

CHAPTER 67**FINANCIAL RESPONSIBILITY**

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6700 PETROLEUM UST SYSTEMS

- 6700.1 The provisions of this chapter shall apply to all owners and operators of petroleum underground storage tank (UST) systems, except as otherwise provided in this section.
- 6700.2 State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States or the District of Columbia government are exempt from the requirements of this section.
- 6700.3 The requirements of this chapter do not apply to owners or operators of any UST system described in §5501.3, 5502.1 or 5503.
- 6700.4 If the owner and operator of a petroleum underground storage tank are separate persons, only the owner shall be required to demonstrate financial responsibility; however, both the owner and operator shall be liable for noncompliance.
- 6700.5 An owner shall not be required to maintain financial responsibility under this section or an UST system after the UST system has been properly closed, in accordance with Chapter 61.

- 6700.6 If corrective action is required before an UST or UST system is closed, the corrective action shall be completed in accordance with the applicable requirements of Chapter 62. After corrective action has been completed and the tank has been properly closed in accordance with Chapter 61, the owner shall no longer be required to demonstrate financial responsibility.
- 6700.7 The amounts of demonstrated financial responsibility assurance required under this section shall not include legal defense costs.
- 6700.8 The owner of one or more existing petroleum UST(s), who has not previously filed a Certification of Financial Responsibility with the Director, shall immediately file such a Certification of Financial Responsibility as described in §6702.7, since all UST owners have been required to comply with the federal financial responsibility requirements since December 31, 1993, or earlier.
- 6700.9 Within thirty (30) days after installation of a new UST, the owner of the petroleum UST shall file with the Director a Certification of Financial Responsibility as described in §6702.7.
- 6700.10 The owner of a petroleum UST system shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in the per-occurrence amount of at least one million dollars (\$1,000,000):
- (a) For a petroleum UST that is located at a petroleum marketing facility; and
 - (b) For a petroleum UST that handles an average of more than ten thousand (10,000) gallons of petroleum per month based on annual throughput for the previous calendar year.
- 6700.11 The owner of a petroleum UST system not covered under §6700.10 shall demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum UST systems in the per-occurrence amount of five hundred thousand dollars (\$500,000).
- 6700.12 The owner of each petroleum UST shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:
- (a) The owner of one (1) to one hundred (100) petroleum UST's shall demonstrate financial responsibility in the amount of one million dollars (\$1,000,000); and

- (b) The owner of one-hundred-one (101) or more petroleum UST's shall demonstrate financial responsibility in the amount of two million dollars (\$2,000,000).

6700.13 For the purposes of §6700.12 and §6700.16 only, the term “petroleum UST” means a single containment unit and does not mean combinations of single containment units.

6700.14 Except as provided in §6700.15 of this section, if an owner uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility (for example, self-insurance for taking corrective action, liability insurance for compensating third parties for bodily injury and property damage caused by sudden accidental releases, and a separate policy of insurance for compensating third parties for bodily injury and property damage caused by non-sudden accidental releases), the amount of assurance provided by each separate mechanism or combination of mechanisms used for each purpose shall be in the full amount specified in §§6700.10, 6700.11 and 6700.12 of this section.

6700.15 If an owner uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different UST's, the annual aggregate amount required under §6700.12 shall be based on the number of tanks covered by each separate mechanism or separate combination of mechanisms.

6700.16 Owners shall review the amount of aggregate assurance provided whenever one (1) or more additional petroleum UST's are acquired or installed. If, after review, the number of petroleum UST's for which financial responsibility must be demonstrated exceeds one hundred (100), the owner shall comply with the requirements of §6700.12(b) of this section (at least two million dollars (\$2,000,000) annual aggregate) by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If financial responsibility is being demonstrated by a combination of mechanisms, the owner shall demonstrate financial responsibility in the amount of at least two million dollars (\$2,000,000) of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

6700.17 The per-occurrence and annual aggregate coverage amounts required under this section shall not in any way limit the liability of the owner or operator.

6701 FINANCIAL RESPONSIBILITY MECHANISMS

6701.1 Subject to the limitations of §§6701.2 and 6701.3 of this section, the owner of a petroleum UST system may use any single mechanism or combination of mechanisms listed in §§6703 through 6711 to demonstrate financial responsibility under this chapter for one (1) or more UST's.

- 6701.2 An owner may use a guarantee or surety bond to establish financial responsibility only if the Corporation Counsel of the District of Columbia has submitted a written statement to the Director that the guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in the District of Columbia.
- 6701.3 An owner may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under §§6703 through 6705, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.
- 6701.4 Subject to the requirements of §§6701.5 and 6701.6, an owner may substitute any alternate financial assurance mechanism or combination of mechanisms specified in §§6703 through 6710 for a financial assurance mechanism currently in place.
- 6701.5 If an owner substitutes an alternate financial mechanism, the owner shall maintain the existing financial assurance mechanism or combination of mechanisms in effect, in compliance with the requirements of §6700, at all times until the transition to the alternative mechanism or mechanisms is completed.
- 6701.6 After obtaining alternate financial assurance that complies with the requirements of §6700, an owner may cancel an existing financial assurance mechanism by providing notice to the provider of financial assurance.
- 6701.7 An owner shall obtain alternate assurance of financial responsibility within thirty (30) days after the owner receives notice of any of the following:
- (a) Commencement of a voluntary or involuntary proceeding under Title 11 of the United States Code (Bankruptcy), naming a provider of financial assurance as a debtor;
 - (b) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;
 - (c) Failure of a guarantor to meet the requirements of the financial test required under this chapter; or
 - (d) Any other incapacity of a provider of financial assurance.

6702 RECORDS AND REPORTS

- 6702.1 Each owner shall maintain a copy of each financial assurance mechanism used to demonstrate financial responsibility under §§6703 through 6711 of this chapter for each underground storage tank until released from the requirements of this chapter under §§6700.5 or 6700.6.

- 6702.2 An owner may maintain the documentary evidence required under §6702.1 at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site shall be made available to the Director upon request.
- 6702.3 Each owner using an assurance mechanism specified in §§6703 through 6710 shall maintain a copy of the appropriate assurance instrument in the form prescribed by the Director.
- 6702.4 Each owner using a financial test of self-insurance or guarantee shall maintain a copy of the chief financial officer's letter of assurance based on year-end financial statements for the most recent completed financial reporting year. This letter shall be on file not later than one hundred twenty (120) days after the close of the owner's financial reporting year.
- 6702.5 An owner 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.
- 6702.6 An owner using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, along with the endorsement or certificate of insurance and any amendments to the agreements.
- 6702.7 An owner using an assurance mechanism specified in §§6703 through 6710 shall maintain a copy of a certification of financial responsibility, in the form prescribed in Appendix 67-1 of this chapter and shall file the form with the Director as required under §6700.8. The form shall be updated whenever there is a change in a financial assurance mechanism used to demonstrate financial responsibility.
- 6702.8 An owner shall submit current evidence of financial responsibility to the Director within thirty (30) days after the owner identifies a release from an underground storage tank required to be reported under §6201 or 6204 of this subtitle.
- 6702.9 An owner shall submit current evidence of financial responsibility to the Director within thirty (30) days after the owner or operator receives notice of the incapacity of a provider of assurance under §6701.7 of this chapter.
- 6702.10 An owner shall certify compliance with the financial responsibility requirements of this chapter as specified in the new tank notification form, when notifying the Director of the installation of a new underground storage tank under the provisions of §5600 of this subtitle.
- 6702.11 The Director may require an owner to submit evidence of financial assurance or any other information relevant to compliance with the provisions of §§6703 through 6711 of this chapter at any time.

6703 FINANCIAL TEST OF SELF-INSURANCE

- 6703.1 An owner, or a guarantor, or both (also written in abbreviated form as “owner/guarantor” in this chapter) may satisfy the requirements of §6700 by passing either of the financial tests set forth in this section.
- 6703.2 To pass a financial test of self-insurance, the owner/guarantor shall meet either of the following, based on year-end financial statements for the latest completed fiscal year:
- (a) The criteria of Test A, as set forth in §6704; or
 - (b) The criteria of Test B, as set forth in §6705.
- 6703.3 To demonstrate that the owner/guarantor meets the financial test under §6703.2(a) or (b), the chief financial officer of the owner/guarantor shall sign, within one hundred twenty (120) days of the close of each financial reporting year, as defined by the twelve (12) month period for which financial statements used support the financial test are prepared, a letter of assurance in the form specified in Appendix 67-2 to this chapter.
- 6703.4 If an owner finds that he or she no longer meets the requirements of the financial test set forth in §6704 or 6705 based on year-end financial statements, the owner shall obtain alternative coverage within one hundred fifty (150) days after the end of the year for which the financial statements used were prepared.
- 6703.5 The Director may require reports of financial condition at any time from the owner/guarantor. If the Director finds, on the basis of any report or other information, that the owner/guarantor no longer meets the financial test requirements of this section, the owner shall be required to obtain alternate coverage within thirty (30) days after notification by the Director of the finding.
- 6703.6 If an owner fails to obtain alternate assurance within one hundred fifty (150) days, as required by §6703.4, or within thirty (30) days of notification by the Director under §6703.5, the owner shall notify the Director of the failure within ten (10) days.

6704 FINANCIAL TEST OF SELF-INSURANCE: TEST A

- 6704.1 In order to meet financial Test A, the owner/guarantor shall have a tangible net worth of at least ten (10) times the aggregate total of the following:
- (a) The total of the applicable aggregate amount required by §6700, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the Director;
 - (b) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and the amount of liability coverage for which a financial test is use to demonstrate financial responsibility to the Director; and

- (c) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to the Director.
- 6704.2 Under Test A, the owner/guarantor shall have a tangible net worth of at least ten million dollars (\$10,000,000).
- 6704.3 Under Test A, the owner/guarantor shall have a letter of assurance signed by the chief financial officer in the form specified in Appendix 67-2 (Alternative I) to this chapter.
- 6704.4 Under Test A, the owner/guarantor's year-end financial statements, if independently audited, may not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- 6704.5 Under Test A, the owner/guarantor, annually shall do either of the following:
 - (a) File financial statements with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or
 - (b) Report the firm's tangible net worth to Dun and Bradstreet. Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

6705 FINANCIAL TEST OF SELF-INSURANCE: TEST B

- 6705.1 In order to meet financial Test B, the owner/guarantor shall meet the federal financial test requirements set forth in Title 40 of the *Code of Federal Regulations* (40 CFR §264.147(f)(1)), substituting the appropriate amount specified in §6700.12(a) or (b) for the "amount of liability coverage" each time specified in that section of the federal regulations.
- 6705.2 Under Test B, the fiscal year-end financial statements of the owner/guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.
- 6705.3 Under Test B, the owner/guarantor's year-end financial statements may not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- 6705.4 Under Test B, the owner/guarantor shall have a letter of assurance signed by the chief financial officer in the form specified in Appendix 67-2 (Alternative II) to this chapter.
- 6705.5 Under Test B, if the financial statements of the owner/guarantor are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration, the owner/operator/guarantor shall obtain a special report by an independent certified public accountant ("CPA") stating the following:

- (a) The CPA 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/guarantor, with the amounts in the financial statements; and
- (c) In connection with that comparison, no matters came to the attention of the CPA which caused him or her to believe that the specified data should be adjusted.

6706 GUARANTEES

- 6706.1 An owner may satisfy the requirements of §6700 of this chapter by obtaining a guarantee that conforms to the requirements of this section.
- 6706.2 The guarantor shall be a firm that meets one (1) of the following criteria:
- (a) It has a controlling interest in the owner;
 - (b) It has a controlling interest in a firm that has a controlling interest in the owner;
 - (c) It is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner; or
 - (d) It is engaged in a substantial business relationship with the owner and issues the guarantee as an act incident to that business relationship.
- 6706.3 Each guarantee issued under this section shall be provided in the form prescribed in Appendix 67-3 of this chapter.
- 6706.4 Within one hundred twenty (120) days after the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of §6703 based on year end financial statements for the latest completed financial reporting year by completing a letter of assurance from the chief financial officer, as described in §6703.3, and delivering the letter to the owner.
- 6706.5 If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within one hundred twenty (120) days after the end of that financial reporting year, the guarantor shall notify the owner by certified mail (return receipt requested) before cancellation or non-renewal of the guarantee.
- 6706.6 If the Director notifies the guarantor that the guarantor no longer meets the requirements of the financial test of §6704 or 6705 and §6703.3, the guarantor shall notify the owner by certified mail (return receipt requested) within ten (10) days of receiving the notification from the Director.

6706.7 If the guarantor no longer meets the financial test, as provided in §6706.5 or 6706.6, the guarantee shall terminate not less than one hundred twenty (120) days after the date the owner receives the notification, as evidenced by the return receipt. The owner shall obtain alternative coverage, in accordance with the provisions of §§6715.3 through 6715.5.

6706.8 An owner who uses a guarantee to satisfy the requirements of §6700 shall establish a standby trust fund when the guarantee is obtained.

6706.9 Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee shall be deposited directly into the standby trust fund in accordance with instructions from the Director under §6712. The standby trust fund shall meet the requirements of §6711 of this chapter.

6707 INSURANCE AND RISK RETENTION GROUP COVERAGE

6707.1 An owner may satisfy the requirements of §6700 by obtaining liability insurance that meets the requirements of this section from a qualified insurer or risk retention group.

6707.2 The liability insurance required under this section may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

6707.3 Each certificate of insurance and each insurance policy endorsement issued under this section shall be in the form prescribed in Appendix 67-4 and Appendix 67-5 of this chapter.

6707.4 Each insurance policy shall be issued by an insurer or risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the District of Columbia.

6708 SURETY BONDS

6708.1 An owner may satisfy the requirements of §6700 by obtaining a surety or performance bond that conforms to the requirements of this section.

6708.2 The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

6708.3 Each surety bond shall be provided in the form prescribed in Appendix 67-6 of this chapter.

6708.4 Under the terms of the bond, the surety shall become liable on the bond obligation when the owner 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 set forth in §6700.

6708.5 The owner who uses a surety bond to satisfy the requirements of §6700 shall establish a standby trust fund when the surety bond is acquired.

6708.6 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 Director under §6712. This standby trust fund shall meet the requirements specified in §6711.

6709 LETTER OF CREDIT

6709.1 An owner may satisfy the requirements of §6700 by obtaining an irrevocable standby letter of credit that meets the requirements of this section.

6709.2 The issuing institution shall be an entity that has the authority to issue letters of credit in the District of Columbia and whose letter of credit operations are regulated and examined by an agency of the federal government or the District of Columbia.

6709.3 Each letter of credit issued under this section shall be in the form prescribed in Appendix 67-7 to this chapter.

6709.4 An owner that uses a letter of credit to satisfy the requirements of §6700 shall also establish a standby trust fund when the letter of credit is acquired.

6709.5 Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Director shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Director under §6712. The standby trust fund shall meet the requirements specified in §6711.

6709.6 Each letter of credit shall be irrevocable with a term specified by the issuing institution.

6709.7 Each letter of credit shall provide that credit be automatically renewed for the same term as the original term, unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies the owner by certified mail (return receipt requested) of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty (120) days shall begin on the date when the owner receives the notice, as evidenced by the return receipt.

6710 PRIVATE TRUST FUNDS

6710.1 An owner may satisfy the requirements of §6700 by establishing a trust fund that conforms to the requirements of this section.

6710.2 The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by an agency of the federal government or the District of Columbia.

6710.3 Each trust agreement shall be in the form prescribed by the Director and shall be accompanied by a formal certification of acknowledgement in the form prescribed in Appendix 67-8 of this chapter.

6710.4 The trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

- 6710.5 If the value of the trust fund is greater than the required amount of coverage, the owner may submit a written request to the Director for release of the excess.
- 6710.6 If other financial assurance, or combination of assurance mechanisms, as specified in §§6703 through 6709, is substituted for all or part of the trust fund, the owner may submit a written request to the Director for release of the excess.
- 6710.7 Within sixty (60) days after receiving a request from the owner for release of funds, as specified in §6710.5 or 6710.6 of this section, the Director shall instruct the trustee in writing to release to the owner a specified amount of excess funds determined by the Director to be the proper amount for compliance with the requirements of this chapter.

6711 STANDBY TRUST FUNDS

- 6711.1 An owner using any of the mechanisms authorized under §6706, 6708, or 6709 shall establish a standby trust fund when the mechanism is acquired.
- 6711.2 The trustee of a standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are examined and regulated by an agency of the federal government or the District of Columbia.
- 6711.3 Each standby trust agreement or trust agreement shall be in the form prescribed in Appendix 67-8 of this chapter, and shall be accompanied by formal certification of acknowledgement also in the form prescribed in Appendix 67-8.
- 6711.4 The Director shall instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.
- 6711.5 An owner may establish a single trust fund as the depository mechanism for all funds assured in compliance with this chapter, including standby trust funds.

6712 DRAWING ON FINANCIAL ASSURANCE MECHANISM

- 6712.1 The Director shall require a guarantor, surety, or issuer of a letter of credit to place the amount of funds stipulated by the Director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if both of the following occur:
- (a) The owner fails to establish alternate financial assurance within sixty (60) days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and
 - (b) The Director 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 Director of a release from an underground storage tank covered by the assurance mechanism.

- 6712.2 The Director shall require a guarantor, surety, or person issuing a letter of credit to place a specified amount of funds, up to the limit of funds provided by the financial assurance mechanism, into a standby trust if either of the following occurs:
- (a) The Director makes a final determination that a release has occurred, that Corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted the required corrective action under Chapter 62; or
 - (b) The Director has received either of the following:
 - (1) Certification that a third-party liability claim should be paid, in accordance with §6712.3(b)(1); or
 - (2) A valid final court order establishing a judgment against the owner or operator, and the Director determines that the owner or operator has not satisfied the judgment.
- 6712.3 The Director may draw on a standby trust fund when either of the following occurs:
- (a) The Director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under Chapter 62; or
 - (b) The Director has received either of the following:
 - (1) Certification from the owner, the third-party liability claimant(s), and the attorney(s) representing the owner and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification shall be in the form prescribed in Appendix 67-9 to this chapter; or
 - (2) A valid final court order establishing a judgment against the owner or Operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this chapter, and the Director determines that the owner or operator has not satisfied the judgment.
- 6712.4 If the Director determines that the amount of corrective action costs and third-party liability claims eligible for payment as provided in §6712.3(b) of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment.
- 6712.5 The Director shall pay third-party liability claims in the order in which the Director receives certifications and valid court orders under §6712.3(b).
- 6713 REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS**

6713.1 If at any time after a standby trust is funded upon the instruction of the Director with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner shall do either of the following by the anniversary date of the financial mechanism from which the funds were drawn:

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

6713.2 For purposes of this section, the full amount of coverage required is the amount of coverage to be provided under §6700. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

6714 CANCELLATION OR NON-RENEWAL OF FINANCIAL ASSURANCE

6714.1 Except as otherwise provided in this chapter, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail (return receipt requested) to the owner.

6714.2 Termination of a guarantee, surety bond, or letter of credit may not occur until one hundred twenty (120) days after the date on which the owner receives the notice of termination, as evidenced by the return receipt.

6714.3 Termination of insurance or risk retention group coverage, except for non-payment or misrepresentation by the insured may not occur until sixty (60) days after the date on which the owner receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of ten (10) days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

6714.4 The provider of financial assurance shall send a copy of each notice of cancellation or termination to the Director at the same time the notice is sent to the owner.

6714.5 If a provider of financial responsibility cancels or fails to renew for reasons other than the incapacity of the provider as specified in §6701.7, the owner shall obtain alternate coverage as specified in this section within sixty (60) days after receipt of the notice of termination.

6714.6 If an owner fails to obtain alternate coverage within sixty (60) days after receipt of a notice of termination, the owner shall notify the Director of the failure and submit the following to the Director:

- (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 §6702 of this chapter.

6715 BANKRUPTCY OR INCAPACITY

- 6715.1 Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 of the United States Code (Bankruptcy), naming an owner as debtor, the owner shall notify the Director by certified mail (return receipt requested) of the commencement of the proceedings and submit to the Director the appropriate forms listed in §§6702.4 through 6702.7, documenting current financial responsibility.
- 6715.2 Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 of the United States Code (Bankruptcy), naming a guarantor providing financial assurance as debtor, the guarantor shall notify the owner by certified mail (return receipt requested) of the commencement of proceedings, as required under the terms of the guarantee specified in §6706 of this chapter.
- 6715.3 An owner who obtains financial assurances by a mechanism other than the financial test of self-insurance shall be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit.
- 6715.4 An owner shall obtain alternate financial assurance, in accordance with the requirement of this chapter, within thirty (30) days after receiving notice of the bankruptcy or incapacity of its provider of financial assurance, or the suspension or revocation of the authority of its provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit.
- 6715.5 If an owner does not obtain alternate coverage within thirty (30) days after notification of bankruptcy or incapacity, as provided in this section, the owner shall notify the Director.

APPENDIX 67-1

CERTIFICATION OF FINANCIAL RESPONSIBILITY

_____ hereby certifies that is in compliance with the financial responsibility
[owner]

requirements of Chapter 67.

The financial assurance mechanism(s) used to demonstrate financial responsibility under Chapter 67 of this title are as follows: _____

[Type of mechanisms] _____
[Name of issuer] _____
[Mechanism number (if applicable)] _____
[Amount of coverage] _____
[Effective period of coverage] _____

Whether mechanism covers "taking correction action" or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."

[Type of mechanisms] _____
[Name of issuer] _____
[Mechanism number (if applicable)] _____
[Amount of coverage] _____
[Effective period of coverage] _____

Whether mechanism covers "taking correction action" or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."

[Signature of Owner] _____
[Name of owner] _____
[Title] _____
[Date] _____
[Signature of witness or notary] _____
[Signature of witness or notary] _____
[Name of witness or notary] _____
[Date] _____

The owner must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

**APPENDIX 67-2
FINANCIAL TEST OF SELF INSURANCE
LETTER FROM CHIEF FINANCIAL OFFICER**

I am the chief financial officer of _____
[name and address of the owner or guarantor]

This letter is in support of the use of _____
[“the financial test of self-insurance” and/or guarantee”]

to demonstrate financial responsibility for _____
[“taking corrective action” and/or compensating
third parties for bodily injury and property damage”]

caused by _____
[“sudden accidental releases” and/or “nonsudden accidental releases”]

in the amount of at least _____
[dollar amount]

per occurrence and _____ annual aggregate arising operating (an)
underground
[dollar amount]

storage tank(s). Underground storage tanks at the following facilities are assured by this
financial test by this _____
[“owner” and/or “guarantor”]

<u>UST Facility I.D. Number</u>	<u>Number of UST(s)</u>	<u>Name/Address of UST(s) Facility</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to §5600 of this subtitle.]

A _____ is also used by

_____ [financial test and/or guarantee] [owner or guarantor]

to demonstrate evidence of financial responsibility in the following amounts under other
EPA regulations or state programs authorized by EPA under 40 CFR Parts 145 and 271:

Closure (§§264.143 and 265.143) _____

Post-Closure Care (§§264.145 and 265.145)	_____
Liability Coverage (§§264.147 and 265.147)	_____
Corrective Action (§264.101(b))	_____
Plugging and Abandonment (§144.63)	_____
Closure	_____
Post-Closure Care	_____
Liability Coverage	_____
Corrective Action	_____
Plugging and Abandonment	_____
Total	_____

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

[Fill in the information for Alternative I if the criteria of §6704 are being used to demonstrate
 compliance with the financial test requirements. Fill in the information for Alternative II if the
 criteria of §6705 are being used to demonstrate compliance with the financial test requirements.]

Alternative I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee. \$ _____
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee. \$ _____
3. Sum of lines 1 and 2 _____ \$ _____
4. Total tangible assets _____ \$ _____
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] _____ \$ _____
6. Tangible net worth [subtract line 5 from line 4]
Yes No \$ _____
7. Is line 6 at least ten million dollars (\$10,000,000)? _____
8. Is line 6 at least 10 times line 3? _____
9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? _____
10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? _____
11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? _____
12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] _____
13. Has financial information been provided to the Board of Governors of the Federal Reserve System, the Comptroller of the Currency or the Federal Deposit Insurance Corporation? _____

Alternative II

1.	Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee.	\$ _____
2.	Amount of corrective action, closure and post-closure care cost, liability coverage, and plugging and abandonment costs covered by a financial test or guarantee	\$ _____
3.	Sum of lines 1 and 2 _____	\$ _____
4.	Total tangible assets _____	\$ _____
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] _____	\$ _____
6.	Tangible net worth [subtract line 5 from line 4]	\$ _____
7.	Total assets in the U.S. [required only if less than ninety percent (90%) of assets are located in the U.S.] _____	\$ _____
		Yes No
8.	Is line 6 at least ten million dollars (\$10,000,000)?	_____
9.	Is line 6 at least six (6) times line 3?	_____
10.	Are at least ninety percent (90%) of assets located in the U.S.? [If "No," complete line 11]	_____
11.	Is line 7 at least six (6) times line 3? [Fill in either lines 12-15 or lines 16-18:]	_____
12.	Current Assets _____	\$ _____
13.	Current Liabilities _____	\$ _____
14.	Networking capital [subtract line 13 from line 12]	\$ _____
		Yes No
15.	Is line 14 at least 6 times line 3?	_____
16.	Current bond rating of most recent bond issue.	_____
17.	Name of rating service	_____
18.	Date of maturity of bond	_____

Alternative II (Continued)

Yes

No

19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, the Rural Electrification Administration, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency or the Federal Deposit Insurance Corporation? _____

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

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

I hereby certify that the wording of this letter is identical to the wording specified in Appendix 67-2 to the UST Regulations, DCMR Title 20, Environment, as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

GUARANTEE

RECITALS:

- | UST Facility I.D.
Number | Number of UST(s) | Name/Address of
UST(s) Facility |
|-----------------------------|------------------|------------------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

[dollar amount]

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corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with Chapter 62, the guarantor upon written instructions from the Director shall fund a standby trust fund in accordance with the provisions of §6712 in an amount not to exceed the coverage limits specified above.

If _____ fails to satisfy a judgment or award based on a determination of liability for
[owner]
bodily injury or property damage to third parties caused by _____ accidental
[“sudden” or “nonsudden”]
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 Director, shall fund a standby trust fund in accordance with the provisions of §6712 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

- (4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of §6703 or 6704 and §6705, guarantor shall send within one hundred twenty (120) days of such failure, by certified mail notice to owner. The guarantee will terminate one hundred twenty (120) days from the date of receipt of the notice by _____, as evidenced by the return receipt.
[owner]
- (5) Guarantor agrees to notify _____ by certified mail of a voluntary or involuntary proceeding
[owner]
under Title II (Bankruptcy), U.S. Code, naming guarantor as debtor, within ten (10) days after commencement of the proceeding.
- (6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of _____ pursuant to Chapter 67 of this title.
[owner]
- (7) Guarantor agrees to remain bound under this guarantee for so long as _____ must comply with
[owner]
the applicable financial responsibility requirements of the regulations under Chapter 67 for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to _____, such cancellation to become effective no earlier than one hundred twenty (120) days
[owner]
after receipt of such notice by _____ as evidenced by the return receipt.
[owner]
- (8) The guarantor’s obligation does not apply to any of the following:
 - (a) Any obligation of _____ under a workers’ compensation, disability benefits,
[owner]
or unemployment compensation law or other similar law;
 - (b) Bodily injury to an employee of _____ arising from, and in the course of, employment by
[owner]
_____;
[owner]
 - (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
 - (d) Property damage to any property owned, rented, loaned to, in the care of, custody, or control of, or occupied by _____ that is not the direct result of a release from a petroleum
[owner]
underground storage tank; and
 - (e) Bodily damage or property damage for which _____ is obligated to pay damages by
[owner]
reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of §§6700.10 through 6700.17; and

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

I hereby certify that the wording of this guaranteed is identical to the wording specified in Appendix 67-3 as such regulations were constituted on the effective date shown immediately below.

Effective date _____
Name of guarantor _____
Authorized signature for guarantor _____
Name of person signing _____
Title of person signing _____
Signature of witness or notary _____

APPENDIX 67-4

CERTIFICATE OF INSURANCE

Name and address of each covered location:

Policy number:

Endorsement (if

applicable):

Period of coverage: [current policy
period]

Name of [Insurer or Risk Retention
Group]:

Address of Insurer or Risk Retention
Group]:

Name of

insured:

Address of

insured:

CERTIFICATION:

(I) _____, the
“Insurer”

[name of Insurer or Risk Retention Group]

or “Group” as identified above, hereby certifies that it has issued liability insurance covering the following
underground storage tanks:

UST Facility I.D. Number	Number of UST(s)	Name/Address of UST Facility
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to §5600 of this subtitle and the name and address of the facility.] for _____ [insert: “taking corrective

action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental

releases” or “nonsudden accidental releases” or “accidental releases” in accordance with and subject to the limits

of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or

_____ arising from
operating the locations, indicate the type of coverage applicable to each tank or location] underground storage tank(s)
identified above.

The limits of liability are _____

[insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer’s or Group’s

liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs which are subject to a separate limits under the policy.

This coverage is provided under _____ The effective date of said policy is _____.
[policy number] [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 _____ of its obligations
[Insurer or Group]
- (b) The _____ is liable for the payment of amounts within any deductible
[Insurer or Group]
applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured from any such payment made by the _____.
[Insurer or Group]
This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §§6703 through 6710.
- (c) Whenever requested by the Director, the _____ agrees to furnish to the Director
[Insurer or Group]
a signed duplicate original of the policy and all endorsements.
- (d) Cancellation or any other termination of the insurance by the _____ except for non-
[Insurer or Group]
payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten (10) 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 (10) days after a copy of such written notice is received by the insured.

Insert for claims-made policies:

- (e) The insurance covers claims otherwise covered by the policy that are reported to the _____ within six (6) months of the effective date of cancellation or non-renewal of
[Insurer or Group]
The policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this instrument is identical to the wording in Appendix 67-4 of the UST Regulations, (DCMR Title 20, Environment, and that the _____

is _____ Insurer or Group]
[licensed to transact the business of insurance, or eligible to provide insurance as an
excess or surplus lines insurer, in one or more states"].

[Signature of Authorized Representative of _____ Insurer]
[Name of person signing] _____
[Title of person signing] _____
Authorized representative of _____
Insurer or Risk Retention Group]

Address of Representative] _____

APPENDIX 67-5

ENDORSEMENT

Name and address of each covered location: _____

Policy number: _____

Period of coverage: [current policy period] _____

Name and address of [Insurer or Risk Retention Group]: _____

Name of insured: _____

Address of insured: _____

ENDORSEMENT:

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

UST Facility I.D. Number	Number of UST(s)	Name/Address of UST Facility
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to §5600 of this subtitle and the name and address of the facility.]

For _____
 [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property
 damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or

 "accidental releases" in accordance with and subject to the limits
 of liability, exclusions, conditions,

 and other terms of the policy; if coverage is different for different tanks
 or
 locations, indicate the type

 of coverage applicable to each tank or arising from operating the
 underground storage tank(s) location] _____ identified above.

The limits of liability are

 [Insert the dollar amount of the "each occurrence" and "annual aggregate"
 limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for
 different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for
 each UST or location exclusive of legal defense costs which are subject to a separate limit under the policy.]

This coverage is provided under _____ The effective date of said policy is
 _____.

[date] [policy number]

(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 _____ of
[Insurer or Group]
its obligations under the policy to which this endorsement is attached;
- (b) The _____ is liable for the payment of amounts within any deductible
[Insurer or Group]
applicable to the policy to the provider of corrective action or a damage third-party, with a right of reimbursement by the insured for any such payment made by the _____.
[Insurer or Group]

This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §6703 through §6710 of this title;

- (c) Whenever requested by the Director _____ agrees to furnish to the Director
[Insurer or Group]
a signed duplicate original of the policy and all endorsements;
- (d) Cancellation or any other termination of the insurance by the _____ except for non-
[Insurer or Group]
payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten (10) days after a copy of such written notice is received by the insured [Insert for claims made policies]; and
- (e) The insurance covers claims otherwise covered by the policy that are reported to the

[Insurer or Group]
within six (6) months of the effective date of the cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy].

I hereby certify that the wording of this instrument is identical to the wording in Appendix 67-5 to the UST Regulations (DCMR Title 20, Environment) and that the _____
[Insurer or Group]

Is _____
[licensed to transact the business of insurance or eligible to provide insurance as _____

excess or surplus lines insurer in one or are states"].

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

[Name of person signing]

[Title of person signing]

[Authorized Representative of]

[name of Insurer or Risk Retention Group]

[Address of Representative]

APPENDIX 67-6

PERFORMANCE BOND

Date bond executed: _____

Period of coverage: _____

Principal: [legal name and business address of owner] _____

Type or Organization: [insert "individual," "joint venture," "partnership," or "corporation"] _____

State of incorporation (if applicable): _____

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

SCOPE OF COVERAGE:

UST Facility I.D. Number	Number of UST(s)	Name/Address of UST Facility
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to §5600 of this title, and the name and address of the facility as above.]

List the coverage guaranteed by the bond:

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

Penal Sums of Bond:

Per-occurrence \$ _____

Annual aggregate \$ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the District of Columbia Department of Health (DOH) 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.

District of Columbia Municipal Regulations

[“Taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location]

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully_____

[“Corrective action in accordance with DCMR Title 20, Environment, Chapter 62 and the Director’s instructions,” or third-party liability compensation”]

or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Director under §6712.

Upon notification by the Director that the Principal has failed to provide alternate financial assurance within sixty (60) days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Director 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 Director under §6712.

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

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

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

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

In Witness 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 Appendix 67-6 of the UST Regulations (DCMR Title 20, Environment) on the date this bond was executed.

Principal
 [Signature(s)] _____
 [Names] _____

 [Title(s)] _____

 [Corporate seal] _____
 Corporate surety(ies)
 [Name and address] _____
 [State of incorporation] _____
 [Liability limit] \$ _____
 [Signature(s)] _____

[Names(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: \$ _____

IRREVOCABLE STANDBY LETTER OF CREDIT

- (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 _____ that is not the direct result of a release from a petroleum underground storage tank;
[insert owner or operator]
- (e) Bodily injury or property damage for which _____ is obligated to pay
[insert owner or operator]
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 §§6700.10 through 6700.17 of this chapter.

This letter of credit is effective as of _____ and shall expire on _____, but such expiration date shall be
[date] [date]
automatically extended for a period of _____

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

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
_____ in accordance with your instructions.
[owner]

We certify that the wording of this letter of credit is identical to the wording specified in Appendix 67-7 to the UST
Regulations, DCMR Title 20, Environment, on the date shown immediately below.

[Signature(s) and title(s) of
official(s) of issuing institution] 1. _____ Title _____
2. _____ Title _____
[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"].

APPENDIX 67-8

PRIVATE TRUST AGREEMENT

Trust agreement, the “Agreement,” entered into as of _____ by and between _____,
[date] [name of owner]
a _____ [“corporation”, “partnership,” “association,” or “proprietorship”], the “Grantor,”
[name of state]
and

[name of corporation]

“Incorporated in the State of _____” or “a
_____ national bank]
The Trustee.”

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

[Whereas, the Grantor has elected to establish

[Insert either “a guarantee,” “surety bond,” or “letter of credit”]

to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

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

SECTION 1. DEFINITIONS

As used in this Agreement:

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

SECTION 2. IDENTIFICATION OF THE FINANCIAL ASSURANCE MECHANISM

This Agreement pertains to the

[identify the financial assurance mechanism, either a guarantee, surety bond, or

letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement)].

SECTION 3. ESTABLISHMENT OF FUND

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

SECTION 4. PAYMENT FOR [“CORRECTIVE ACTION“ OR “THIRD-PARTY LIABILITY CLAIMS”]

The Trustee shall make payments from the Fund as the Director shall direct, in writing, to provide for the payment of the costs of

[insert: “taking corrective action” or “compensating third parties for bodily injury and property

damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”]

arising from operating the tanks or covered by the financial assurance mechanism identified in the Agreement.

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

- (a) Any obligation of _____ under a workers’ compensation, disability benefits, or
[insert owner or operator]
unemployment compensation law or other similar law;
- (b) Bodily injury to any employee of _____ arising from, and in the course of
[owner or operator]
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 _____ that is not the direct result of a release from a petroleum
[insert owner or operator]
underground storage tank;
- (e) Bodily injury or property damage for which _____ is obligated to pay damages by
reason _____
[owner or operator]
of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of §§6700.10 through 6700.17 of this chapter.

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

SECTION 5. PAYMENTS COMPRISING

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

SECTION 6. TRUSTEE MANAGEMENT

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time-to-time, subject, however, to the provisions of this

section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (c) The Trustee is authorized to hold cash awaiting investment or distribution 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 discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

SECTION 9. TAXES AND EXPENSES

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

SECTION 10. ADVICE COUNSEL

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

SECTION 11. TRUSTEE COMPENSATION

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

SECTION 12. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

SECTION 13. INSTRUCTIONS TO THE TRUSTEE

All orders, requests, and instructions by the Grantor to the trustee shall be in writing, signed by such persons as are designated in Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Director to the Trustee shall be in writing, signed by the Director, 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 Director 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 Director, 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 Director if the Grantor ceases to exist.

SECTION 15. IRREVOCABILITY TERMINATION

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

Title 20

District of Columbia Municipal Regulations

This Agreement shall be administered, construed, and enforced according to the laws of the District of Columbia, or the Comptroller of the Currency in the case of National Association banks.

SECTION 18. INTERPRETATION

As used in this Agreement, words in singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness 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 Appendix 67-8 to the UST Regulations, DCMR Title 20, Environment, on the date written above.

[Signature of grantor]

[Name of the grantor]

[Title]

Attest:

[Signature of trustee]

[Name of trustee]

[Title]

[Seal]

Attest:

[Signature of witness]

[Name of witness]

[Title]

[Seal]

The standby trust agreement or trust agreement must be accompanied by a formal certification of acknowledgement similar to the following:

District of Columbia, ss:

_____ On this _____, before me personally came
_____ to me known, who, being by me duly sworn, [date]
[owner]

did depose and say that he/she resides at _____ that he/s he is

[address]

[title]

of _____, the corporation described in and which executed the above instrument; that he/she knows
[corporation]

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 he/she signed his/her name thereto by like order.

[Signature of notary public] _____

[Name of notary public] _____

SCHEDULE A TO PRIVATE TRUST AGREEMENT

UST Facility I.D.
Number

Number of UST(s)

Name/Address of
UST Facility

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to §5600 of this subtitle, and the name and address of the facility as above.]

SCHEDULE B TO PRIVATE TRUST AGREEMENT

[Grantor should list here the name, title, and business address of each person with authority to issue orders, requests or instructions pertaining to this Private Trust Agreement on behalf of Grantor.]

APPENDIX 67-9

CERTIFICATION OF VALID CLAIM

The undersigned, as principals and as legal representatives of _____
[owner]

and _____
[insert name and address of third-party claimant]

hereby certify that the claim of bodily injury [and/or] property damage caused by accidental release arising from
operating _____ underground storage tank should be paid in the
[owner or operator]

amount of \$[_____].

[Signature(s)] _____ [Signature(s)] _____

Owner or operator _____ Claimant(s) _____

Attorney for _____ Attorney(s) for

Owner _____ Claimant(s) _____

(Notary) _____ Date _____ (Notary) _____ Date _____