address of Representative]"

- (3) The insurer or risk retention group which issues a policy shall provide to the fire marshal copies of all payments made under the policy within ten days of making payment.
- (4) If, after a payment under the policy by an insurer or risk retention group, the fire marshal determines that the annual aggregate remaining under the policy is less than the applicable per-occurrence amount required under paragraphs (H)(1) to (H)(1)(b) of this rule for any tank comprising a petroleum UST system within this state, the owner or operator shall obtain and demonstrate alternate coverage in compliance with this rule within thirty days after notification of such a determination by the fire marshal.
- (5) The owner or operator shall maintain a copy of either the endorsement or certificate of insurance worded as specified in paragraph (N)(2) of this rule.

(O) Surety bond.

- (1) An owner or operator may satisfy the requirements of paragraphs (H) to (H)(2) of this rule by obtaining a surety bond that conforms to the requirements of paragraphs (O)(2) and (O)(3) of this rule. The surety company issuing the bond shall be in compliance with all applicable sections of Title XXXIX of the Revised Code.
- (2) The surety bond shall be worded as follows, except that instructions in brackets shall 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, describe the tanks covered and list the name and address of the facility. List the coverage guaranteed by the bond as "taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from operating the underground storage tank"].

Penal sums of bond:

Per occurrence: [insert applicable dollar amounts required under paragraphs (H)(1) to (H)(1)(b) of this rule].

Annual aggregate: [insert applicable dollar amounts required under paragraph (J)(3) of this rule].

Surety's bond number:

\_\_\_\_\_

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Ohio Fire Marshal, 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 paragraphs (H) to (H)(2) of rule 1301:7-9-05 of the Ohio Administrative Code to provide financial assurance for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required by paragraph (O)(4) of rule 1301:7-9-05 of the Ohio Administrative Code 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 sections 3737.88 and 3737.882 of the Ohio Revised Code and Chapter 1301:7-9 of the Ohio Administrative Code and the Ohio Fire Marshal's instructions and compensate injured third parties for bodily injury and property damage caused by accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in paragraphs (X) to (X)(2)(c) of rule 1301:7-9-05 of the Ohio Administrative Code, within one hundred twenty 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 paragraphs (H) to (H)(2) of rule 1301:7-9-05 of the Ohio Administrative Code.

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 Ohio Fire Marshal that the Principal has failed to take corrective action, in accordance with sections 3737.88 and 3737.882 of the Ohio Revised Code and Chapter 1301:7-9 of the Ohio Administrative Code and the Ohio Fire Marshal's instructions, or compensate injured third parties as guaranteed by this bond, the Surety(ies) shall either perform corrective action in accordance with sections 3737.88 and 3737.882 of the Ohio Revised Code and Chapter 1301:7-9 of the Ohio Administrative Code and the Ohio Fire Marshal's instructions and pay third-party liability compensation or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Ohio Fire Marshal under paragraphs (AA) to (AA)(3) of rule 1301:7-9-05 of the Ohio Administrative Code. The surety(ies) shall notify the Ohio Fire Marshal of all payments made under this instrument within ten days of making payment.

Upon notification by the Ohio Fire Marshal that the Principal has failed to provide alternate financial assurance within sixty days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Ohio Fire Marshal 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 Ohio Fire Marshal under paragraphs (AA) to (AA)(3) of rule 1301:7-9-05 of the Ohio Administrative Code.

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

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

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the one hundred twenty 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 Whereof, 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 paragraph (O)(2) of rule 1301:7-9-05 of the Ohio Administrative Code as such regulations were constituted on the date this bond was executed. The persons whose signatures appear below hereby certify that the Surety(ies) are in compliance with all applicable sections of Title 39 of the Ohio Revised Code.

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: \$\_\_\_\_\_ "

- (3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and

annual aggregate penal sums.

- (4) The owner or operator who uses a surety bond to satisfy the requirements of paragraphs (H) to (H)(2) of this rule shall 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 shall be deposited directly into the standby trust fund in accordance with instructions from the fire marshal under paragraphs (AA) to (AA)(3) of this rule. This standby trust fund shall meet the requirements specified in paragraphs (R) to (R)(5) of this rule.
- (5) The owner or operator shall maintain an original of the surety bond worded as specified in paragraph (O)(2) of this rule.

(P) Letter of credit.

- (1) An owner or operator may satisfy the requirements of paragraphs (H) to (H)(2) of this rule by obtaining an irrevocable standby letter of credit that conforms to the requirements of paragraph (P)(2) of this rule. The issuing institution shall be an entity that has the authority to issue letters of credit in the state of Ohio and whose letter-of-credit operations are regulated and examined by a federal or state agency.
- (2) The letter of credit shall 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 the Ohio Fire Marshal].

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 of an amount equal to the per-occurrence amount required under paragraphs (H)(1) to (H)(1)(b) of this rule] U.S. dollars (\$[insert dollar amount]), available upon presentation by you of

- (1) Your signed 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 section 3737.882 of the Ohio Revised Code."

This letter of credit may be drawn on to cover taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from the underground storage tank(s) identified below in the amount of [in words of an amount equal to the per-occurrence amount required under paragraphs (H)(1) to (H)(1)(b) of this rule] \$[insert dollar amount] per occurrence and [in words of an amount equal to the per-occurrence amount required under paragraphs (H)(1) to (H)(1)(b) of this rule] \$[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, describe the tanks covered and list 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 paragraphs (H) to (H)(2) of rule 1301:7-9-05 of the Ohio Administrative Code.

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

twenty 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 paragraph (P)(2) of rule 1301:7-9-05 of the Ohio Administrative Code as such regulations were constituted on the date shown immediately below.

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

[date]

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

- (3) An owner or operator who uses a letter of credit to satisfy the requirements of paragraphs (H) to (H)(2) of this rule shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the fire marshal shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the fire marshal under paragraphs (AA) to (AA)(3) of this rule. This standby trust fund shall meet the requirements specified in paragraphs (R) to (R)(5) of this rule.
- (4) The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit be automatically renewed for the same term as the original term, unless, at least one hundred twenty 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 one hundred twenty days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.
- (5) The owner or operator shall maintain an original of the letter of credit worded as specified in paragraph (P)(2) of this rule.

(Q) Trust fund.

- (1) An owner or operator may satisfy the requirements of paragraphs (H) to (H)(2) of this rule by establishing a trust fund that conforms to the requirements of paragraphs (Q)(1) to (Q)(7) of this rule. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency, the Ohio department of commerce, or an agency of the state in which the fund is established.
- (2) The wording of the trust agreement shall be identical to the wording specified in paragraph (R)(2)(a) of this rule, and must be accompanied by a formal certification of acknowledgement as specified in paragraph (R)(2)(b) of this rule.
- (3) The trust fund, when established, shall be funded for the applicable full required amount of coverage specified in paragraphs (H)(1) to (H)(1)(b) of this rule.
- (4) If the value of the trust fund is greater than the applicable required amount of coverage specified in paragraphs (H)(1) to (H)(1)(b) of this rule, the owner or operator may submit a written request to the fire marshal for release of the excess if such a release is not provided for under the terms of the trust agreement.
- (5) If other financial assurance as specified in paragraphs (W)(1) and (W)(2) of this rule is substituted for all of the trust fund, the owner or operator may submit a written request to the fire marshal for release of the excess.
- (6) Within sixty days after receiving a request from the owner or operator for release of funds as specified in paragraph (Q)(4) or (Q)(5) of this rule, the fire marshal shall instruct the trustee to release to the owner or operator such funds as the fire marshal specifies in writing.
- (7) The owner or operator shall maintain an original of the trust agreement and certification worded as specified in paragraphs (R)(2)(a) and (R)(2)(b) of this rule.

(R) Standby trust fund.

- (1) An owner or operator using any one of the mechanisms authorized by paragraphs (M) to (M)(5), (O) to (O)(5), (P) to (P)(5), or (U)(4)(a) to (U)(4)(b) of this rule shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency, the Ohio department of commerce, or an



agency of the state in which the fund is established.

(2)

- (a) The standby trust agreement, or trust agreement, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

"Trust Agreement.

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 Fire Marshal, a division of the state of Ohio, 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 from underground storage tanks. 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 this 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 successor 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 following paragraph is only applicable to the standby trust fund.]

The Grantor and Trustee hereby establish a standby trust fund, the "Fund", for the benefit of the Ohio Fire Marshal. 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 Ohio Fire Marshal's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Ohio Fire Marshal.

[The following paragraph is only applicable to the trust fund.]

The Grantor and Trustee hereby establish a trust fund, the "Fund", for the benefit of the Ohio Fire Marshal. The Fund shall at all times have a minimum value of [insert: applicable dollar amount from paragraphs (H)(1) to (H)(1)(b) of rule 1301:7-9-05 of the Ohio Administrative Code.] The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund shall be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liability of the Grantor established by the Ohio Fire Marshal.

## Section 4. Payment for Corrective Action and Third-party Liability Claims.

The Trustee shall make payments from the Fund as the Ohio Fire Marshal shall direct, in writing, to provide for the payment of the costs of taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from 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 worker's 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; or

(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 paragraphs (H) to (H)(2) of rule 1301:7-9-05 of the Ohio Administrative Code.

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

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

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

#### Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(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 Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(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 state government; 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 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 other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(A) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(B) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(C) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(D) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government;

(E) To compromise or otherwise adjust all claims in favor of or against the Fund; and

(F) To distribute income of the Fund to the Grantor, but only to an extent which assures that the Fund retains a minimum value equal to [insert: applicable dollar amount from paragraphs (H) to (H)(1)(b) of rule 1301:7-9-05 of the Ohio Administrative Code.]

#### 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 set forth in the attached Schedule B and 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 and shall provide the Grantor and successor trustee with a final accounting of the Fund within thirty days. 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 ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

#### Section 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 C or such other designees as the Grantor may designate by

amendment to Schedule C. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Ohio Fire Marshal to the Trustee shall be in writing, signed by the Ohio Fire Marshal, 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 Ohio Fire Marshal hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Ohio Fire Marshal, 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 Ohio Fire Marshal 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 Ohio Fire Marshal 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 Ohio Fire Marshal issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

#### Section 17. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the state of [insert name of state], 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 paragraph (R)(2)(a) of rule 1301:7-9-05 of the Ohio Administrative Code as such regulations 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 the Witness].

[Title].

[Seal]."

- (b) The standby trust agreement or trust agreement shall be accompanied by a formal certification of acknowledgement worded as follows:

"State of [insert: name of state] \_\_\_\_\_

State of [insert: name of county] \_\_\_\_\_



On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he 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]

[Printed Name of Notary Public]"

- (3) The fire marshal may instruct the Trustee to refund the balance of the standby trust fund or trust fund to the provider of financial assurance if the fire marshal 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 or trust fund was established.
  - (4) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.
  - (5) The owner or operator shall maintain an original of the standby trust agreement and certification worded as specified in paragraphs (R)(2)(a) and (R)(2)(b) of this rule.
- (S) State or political subdivision bond rating test.
- (1) Only the state or a political subdivision owner or operator may use the state or political subdivision bond rating test established in paragraphs (S)(1) to (S)(8) of this rule to satisfy the requirements of paragraphs (H) to (H)(2) of this rule.
  - (2) The state or a general purpose political subdivision owner or operator, or the state or a political subdivision serving as a guarantor may satisfy the requirements of paragraphs (H) to (H)(2) of this rule 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 & Poor's rating of AAA, AA, A, or BBB. Where the state or political subdivision has multiple outstanding issues, or where the state or political subdivision's bonds are rated by both Moody's and Standard & Poor's, the lowest rating shall be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance shall

not be considered in determining the amount of applicable bonds outstanding.

- (3) A political subdivision owner or operator, or political subdivision serving as a guarantor that is not a general purpose political subdivision and does not have the legal authority to issue general obligation bonds may satisfy the requirements of paragraphs (H) to (H)(2) of this rule by having a currently outstanding issue or issues of revenue bonds of one million dollars 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 political subdivision. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond shall be used to determine eligibility. Bonds that are backed by credit enhancement shall not be considered in determining the amount of applicable bonds outstanding.
- (4) The state or a political subdivision owner or operator, or the state or a political subdivision serving as a guarantor shall maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.
- (5) To demonstrate that it meets the state or political subdivision bond rating test set forth in paragraphs (S)(1) to (S)(8) of this rule, the chief financial officer of the state or a general purpose political subdivision owner or operator, or the chief financial officer of the state or a political subdivision serving as a guarantor shall sign a letter worded exactly as follows, except that the instructions in square brackets are to be replaced by the relevant information and the square brackets deleted:

"Letter from chief financial officer

I am the chief financial officer of [insert: name and address of the state or political subdivision owner or operator, or the state or a political subdivision serving as a guarantor]. This letter is in support of the bond rating test to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases in the amount of at least [insert: applicable dollar amount from paragraphs (H)(1) to (H)(1)(b) of rule 1301:7-9-05 of the Administrative Code in words] dollars per occurrence and [insert: applicable dollar amount from paragraph (J)(1) of rule 1301:7-9-05 of the Administrative Code in words] dollars 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 [insert: name of state or political subdivision owner or operator, or the state or a political subdivision serving as a 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: the total of the Outstanding Amount column in words] dollars, 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 twelve months. Neither rating service has provided notification within the last twelve 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 paragraph (S)(5) of rule 1301:7-9-05 of the Ohio Administrative Code as such regulations were constituted on the date shown immediately below.

[Insert: Date]

[Signature of the Chief Financial Officer]

[Insert: The Printed Name of the Chief Financial Officer]

[Insert: Official Title of the Chief Financial Officer]"

- (6) To demonstrate that it meets the state or political subdivision bond rating test set forth in paragraphs (S)(1) to (S)(8) of this rule, the chief financial officer of a political subdivision owner or operator, or a political subdivision serving as a guarantor other than a general purpose political subdivision shall sign a letter worded exactly as follows, except that the instructions in square brackets are to be replaced by the relevant information and the square brackets deleted:

"Letter from chief financial officer

I am the chief financial officer of [insert: name and address of the political subdivision owner or operator, or the political subdivision serving as a guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases in the amount of at least [insert: applicable dollar amount from paragraphs (H)(1) to (H)(1)(b) of rule 1301:7-9-05 of the Ohio Administrative Code in words] dollars per occurrence and [insert: applicable dollar amount from paragraph (J)(1) of rule 1301:7-9-05 of the Ohio Administrative Code in words] dollars annual aggregate arising from operating (an) underground storage tank(s). This political subdivision is not organized to provide general governmental services and does not have the legal authority under Ohio law or the Ohio constitution 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 [insert: name of political subdivision owner or operator, or the political subdivision serving as a 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: the total of the Outstanding Amount column in words] dollars, 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 twelve 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 twelve 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 paragraph (S)(6) of rule 1301:7-9-05 of the Ohio Administrative

Code as such regulations were constituted on the date shown immediately below.

[Insert: Date]

[Signature of the Chief Financial Officer]

[Insert: The Printed Name of the Chief Financial Officer]

[Insert: Official Title of the Chief Financial Officer]"

(7) The fire marshal by require reports of financial condition at any time from the state or a political subdivision owner or operator, or the state or a political subdivision serving as a guarantor. If the fire marshal determines, on the basis of such reports or other information, that the state of a political subdivision owner or operator, or the state or a political subdivision serving as a guarantor, no longer meets the state or political subdivision bond rating test requirements of paragraphs (S)(1) to (S)(8) of this rule, the state or a political subdivision owner or operator shall obtain alternative coverage within thirty days after notification of such finding.

(8) If the state or a political subdivision owner or operator using this bond rating test to provide financial assurance finds that it no longer meets the state or political subdivision bond rating test requirements, the state or a political subdivision owner or operator shall obtain alternative coverage within one hundred fifty days of the change in status.

(T) State or political subdivision financial test.

(1) The state or a political subdivision owner or operator may satisfy the requirements of paragraphs (H) to (H)(2) of this rule by passing the state or political subdivision financial test specified in paragraphs (T)(1) to (T)(6) of this rule. To be eligible to use the state or political subdivision financial test, the state or a political subdivision owner or operator shall have the ability and authority to asses and levy taxes or to freely establish fees and charges. To pass the state or political subdivision financial test, the state or political subdivision owner or operator shall meet the criteria established in paragraphs (T)(2)(b) to (T)(2)(c) of this rule based on year-end financial statements for the latest completed fiscal year.

(2)

(a) The state or a political subdivision owner or operator shall have the

following information available, as shown in the year-end financial statement for the latest completed fiscal year:

- (i) Total revenues: consists of the sum of general fund operating and non-operating revenues including net state or local taxes (as applicable), 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 enterprises, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this state or political subdivision financial test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the state or political subdivision using the state or political subdivision financial test (interfund transfers), liquidation of investments, and issuance of debt.
- (ii) 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 state or political subdivision financial test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the state or political subdivision using this state or political subdivision financial test (interfund transfers).
- (iii) Local revenues: consists of total revenues (as defined in paragraph (T)(2)(a)(i) of this rule) minus the sum of all transfers from other governmental entities, including all monies received from federal, state, or local government sources.
- (iv) Debt service: consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest bearing warrants. Excludes payments on non-interest bearing short-term

obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

(v) 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 state's or political subdivision's financial reporting year. Includes federal securities, federal agency securities, state and political subdivision securities, and other securities such as bonds, notes and mortgages. For the purpose of this state or political subdivision financial test, the calculation of total funds shall exclude agency funds, private funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

(vi) Population: consists of the number of people in the area served by the state or political subdivision.

(b) The state's or political subdivision's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The state or political subdivision cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

(c) The state or political subdivision owner or operator shall have a letter signed by the chief financial officer worded as specified in paragraph (T)(3) of this rule.

(3) To demonstrate that it meets the state or political subdivision financial test contained in paragraphs (T)(1) to (T)(6) of this rule, the chief financial officer of the state or political subdivision owner or operator, shall sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support this state or political subdivision financial test are prepared, a letter worded exactly as follows, except that the instructions in the square brackets are to be replaced by the relevant information and the square brackets deleted:

"Letter from chief financial officer.

I am the chief financial officer of [insert: name and address of the state or political subdivision owner or operator]. This letter is in support of the use of the state or political subdivision financial test to demonstrate financial responsibility for taking corrective action and compensating third parties for

bodily injury and property damage caused by accidental releases in the amount of at least [insert: applicable dollar amount from paragraphs (H)(1) to (H)(1)(b) of rule 1301:7-9-05 of the Ohio Administrative Code in words] dollars per occurrence and [insert: applicable dollar amount from paragraph (J)(1) of rule 1301:7-9-05 of the Ohio Administrative Code in words] dollars 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 state of political subdivision 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 state or political subdivision financial test by the tank identification number required in the annual registration application required by paragraphs (B) to (B)(3) of rule 1301:7-9-04 of the Ohio Administrative Code].

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

#### Worksheet for State or Political Subdivision 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 operating and nonoperating 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 1) (dollars) \_\_\_\_\_

b. Subtract total intergovernmental transfers (dollars) \_\_\_\_\_

c. Local Revenues (dollars) \_\_\_\_\_

### 4. Debt Service

a. Interest and fiscal charges (dollars) \_\_\_\_\_

b. Add debt retirement (dollars) \_\_\_\_\_

c. Total Debt Service (dollars) \_\_\_\_\_

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

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

6. Population (Persons) \_\_\_\_\_

### Part II: Application of Test

### 7. Total Revenues to Population

a. Total Revenues (from 1c) \_\_\_\_\_

b. Population (from 6) \_\_\_\_\_

c. Divide 7a by 7b \_\_\_\_\_

d. Subtract 417 \_\_\_\_\_

e. Divide by 5,212 \_\_\_\_\_

- f. Multiply by 4.095 \_\_\_\_\_
- 8. Total Expenses to Population
  - a. Total Expenses (from 2c) \_\_\_\_\_
  - b. Population (from 6) \_\_\_\_\_
  - c. Divide 8a by 8b \_\_\_\_\_
  - d. Subtract 524 \_\_\_\_\_
  - e. Divide by 5,401 \_\_\_\_\_
  - f. Multiply by 4.095 \_\_\_\_\_
- 9. Local Revenues to Total Revenues
  - a. Local Revenues (from 3c) \_\_\_\_\_
  - b. Total Revenues (from 1c) \_\_\_\_\_
  - c. Divide 9a by 9b \_\_\_\_\_
  - d. Subtract .695 \_\_\_\_\_
  - e. Divide by .205 \_\_\_\_\_
  - f. Multiply by 2.840 \_\_\_\_\_
- 10. Debt Service to Population
  - a. Debt Service (from 4d) \_\_\_\_\_
  - b. Population (from 6) \_\_\_\_\_
  - c. Divide 10a by 10b \_\_\_\_\_
  - d. Subtract 51 \_\_\_\_\_
  - e. Divide by 1,038 \_\_\_\_\_
  - f. Multiply by -1.866 \_\_\_\_\_
- 11. Debt Service to Total Revenues
  - a. Debt Service (from 4d) \_\_\_\_\_

b. Total Revenues from (1c) \_\_\_\_\_

c. Divide 11a by 11b \_\_\_\_\_

d. Subtract .068 \_\_\_\_\_

e. Divide by .259 \_\_\_\_\_

f. Multiply by -3.533 \_\_\_\_\_

12. Total Revenues to Total Expenses

a. Total Revenues (from 1c) \_\_\_\_\_

b. Total Expenses (from 2c) \_\_\_\_\_

c. Divide 12a by 12b \_\_\_\_\_

d. Subtract .910 \_\_\_\_\_

e. Divide by .899 \_\_\_\_\_

f. Multiply by 3.458 \_\_\_\_\_

13. Funds Balance to total revenues

a. Total Funds (from 5) \_\_\_\_\_

b. Total Revenues (from 1c) \_\_\_\_\_

c. Divide 13a by 13b \_\_\_\_\_

d. Subtract .891 \_\_\_\_\_

e. Divide by 9.156 \_\_\_\_\_

f. Multiply by 3.270 \_\_\_\_\_

14. Funds Balance of Total Expenses

a. Total Funds (from 5) \_\_\_\_\_

b. Total Expenses (from 2c) \_\_\_\_\_

c. Divide 14a by 14b \_\_\_\_\_

d. Subtract .866 \_\_\_\_\_

e. Divide by 6.409 \_\_\_\_\_

f. Multiply by 3.270 \_\_\_\_\_

15. Total Funds to Population

a. Total Funds (from 5) \_\_\_\_\_

b. Population (from 6) \_\_\_\_\_

c. Divide 15a by 15b \_\_\_\_\_

d. Subtract 270 \_\_\_\_\_

e. Divide by 4,548 \_\_\_\_\_

f. Multiply by 1.866 \_\_\_\_\_

16. Add  $7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937$  \_\_\_\_\_

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in paragraph (T)(3) of rule 1301:7-9-05 of the Ohio Administrative Code as such regulations were constituted on the date shown immediately below.

[Date]

[Signature of Chief Financial Officer]

[Printed Name of Chief Financial Officer]

[Official Title of Chief Financial Officer]"

- (4) If the state or a political subdivision owner or operator using this state or political subdivision financial test to provide financial assurance finds that it no longer meets the requirements of the state or political subdivision financial test based on the year-end financial statements, the state or political subdivision owner or operator shall obtain alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.
- (5) The fire marshal may require reports of financial condition at any time from the state or political subdivision owner or operator. If the fire marshal

determines, on the basis of such reports or other information, that the state of a political subdivision owner or operator no longer meets the state or political subdivision financial test requirements of paragraphs (T)(1) to (T)(6) of this rule, the state or political subdivision owner or operator shall obtain alternative coverage within thirty days after notification of such finding.

- (6) If the state or political subdivision owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that it no longer meets the requirements of the state or political subdivision financial test based on the year-end financial statements or within thirty days of notification by the fire marshal that it no longer meets the requirements of this state or political subdivision financial test, the state or political subdivision owner or operator shall notify the fire marshal of such failure within ten days.

(U) Political subdivision guarantee.

- (1) The political subdivision owner or operator may satisfy the requirements of paragraphs (H) to (H)(2) of this rule by obtaining a guarantee that conforms to the requirements of paragraphs (U)(1) to (U)(5) of this rule. The guarantor must be either the state in which the political subdivision owner or operator is located or a political subdivision having a substantial governmental relationship with the political subdivision owner or operator and issuing the guarantee as an act incident to that relationship. A political subdivision acting as the guarantor must:
  - (a) Demonstrate that it meets the state or political subdivision bond rating tests requirements of paragraphs (S)(1) to (S)(8) of this rule and deliver a copy of the applicable chief financial officer's letter as contained in paragraphs (S)(5) or (S)(6) of this rule to the political subdivision owner or operator; or
  - (b) Demonstrate that it meets the state or political subdivision financial test requirements of paragraphs N (T)(1) to (T)(6) of this rule and deliver a copy of the chief financial officer's letter as contained in paragraph (T)(3) of this rule to the political subdivision owner or operator; or
  - (c) Demonstrate that it meets the state or political subdivision fund requirements of paragraphs (V)(1) to (V)(1)(d) of this rule and deliver a copy of the chief financial officer's letter as contained in paragraph (V)(1)(d) of this rule to the political subdivision owner or operator.
- (2) If the political subdivision guarantor is unable to demonstrate financial assurance under paragraphs (S)(1) to (S)(8), (T)(1) to (T)(6), or (V)(1) to (V)(1)(d) of this rule, the political subdivision owner or operator shall obtain alternative coverage within thirty days after notification of such finding.

(V)(1)(d) of this rule, at the end of the financial reporting year, the political subdivision guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the political subdivision owner or operator. The guarantee will terminate no less than one hundred twenty days after the date the political subdivision owner or operator receives the notification, as evidenced by the return receipt. The political subdivision owner or operator shall obtain alternative coverage as specified in paragraph (CC)(3) of this rule.

(3) The guarantee agreement shall be worded as specified in paragraphs (U)(4)(a) to (U)(4)(b) or (U)(5)(a) to (U)(5)(b) of this rule, depending on which of the following alternative guarantee agreements is selected:

(a) If, in the default or incapacity of the political subdivision owner or operator, the guarantor guarantees to fund a standby trust as directed by the fire marshal, the guarantee shall be worded as specified in paragraphs (U)(4)(a) or (U)(4)(b) of this rule; or

(b) If, in the default or incapacity of the political subdivision owner or operator, the guarantor guarantees to make payments as directed by the fire marshal for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in paragraphs (U)(5)(a) or (U)(5)(b) of this rule.

(4)

(a) If the guarantor is the state, the political subdivision guarantee with standby trust shall be worded exactly follows, except that the instructions in the square brackets are to be replaced with the relevant information and the square brackets deleted:

"Political Subdivision Guarantee With Standby Trust Made By The State.

Guarantee made this [insert: date] by the State of Ohio, herein referred to as Guarantor, to the Ohio Fire Marshal and to any and all third parties, and obliges, on behalf of [insert: name of the political subdivision owner or operator].

Recitals

(1) Guarantor is the State of Ohio

(2) [Insert: Name of political subdivision 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 required in the annual registration application required by paragraphs (B) to (B)(3) of rule 1301:7-9-04 of the Ohio Administrative Code, and the name and address of the facility.] This guarantee satisfies the requirements of rule 1301:7-9-05 of the Ohio Administrative Code for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases in the amount of at least [insert: applicable dollar amount from paragraphs (H)(1) to (H)(1)(b) of rule 1301:7-9-05 of the Ohio Administrative Code in words] dollars per occurrence and [insert: applicable dollar amount from paragraph (J)(1) of rule 1301:7-9-05 of the Ohio Administrative Code in words] dollars annual aggregate arising from operating the above-identified underground storage tank(s).

(3) Guarantor guarantees to the Ohio Fire Marshal and to any and all third parties that:

In the event that [insert: name of political subdivision owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Ohio Fire Marshal has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the Guarantor, upon instructions from the Ohio Fire Marshal shall fund a standby trust in accordance with the provisions of paragraphs (AA)(1) to (AA)(3) of rule 1301:7-9-05 of the Ohio Administrative Code, in an amount not to exceed the coverage limits specified above.

In the event that the Ohio Fire Marshal determines that [insert: name of the political subdivision 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 the requirements of paragraphs (A) to (O)(2) of rule 1301:7-9-13 of the Ohio Administrative Code, the Guarantor upon written instructions from the Ohio Fire Marshal shall fund a standby trust fund in accordance with the provisions of paragraphs (AA)(1) to (AA)(3) of rule 1301:7-9-05 of the Ohio Administrative Code, in an amount not to exceed the coverage limits specified above.

If [insert: name of the political subdivision owner or operator] fails to satisfy a judgement or award based on a determination of liability for bodily injury or property damage to third parties caused by accidental

releases arising from the operation of the above-identified 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 Ohio Fire Marshal, shall fund a standby trust in accordance with the provisions of paragraphs (AA)(1) to (AA)(3) of rule 1301:7-9-05 of the Ohio Administrative Code to satisfy such judgement(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees to notify [insert: name of the political subdivision owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming Guarantor as debtor, within ten days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [insert: name of the political subdivision owner or operator] pursuant to Chapter 1301:7-9 of the Ohio Administrative Code.

(6) Guarantor agrees to remain bound under this guarantee for so long as [insert: name of the political subdivision owner or operator] must comply with the applicable financial responsibility requirements of rule 1301:7-9-05 of the Ohio Administrative Code for the above-identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [insert: name of the political subdivision owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [insert: name of the political subdivision owner or operator], as evidenced by the return receipt.

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

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

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

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

(d) Property damage to any property owned, rented, loaned to, in the



care, custody, or control of, or occupied by [insert: name of the political subdivision 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: name of the political subdivision 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 paragraphs (H) to (H)(2) of rule 1301:7-9-05 of the Ohio Administrative Code.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Ohio Fire Marshal, by any or all third parties, or by [insert: name of the political subdivision owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in paragraph (U)(4)(a) of rule 1301:7-9-05 of the Ohio Administrative Code as such regulations were constituted on the effective date shown immediately below.

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

State of Ohio.

[Authorized signature for Guarantor].

[Printed Name of Person Signing for the Guarantor].

[Official Title of Person Signing for the Guarantor].

Signature of witness or notary: \_\_\_\_\_ "

- (b) If the guarantor is a political subdivision, the political subdivision guarantee with standby trust must be worded exactly as follows, except that instructions in the square brackets are to be replaced with the relevant information and the square brackets deleted:

"Political Subdivision Guarantee With Standby Trust Made By A Political Subdivision.

Guarantee made this [insert: date] by [insert: name of the political subdivision that is the guaranteeing entity], a political subdivision organized under the laws of the State of Ohio, herein referred to as Guarantor, to the Ohio Fire Marshal and to any and all third parties, and obliges, on behalf of [insert: name of the political subdivision owner or operator].

### Recitals

(1) Guarantor meets or exceeds [insert: "The state or political subdivision bond rating test requirements of paragraphs (S)(1) to (S)(8) of rule 1301:7-9-05 of the Ohio Administrative Code." Or "the state or political subdivision financial test requirements of paragraphs (T)(1) to (T)(6) of rule 1301:7-9-05 of the Ohio Administrative Code." or "the state or political subdivision fund requirements of paragraphs (V)(1) to (V)(1)(d) of rule 1301:7-9-05 of the Ohio Administrative Code."]

(2) [Insert: Name of the political subdivision 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 required in the annual registration application required by paragraphs (B) to (B)(3) of rule 1301:7-9-04 of the Ohio Administrative Code and the name and address of the facility.] This guarantee satisfies the requirements of rule 1301:7-9-05 of the Ohio Administrative Code for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases in the amount of at least [insert: applicable dollar amount from paragraphs (H)(1) to (H)(1)(b) of rule 1301:7-9-05 of the Ohio Administrative Code in words] dollars per occurrence and [insert: applicable dollar amount from paragraph (J)(1) of rule 1301:7-9-05 of the Ohio Administrative Code in words] dollars annual aggregate arising from operating the above-identified underground storage tank(s).

(3) Incidental to our substantial governmental relationship with [insert: name of the political subdivision owner or operator], Guarantor guarantees to the Ohio Fire Marshal and to any and all third parties that:

In the event that [insert: name of political subdivision owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Ohio Fire Marshal has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the Guarantor, upon instructions from the Ohio Fire Marshal shall fund a standby trust in accordance with the provisions of paragraphs (AA)(1) to (AA)(3) of rule 1301:7-9-05 of the Ohio Administrative Code, in an amount not to exceed the coverage limits specified above.

In the event that the Ohio Fire Marshal determines that [insert: name of the political subdivision 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 the requirements of paragraphs (A) to (O)(2) of rule 1301:7-9-13 of the Ohio Administrative Code, the Guarantor upon written instructions from the Ohio Fire Marshal shall fund a standby trust fund in accordance with the provisions of paragraphs (AA)(1) to (AA)(3) of rule 1301:7-9-05 of the Ohio Administrative Code, in an amount not to exceed the coverage limits specified above.

If [insert: name of the political subdivision owner or operator] fails to satisfy a judgement or award based on a determination of liability for bodily injury or property damage to third parties caused by accidental releases arising from the operation of the above-identified 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 Ohio Fire Marshal, shall fund a standby trust in accordance with the provisions of paragraphs (AA)(1) to (AA)(3) of rule 1301:7-9-05 of the Ohio Administrative Code to satisfy such judgement(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the Guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), Guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [insert: name of the political subdivision owner or operator], as evidenced by the return receipt.

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

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [insert: name of the political subdivision owner or operator] pursuant to Chapter 1301:7-9 of the Ohio Administrative Code.

(7) Guarantor agrees to remain bound under this guarantee for so long as [insert: name of the political subdivision owner or operator] must comply with the applicable financial responsibility requirements of rule 1301:7-9-05 of the Ohio Administrative Code for the above-identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [insert: name of the political subdivision owner or operator], such cancellation to become effective no earlier

than one hundred twenty days after receipt of such notice by [insert: name of the political subdivision 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: name of the political subdivision owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

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

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

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: name of the political subdivision 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: name of the political subdivision 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 paragraphs (H) to (H)(2) of rule 1301:7-9-05 of the Ohio Administrative Code.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Ohio Fire Marshal, by any or all third parties, or by [insert: name of the political subdivision owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in paragraph (U)(4)(b) of rule 1301:7-9-05 of the Ohio Administrative Code as such regulations were constituted on the effective date shown immediately below.

Effective Date: \_\_\_\_\_

[Insert: Name of the political subdivision acting as Guarantor].

[Authorized signature for Guarantor].

[Printed Name of Person Signing for the Guarantor].

[Official Title of Person Signing for the Guarantor].

Signature of witness or notary: \_\_\_\_\_ "

(5)

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

"Political Subdivision Guarantee Without Standby Trust Made By The State.

Guarantee made this [insert: date] by the State of Ohio, herein referred to as Guarantor, to the Ohio Fire Marshal and to pay any and all third parties, and obliges, on behalf of [insert: name of the political subdivision owner or operator].

Recitals

(1) Guarantor is the State of Ohio

(2) [Insert: Name of political subdivision 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 required in the annual registration application required by paragraphs (B) to (B)(3) of rule 1301:7-9-04 of the Ohio Administrative Code, and the name and address of the facility.] This guarantee satisfies the requirements of rule 1301:7-9-05 of the Ohio Administrative Code for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases in the amount of at least [insert: applicable dollar amount from paragraphs (H)(1) to (H)(1)(b) of rule 1301:7-9-05 of the Ohio Administrative Code in words] dollars per occurrence and [insert: applicable dollar amount from paragraph (J)(1) of rule 1301:7-9-05 of the Ohio Administrative Code in words] dollars annual aggregate arising from operating the above-identified underground storage tank(s).

(3) Guarantor guarantees to the Ohio Fire Marshal and to any and all

third parties that:

In the event that [insert: name of political subdivision owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Ohio Fire Marshal has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the Guarantor, upon instructions from the Ohio Fire Marshal 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 Ohio Fire Marshal determines that [insert: name of the political subdivision 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 the requirements of paragraphs (A) to (O)(2) of rule 1301:7-9-13 of the Ohio Administrative Code, the Guarantor upon written instructions from the Ohio Fire Marshal shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [insert: name of the political subdivision owner or operator] fails to satisfy a judgement or award based on a determination of liability for bodily injury or property damage to third parties caused by accidental releases arising from the operation of the above-identified 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 Ohio Fire Marshal, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees to notify [insert: name of the political subdivision owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming Guarantor as debtor, within ten days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [insert: name of the political subdivision owner or operator] pursuant to Chapter 1301:7-9 of the Ohio Administrative Code.

(6) Guarantor agrees to remain bound under this guarantee for so long as [insert: name of the political subdivision owner or operator] must comply with the applicable financial responsibility requirements of rule 1301:7-9-05 of the Ohio Administrative Code for the above-identified

tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [insert: name of the political subdivision owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [insert: name of the political subdivision owner or operator], as evidenced by the return receipt. If notified of a probable release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

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

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

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

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

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: name of the political subdivision 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: name of the political subdivision 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 paragraphs (H) to (H)(2) of rule 1301:7-9-05 of the Ohio Administrative Code.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Ohio Fire Marshal, by any or all third parties, or by [insert: name of the political subdivision owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in paragraph (U)(5)(a) of rule 1301:7-9-05 of the Ohio Administrative Code as such regulations were constituted on the effective date shown immediately below.

Effective Date: \_\_\_\_\_

State of Ohio.

[Authorized signature for Guarantor].

[Printed Name of Person Signing for the Guarantor].

[Official Title of Person Signing for the Guarantor].

Signature of witness or notary: \_\_\_\_\_ "

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

"Political Subdivision Guarantee Without Standby Trust Made By A Political Subdivision.

Guarantee made this [insert: Date] by [insert: name of the political subdivision that is the guaranteeing entity], a political subdivision organized under the laws of the State of Ohio, herein referred to as Guarantor, to the Ohio Fire Marshal and to any and all third parties, and obliges, on behalf of [insert: name of the political subdivision owner or operator].

Recitals

(1) Guarantor meets or exceeds [insert: "the state or political subdivision bond rating test requirements of paragraphs (S)(1) to (S)(8) of rule 1301:7-9-05 of the Ohio Administrative Code." Or "the state or political subdivision financial test requirements of paragraphs (T)(1) to (T)(6) of rule 1301:7-9-05 of the Ohio Administrative Code." Or "the state or political subdivision fund requirements of paragraphs (V)(1) to (V)(1)(d) of rule 1301:7-9-05 of the Ohio Administrative Code."]

(2) [Insert: Name of the political subdivision 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 required in the annual registration application required by paragraphs (B) to (B)(3) of rule 1301:7-9-04 of the Ohio Administrative



Code, and the name and address of the facility.] This guarantee satisfies the requirements of rule 1301:7-9-05 of the Ohio Administrative Code for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases in the amount of at least [insert: applicable dollar amount from paragraphs (H)(1) to (H)(1)(b) of rule 1301:7-9-05 of the Ohio Administrative Code in words] dollars per occurrence and [insert: applicable dollar amount from paragraph (J)(1) of rule 1301:7-9-05 of the Ohio Administrative Code in words] dollars annual aggregate arising from operating the above-identified underground storage tank(s).

(3) Incidental to our substantial governmental relationship with [insert: name of the political subdivision owner or operator], Guarantor guarantees to the Ohio Fire Marshal and to any and all third parties that:

In the event that [insert: name of political subdivision owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the Ohio Fire Marshal has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the Guarantor, upon instructions from the Ohio Fire Marshal 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 Ohio Fire Marshal determines that [insert: name of the political subdivision 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 the requirements of paragraphs (A) to (O)(2) of rule 1301:7-9-13 of the Ohio Administrative Code, the Guarantor upon written instructions from the Ohio Fire Marshal shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [insert: name of the political subdivision owner or operator] fails to satisfy a judgement or award based on a determination of liability for bodily injury or property damage to third parties caused by accidental releases arising from the operation of the above-identified 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 Ohio Fire Marshal, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before

cancellation of this guarantee, the Guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), Guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [insert: name of the political subdivision owner or operator], as evidenced by the return receipt.

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

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [insert: name of the political subdivision owner or operator] pursuant to Chapter 1301:7-9 of the Ohio Administrative Code.

(7) Guarantor agrees to remain bound under this guarantee for so long as [insert: name of the political subdivision owner or operator] must comply with the applicable financial responsibility requirements of rule 1301:7-9-05 of the Ohio Administrative Code for the above-identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [insert: name of the political subdivision owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [insert: name of the political subdivision 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 [insert: name of the political subdivision owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

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

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

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: name of the political subdivision 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: name of the political subdivision 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 paragraphs (H) to (H)(2) of rule 1301:7-9-05 of the Ohio Administrative Code.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Ohio Fire Marshal, by any or all third parties, or by [insert: name of the political subdivision owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in paragraph (U)(5)(b) of rule 1301:7-9-05 of the Ohio Administrative Code as such regulations were constituted on the effective date shown immediately below.

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

[Insert: Name of the Political Subdivision acting as Guarantor].

[Authorized signature for Guarantor].

[Printed Name of Person Signing for the Guarantor].

[Official Title of Person Signing for the Guarantor].

Signature of witness or notary: \_\_\_\_\_ "

(V) State or political subdivision fund

(1) The state of a political subdivision owner or operator may satisfy the requirements of paragraphs (H) to (H)(2) of this rule by establishing a dedicated fund account that conforms to the requirements of paragraphs (V) to (V)(1)(d) of this rule. Except as specified in paragraph (V)(1)(b) of this rule, 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 state or political subdivision statute, chapter, 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 and is funded for the amount of coverage required by paragraphs (H) to (H)(1)(b) of this rule; or

- (b) The fund is dedicated by state constitutional provision, or state or political subdivision 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 release arising from the operation of petroleum underground storage tanks, and is funded for five times the amount of coverage required by paragraphs (H) to (H)(1)(b) of this rule; or
- (c) The fund is dedicated by state constitutional provision, or state or political subdivision 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. A payment is made to the fund once every year for seven years until this fund is fully funded. This seven year period is hereafter referred to as the "pay-in-period." The amount of each payment shall be determined by this formula:

$$[\text{TF} - \text{CF}]/\text{Y}$$

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

- (i) The state or political subdivision 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
- (ii) The state or political subdivision owner or operation has a letter signed by the Ohio attorney general stating that the use of the bonding authority will not increase the state's or political

subdivision's debt beyond the legal debt ceilings established by the applicable 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 state or political subdivision fund, the chief financial officer of the state or political subdivision owner or operator, or the state or political subdivision serving as a guarantor shall sign a letter worded exactly as follows, except that the instructions in the square brackets are to be replaced by the relevant information and the square brackets deleted:

"Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the state or political subdivision owner or operator, or the state or political subdivision serving as a guarantor]. This letter is in support of the use of the state or political subdivision fund mechanism to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases in the amount of at least [insert: applicable dollar amount from paragraphs (H)(1) to (H)(1)(b) of rule 1301:7-9-05 of the Ohio Administrative Code in words] dollars per occurrence and [insert: applicable dollar amount from paragraph (J)(1) of rule 1301:7-9-05 of Ohio Administrative Code in words] dollars annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this state or political subdivision fund mechanism: [List for each facility: the name and address of the facility where tanks are assured by this state or political subdivision fund].

[Insert: "The state or political subdivision fund is funded for the amount of coverage required by paragraphs (H) to (H)(1)(b) of rule 1301:7-9-05 of the Ohio Administrative Code." Or "The state or political subdivision fund is funded for five times the amount of coverage required by paragraphs (H) to (H)(1)(b) of rule 1301:7-9-05 of the Ohio Administrative Code." Or "A payment is made to the fund once every year for seven years until the fund is fully-funded and [name or state or political subdivision 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 a dedicated fund." Or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the Ohio Attorney General stating that (1) the use of the bonding authority will not increase the state's or political

subdivision's debt beyond the legal debt ceilings established by the applicable state laws and (2) that prior voter approval is not necessary before use of the bonding authority."]

The details of the state or political subdivision 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 paragraphs (V)(1)(c) to (V)(1)(c)(ii) of rule 1301:7-9-05 of the Ohio Administrative Code, 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 state or political subdivision 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 paragraph (V)(1)(d) of rule 1301:7-9-05 of the Ohio Administrative Code as such regulations were constituted on the date shown immediately below.

[Date]

[Signature of Chief Financial Officer]

[Printed Name of Chief Financial Officer]

[Official Title of Chief Financial Officer]"

(W) Substitution of financial assurance mechanisms by owner or operator.

- (1) An owner or operator may substitute any alternate financial assurance mechanism described in paragraphs (L) to (V)(1)(d) of this rule as specified in this paragraph and paragraph (W)(2) of this rule, provided that at all times he maintains an effective financial assurance mechanism that satisfies the requirements of paragraphs (H) to (H)(2) and (J) to (J)(3) of this rule.
- (2) After obtaining alternate financial assurance as specified in paragraph (W)(1) of this rule, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

(X) Cancellation or nonrenewal by a provider of financial assurance.

- (1) Except as otherwise provided in paragraphs (X)(1)(a) and (X)(1)(b) of this rule, 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.
  - (a) Termination of a political subdivision guarantee, guarantee, a surety bond, or a letter of credit shall not occur until one hundred twenty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
  - (b) Termination of insurance, risk retention group coverage, or the fund coverage except for non-payment or misrepresentation by the insured, shall not occur until sixty 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 fee or misrepresentation by the insured shall not occur until a minimum of ten days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
- (2) If a provider of financial responsibility cancels or fails to renew for reasons other than non-payment of premium or fee or misrepresentation by the insured, or the incapacity of the provider as specified in paragraphs (Y)(1)(b)(i) to (Y)(1)(b)(iii) of this rule, the owner and operator shall obtain alternate coverage as specified in this rule within sixty days after receipt of the notice of termination. If the owner and operator fail to obtain alternate coverage within sixty days after receipt of the notice of termination, the owner and operator shall immediately notify the fire marshal of such failure and submit:
  - (a) The name and address of the provider of financial assurance;
  - (b) The effective date of termination; and
  - (c) The evidence of the financial assistance mechanism subject to the termination maintained in accordance with paragraphs (Z)(2) to (Z)(2)(k) of this rule.

(Y) Reporting by owner and operator.

- (1) Owners and operators shall submit the appropriate forms listed in paragraphs (Z)(2) to (Z)(2)(k) of this rule documenting current evidence of financial responsibility to the fire marshal:
  - (a) Within thirty days after the owner or operator identifies a release from an underground storage tank required to be reported under section 3737.88 or 3737.882 of the Revised Code or this chapter of the Administrative Code.
  - (b) If the owner and operator fail to obtain alternate coverage as required by this rule, within thirty days after the owner or operator receives notice of:
    - (i) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U. S. Code, naming a provider of financial assurance as a debtor; or
    - (ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism; or
    - (iii) Failure of a guarantor to meet the requirements of the financial test; or
    - (iv) Other incapacity of a provider of financial assurance.
  - (c) As required by paragraphs (L)(8), (X)(2) to (X)(2)(c), and (CC)(5) of this rule.
- (2) Owners and operators shall certify compliance with the financial responsibility requirements of this rule when notifying the fire marshal of the installation of a new underground storage tank under paragraphs (C) to (C)(4) of rule 1301:7-9-04 of the Administrative Code.
- (3) The fire marshal may require an owner or operator to submit evidence of financial assurance as described in paragraphs (Z)(2) to (Z)(2)(k) of this rule or other information relevant to compliance with this rule at any time.

(Z) Recordkeeping.

- (1) Owners and operators shall maintain copies of all financial assurance



mechanisms and related documents used to demonstrate financial responsibility under this rule for an underground storage tank until released from the requirements of this rule under paragraph (BB) of this rule. Owners and operators shall maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site shall be made available within twenty-four hours upon request of the fire marshal.

- (2) Owners and operators shall maintain the following types of evidence of financial responsibility:
  - (a) Owners and operators using an assurance mechanism specified in paragraph (L) to (V)(1)(d) of this rule shall maintain a copy of the instrument worded as specified.
  - (b) Owners and operators using a financial test, or a state or political subdivision financial test or a political subdivision guarantee supported by the state or political subdivision financial test shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year and, if applicable, a copy of the special report prepared by an independent certified public accountant. Such evidence shall be on file no later than one hundred twenty days after the close of the financial reporting year.
  - (c) Owners and operators using a guarantee, surety bond, or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
  - (d) A political subdivision owner or operator using a political subdivision guarantee under paragraphs (U)(4)(a) to (U)(4)(b) of this rule shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
  - (e) A state or political subdivision owner or operator using the state or political subdivision bond rating test under paragraphs (S)(1) to (S)(8) of this rule shall maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.
  - (f) A political subdivision owner or operator using the political subdivision guarantee under paragraphs (U)(1) to (U)(5)(b) of this rule, where the guarantor's demonstration of financial responsibility relies on the state or political subdivision bond rating test under paragraphs (S)(1) to (S)(8) of this rule shall maintain a copy of the guarantor's bond rating

published within the last twelve months by Moody's or Standard & Poor's.

- (g) Owners and operators using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.
- (h) Owners and operators shall maintain on file a copy of the current certificate of coverage under the fund.
- (i) A state of political subdivision owner or operator using a state or political subdivision fund under paragraphs (V)(1) to (V)(1)(d) of this rule shall maintain the following documents:
  - (i) A copy of the state constitutional provision or state or political subdivision statute, charter, ordinance, or order dedicating the fund, and
  - (ii) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under paragraphs (V)(1)(c) to (V)(1)(c)(ii) of this rule using incremental funding backed by bonding authority, the financial statements shall show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.
  - (iii) If the fund is established under paragraphs (V)(1)(c) to (V)(1)(c)(ii) of this rule using incremental funding backed by bonding authority, the state or political subdivision owner or operator shall also maintain documentation of the required bonding authority, including either the results of the voter referendum (under paragraph (V)(1)(c)(i) of this rule), or attestation by the Ohio attorney general as specified under paragraph (V)(1)(c)(ii) of this rule.
- (j) A political subdivision owner or operator using the political subdivision guarantee supported by the state or political subdivision fund shall maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

- (k) An owner or operator using an assurance mechanism specified in paragraphs (L) to (V)(1)(d) of this rule shall maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in the square brackets are to be replaced with the relevant information and the square brackets deleted:

"Certification of Financial Responsibility

[owner or operator] hereby certifies that it is in compliance with the requirements of rule 1301:7-9-05 of the Ohio Administrative Code.

The financial assurance mechanism(s) used to demonstrate financial responsibility under rule 1301:7-9-05 of the Ohio Administrative Code 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 the tanks covered by the mechanism.]

The financial assurance mechanism(s) listed above cover(s) taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from underground storage tanks.

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]"

Owners and operators shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

(AA) Drawing on financial assurance mechanisms.

(1) Except as specified in paragraph (AA)(4) of this rule, upon direction from the

fire marshal, the guarantor, surety, or institution issuing a letter of credit shall place the amount of funds stipulated by the fire marshal, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

- (a)
  - (i) The owner and operator fail to establish alternate financial assurance within sixty days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and
  - (ii) The fire marshal determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the fire marshal pursuant to section 3737.88 or 3737.882 of the Revised Code or this chapter of the Administrative Code of a confirmed or suspected release from an underground storage tank covered by the mechanism; or
- (b) Any of the conditions contained in paragraphs (AA)(2)(a) to (AA)(2)(b)(ii) of this rule are satisfied.

(2) The fire marshal may draw on a standby trust fund or trust fund when:

- (a) The fire marshal makes a final determination that a release is suspected or has occurred and corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under sections 3737.88 and 3737.882 of the Revised Code and this chapter of the Administrative Code; or
- (b) The fire marshal has received either:
  - (i) 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 square brackets are to be replaced with the relevant information and the square brackets deleted:

"Certification of Valid Claim

The undersigned, as principals and as legal representatives of [insert: name of the 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 [insert: the appropriate dollar amount in words] dollars.

[Signatures]

Owner or Operator

Attorney for Owner or Operator

(Notary) Date

[Signature(s)]

Claimant(s)

Attorney(s) for Claimant(s)

(Notary) Date";

or

- (ii) 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 covered by financial assurance under this rule and the fire marshal determines that the owner or operator has not satisfied the judgment.
- (3) If the fire marshal determines that the amount of corrective action costs and third-party liability claims eligible for payment under paragraph (AA)(2) to (AA)(2)(b)(ii) of this rule may exceed the balance of the trust fund or 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 fire marshal shall pay third-party liability claims in the order in which the fire marshal receives certification under paragraph (AA)(2)(b)(i) of this rule, and valid court orders under paragraph (AA)(2)(b)(ii) of this rule.
- (4) A state or political subdivision acting as a guarantor under paragraphs (U)(5)(a) to (U)(5)(b) of this rule, shall make payments as directed by the fire marshal under the circumstances set forth in paragraphs (AA)(1) to (AA)(3) of this

rule.

(BB) Release from the requirements.

Owners and operators are no longer required to maintain financial responsibility under this rule for a petroleum UST system after the UST system has been properly closed as required by this chapter of the Administrative Code or, if corrective action is required, after corrective action has been completed in compliance with sections 3737.88 and 3737.882 of the Revised Code and this chapter of the Administrative Code and the petroleum UST system has been properly closed as required by this chapter of the Administrative Code.

(CC) Bankruptcy or other incapacity of owner or operator or provider of financial assurance and non-payment of premium or fee or misrepresentation by the insured.

- (1) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the fire marshal by certified mail of such commencement and submit the appropriate forms listed in paragraphs (Z)(2) to (Z)(2)(k) of this rule documenting current financial responsibility.
- (2) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U. S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner and operator by certified mail of such commencement as required under the terms of the guarantee specified in paragraph (M)(4) of this rule.
- (3) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a state or political subdivision owner or operator as debtor, the state or political subdivision owner or operator shall notify the fire marshal by certified mail of such commencement and submit the appropriate forms listed in paragraphs (Z)(2) to (Z)(2)(k) of this rule documenting current financial responsibility.
- (4) Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a state or political subdivision financial assurance as debtor, such guarantor shall notify the state or political subdivision owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in paragraphs (U)(4)(a) to (U)(5)(b) of this rule.
- (5) Owners and operators who obtain 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, letter of credit, or a certificate of coverage under the fund established in section 3737.91 of the Revised Code. The owner and operator shall obtain alternate financial assurance as specified in this rule within thirty days after receiving notice of such an event. If the owner and operator do not obtain alternate coverage within thirty days after such notification, they shall notify the fire marshal of such failure.

- (6) Within thirty days after receipt of notification that the fund has become incapable of paying for assured corrective action or third-party compensation costs, the owner and operator shall obtain alternate financial assurance.
- (7) Within ten days after receipt of notification of termination of insurance, risk retention group coverage, or the fund coverage because of non-payment of premium or fee or misrepresentation by the insured, the owner and operator shall obtain alternate financial assurance.

(DD) Replenishment of financial assurance mechanisms.

- (1) If at any time a standby trust is funded upon the instruction of the fire marshal with funds drawn from a guarantee, political subdivision guarantee with standby trust, letter of credit, or surety bond, the owner and operator shall within thirty days of being so notified by the fire marshal:
  - (a) Replenish the value of financial assurance to equal the full amount of coverage required, or
  - (b) Acquire another financial assurance mechanism described in paragraphs (L) to (V)(1)(d) of this rule for an amount equal to the full amount of coverage required.
- (2) For purposes of paragraphs (DD) to (DD)(4)(b) of this rule, the full amount of coverage required is the amount of coverage to be provided by paragraphs (H) to (H)(2) and (J) to (J)(3) of this rule.
- (3) If at any time during the policy period the amount of aggregate remaining under an insurance or risk retention group policy is reduced below either the reduced fund deductible or fund deductible, whichever is applicable, the owner and operator shall within thirty days of being so notified by the fire

marshal:

- (a) Replenish the value of financial assurance to equal the applicable policy period aggregate under paragraph (J)(2) of this rule, or
  - (b) Acquire another financial assurance mechanism described in paragraphs (L) to (V)(1)(d) of this rule for an amount equal to the full amount of coverage required.
- (4) If at any time a trust agreement balance established pursuant to paragraphs (Q) to (Q)(7) of this rule is reduced below the full amount of coverage required, the owner and operator shall within thirty days of being so notified by the fire marshal:
- (a) Replenish the value of the trust agreement to equal the full amount of coverage required, or
  - (b) Acquire another financial assurance mechanism described in paragraphs (L) to (P)(5) of this rule for an amount equal to the full amount of coverage required.



Five Year Review (FYR) Dates: 11/24/2015 and 11/24/2020

CERTIFIED ELECTRONICALLY

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Certification

11/24/2015

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Date

Promulgated Under: 119.03  
Statutory Authority: 3737.882  
Rule Amplifies: 3737.882  
Prior Effective Dates: 10/2/90, 6/2/91 (Emer.), 9/11/91, 4/10/92, 1/1/94