

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 74A; (7 Del.C. Ch. 74A)
7 DE Admin. Code 1352

FINAL

Secretary's Order No.: 2017-WH-0013

1352 Aboveground Storage Tanks

Date of Issuance: March 13, 2017

Effective Date of the Amendment: April 11, 2017

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 Del.C. §§6006, 6010, and 7 Del.C. Ch. 74A, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation Amendments to 7 DE Admin. Code 1352: *Regulations Governing Aboveground Storage Tank Systems*. The Department's Division of Waste and Hazardous Substances, Tank Management Section, commenced the regulatory development process with Start Action Notice ("SAN") #2016-14 dated September 14, 2016 (which updated previously issued SAN #2013-28 approved by then-DNREC Secretary O'Mara on November 8, 2013). The Department published its initial proposed regulation Amendments in the November 1, 2016 Delaware *Register of Regulations*. The Department then held a public hearing on December 6, 2016. Consistent with 29 Del.C. §10118(a), the public hearing record remained open for public comment through December 21, 2016.

Subsequent to the November 1, 2016 publication of the aforementioned initial proposed Amendments, the Department identified several formatting and typographical errors associated with the same. As a result, a complete list of revisions required to correct said errors was provided at the December 6, 2016 hearing, so as to fully vet the same to the public at that time. Additionally, during the initial time period that the hearing record was open for public comment (November 1, 2016 - December 21, 2016), the Department received three sets of comment: (1) Mark Baker of Baker Petroleum; (2) Diana Turner of DuPont; and (3) Michael Hayes of the Delaware City Refining Company. The Department's DWHS-TMS responded fully to each of these comments, and made further revisions to the initial proposed Amendments as a result of same.

To ensure that all of the aforementioned Department's revisions were fully vetted to the public, a re-publication of the *revised* initial proposed AST Regulations was issued by the Delaware *Register of Regulations* on February 1, 2017. Accordingly, the hearing record was re-open for an additional thirty days, so that public comment could once again be received by the Department subsequent to the above-referenced revisions made by the DWHS-TMS. A press release was issued on February 3, 2017 (as well as additional legal notice published in the *News Journal* on February 5, 2017) to offer formal public notice of the matters of re-publication of the *revised* proposed Amendments, and the re-opening of the hearing record for comment on the same. This additional comment period remained open through Friday, March 3, 2017.

Members of the public attended the December 1, 2016 public hearing, and comment was received by the Department throughout the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned revised proposed Amendments to the *Regulations Governing Aboveground Storage Tank Systems* ("Amendments"), in order to be consistent with changes made in July 2016 to the Jeffrey Davis Aboveground Storage Tank Act, as well as to implement additional changes that provide clarification to the existing AST Regulations, reflect the use of current technologies and best management practices which prevent releases from AST systems and ensure an effective cleanup when a release occurs.

Subsequent to the close of the hearing record for the second time on March 3, 2017, the Department's DWHS-TMS thoroughly reviewed all comment received from the public in this matter, and provided the Department's presiding Hearing Officer, Lisa A. Vest, with a formal Technical Response Memorandum ("TRM"), dated March 9, 2017. This TRM provided a balanced discussion of the comment received, and provided the Department's reasoning for all action taken by the Department concerning these *revised* proposed Amendments. Some comments prompted the Department to insert additional language to the proposed Amendments in order to provide greater clarity and understanding for both the regulated community and the public at large with regard to such AST regulatory matters. It should be noted that all

revisions to the proposed Amendments were made *prior* to the re-publication and re-opening of the hearing record for comment from February 1, 2017 - March 3, 2017. Although comment was received by the Department during the second aforementioned comment period, no additional revisions were made to these *revised* proposed AST Regulation Amendments as a result of the same. Therefore, no further re-publication or re-noticing of the same is necessary.

Hearing Officer Vest prepared a Hearing Officer's Report dated March 10, 2017 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the *revised* proposed Amendments as attached to the Report as Appendix "B".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the revised proposed regulatory Amendments to **7 DE Admin. Code 1352: Regulations Governing Aboveground Storage Tank Systems** are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the *revised* proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Waste and Hazardous Substances, Tank Management Section, fully developed the record to support adoption of these *revised* regulatory Amendments. The adoption of these *revised* regulatory Amendments will allow Delaware to be consistent with changes made in July 2016 to the Jeffrey Davis Aboveground Storage Tank Act, as well as to implement additional changes that provide clarification to the existing AST Regulations, reflect the use of current technologies and best management practices which prevent releases from AST systems, and ensure an effective cleanup when a release occurs.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the revised proposed Amendments to **7 DE Admin. Code 1352: Regulations Governing Underground Storage Tank Systems**, pursuant to **7 Del.C. Ch. 74A**;
2. The Department has jurisdiction under its statutory authority, pursuant to **7 Del.C. §7407A**, to issue an Order adopting these *revised* proposed Amendments as final;
3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on December 6, 2016, and held the record open through close of business on December 21, 2016, consistent with **29 Del.C. §10118(a)**, in order to consider public comment on these proposed regulatory amendments before making any final decision;
4. Due to the aforementioned formatting and typographical errors contained in the initial proposed Amendments as set forth above (realized by the Department subsequent to the publication of the same on November 1, 2016, but prior to the public hearing held on December 6, 2016), a complete list of revisions required to correct said errors was provided at the time of said hearing, so as to fully vet the same to the public at that time. Additionally, to ensure that *all* of the aforementioned Department's revisions were fully vetted to the public, a re-publication of the revised proposed Amendments were issued by the Delaware *Register of Regulations* February 1, 2017. Accordingly, the Department re-opened the hearing record from February 1, 2017, through close of business March 3, 2017, in order to properly vet the *revised* proposed Amendments to the public, and to consider any public comment which might be offered on same before making any final decision in this proposed promulgation;
5. While the Department has made revisions to the initial proposed regulatory Amendments to **7 DE Admin. Code 1352: Regulations Governing Aboveground Storage Tank Systems** as set forth above, such changes were all fully vetted to the public as referenced above. Moreover, although additional comment was received by the Department during the second public comment period of February 1, 2017 - March 3, 2017, no additional changes were made to these *revised* proposed Amendments as a result of the same. Therefore, no additional re-publication or re-noticing is necessitated at this time;
6. The Department's Hearing Officer's Report, including its established record and the recommended *revised* proposed regulatory Amendments as set forth in Appendix "B", are hereby adopted to provide additional reasons and findings for this Order;
7. The adoption of the revised proposed regulatory Amendments to **7 DE Admin. Code 1352: Regulations Governing Aboveground Storage Tank Systems**, pursuant to **7 Del.C. Ch. 74A**, will enable the Department to provide clarification in areas where (1) existing regulations were not specific in nature; (2) technical areas were not addressed; (3) advanced technology was not included; and (4) newly developed industry standards were not included. Additionally, the *revised* proposed Amendments will ensure that DNREC's AST Regulations are consistent with the recent changes made to the Jeffrey Davis Aboveground Storage Tank Act in July 2016, as set forth in Senate Bill 233, to wit: the inclusion of descriptions as to when an aboveground storage tank is considered "in-service" and "out-of-service", and defining the Department's authority to respond to imminent threat and indicated release situations, thus ensuring an effective cleanup when such release occurs;
8. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with **29 Del.C. Ch.104**, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

9. The Department's *revised* proposed regulatory Amendments, as re-published in the February 1, 2017 Delaware *Register of Regulations*, and as set forth in Appendix "B" as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and

10. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 1352: *Regulations Governing Aboveground Storage Tank Systems* to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small
Secretary

1352 Aboveground Storage Tanks

PART A GENERAL REQUIREMENTS FOR ABOVEGROUND STORAGE TANKS ~~ASTS~~

1.0 General Provisions

1.1 Statement of Authority and Purpose

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

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

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

1.2 Applicability

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

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

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

1.2.2.2 ASTs used solely to store propane gas;

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

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

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

1.2.2.6 ASTs regulated pursuant to Title 29 ~~7 Del.C.~~ Ch. ~~§8028~~ 74B, *Division of Boiler Safety Program*.

1.2.2.7 ASTs and associated equipment regulated as a part of a process regulated pursuant to Title 7 **Del.C.** Ch. 77, *Extremely Hazardous Substances Risk Management Act*.

1.2.3 The following ASTs shall only be subject to the requirements of Part A, § subsection 1.3; PART A, subsection 1.4; PART A, subsection 1.5; PART A, subsection 1.6; Part A, § subsection 2.0; Part A, subsection 4.1.1; PART A subsection 4.1.3, PART A, subsection 4.1.4; PART A, subsection 4.1.5; PART A, subsection 4.1.6; PART A, subsection 4.1.7; PART A, subsection 4.1.8, PART A subsection 4.1.9, A,

~~§4.1; Part A, § subsection 4.2; Part A, § subsection 4.3; Part A, § subsection 4.4; Part A, § Section 6.0; Part A, § Section 8.0; Part A, § Section 9.0; and Part E of these Regulations:~~

- 1.2.3.1 ASTs used to store regulated substance other than diesel, kerosene or heating fuel with a capacity greater than 250 gallons and less than 12,499 gallons.
- 1.2.3.2 ASTs used solely to store diesel, kerosene or heating fuel with a capacity greater than 250 gallons of and less than 40,000 [39,999 40,000] gallons, and.
- 1.2.3.3 ~~ASTs having a capacity greater than 250 gallons and containing a Regulated Substance other than diesel, Heating Fuel or kerosene and ASTs having a capacity greater than 19,999 gallons and containing diesel, Heating Fuel or kerosene shall also be subject to the requirements of Part A, §40.~~
- 1.2.4 ASTs regulated pursuant to 7 **Del.C.** Ch. 63 and the Delaware ~~Regulations Governing Hazardous Waste Regulations Governing Hazardous Waste~~ shall be exempted from Part E of these Regulations.
- 1.2.5 The following types of aboveground storage tanks shall not be subject to these Regulations:
 - 1.2.5.1 septic tank;
 - 1.2.5.2 pipeline facility (including gathering lines) regulated under:
 - 1.2.5.2.1 *The Natural Gas Pipeline Safety Act of 1968* as amended [49 U.S.C. §1671 et seq.]; or
 - 1.2.5.2.2 *The Hazardous Liquid Pipeline Safety Act of 1979* as amended [49 U.S.C. §2001 et seq.]; or
 - 1.2.5.2.3 Pipelines regulated pursuant to 33 U.S.C. and 49 CFR 195 *Transportation of Hazardous Liquids by Pipeline*; or
 - 1.2.5.2.4 Pipelines regulated pursuant to 46 U.S.C. and 33 CFR 154 *Facilities transferring oil or hazardous material in bulk* and 33 CFR 156 *Oil and hazardous material transfer operations*.
 - 1.2.5.3 surface impoundment, pit, pond, or lagoon;
 - 1.2.5.4 liquid trap or associated gathering lines directly related to oil or gas production or gathering operations;
 - 1.2.5.5 Flow Through Process Tank that contains a ~~Regulated Substance~~ regulated substance or substances and that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of material during the operation of the process. Flow Through Process Tanks include, but are not limited to seal tanks, surge tanks, bleed tanks, check and delay tanks, phase separator tanks, or tanks in which physical or chemical change of a material is accomplished. A Flow Through Process Tanks does not include:
 - 1.2.5.5.1 a tank that is used for the storage of material before its introduction into a production process; or
 - 1.2.5.5.2 a tank that is used for storage of products or by-products from the production process; or
 - 1.2.5.5.3 a tank that is used only to recirculate materials; or
 - 1.2.5.5.4 a tank that stores fuel for combustion subsequently used to provide heat for a process.
 - 1.2.5.6 transformers, regulators and breakers used for the sole purpose of electrical power distribution and transmission;
 - 1.2.5.7 containment vessels operated as part of a publicly owned treatment works as defined pursuant to Title 7 **Del.C.** Ch. 60, *Environmental Controls*, §6002 and regulated pursuant to Title 7 **Del.C.** Ch. 60, *Environmental Controls*, §6003 or used for the storage and conveyance of wastewater to a treatment plant regulated in accordance with the requirements of the *Clean Water Act*.
- 1.2.6 Agricultural/Farm ASTs, shall only be subject to the requirements of Part A and Part E of these Regulations, provided that the Owner ~~and or~~ Operator shall comply with a written best management practice for the Agricultural/Farm AST, that has been submitted in writing and has received written approval from the approved by the Department, and appropriately updated for any substantial change of conditions. The approved plan must be updated and re-submitted for approval if there are substantial changes to conditions described in the plan. Failure to comply with the best management practice shall constitute a violation of this subsection subject to all appropriate enforcement sanctions including but not limited to daily penalties.
- 1.3 Enforcement
 - 1.3.1 Any person who violates these Regulations shall be subject to all appropriate legal sanctions including but not limited to the provisions set forth in Title 7 **Del.C.** Ch. 74A, *The Jeffrey Davis Aboveground Storage Tank Act*, §7410A.
- 1.4 Severability
 - 1.4.1 If any provisions of these Regulations are adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of these Regulations shall not be affected thereby.

1.5 Right of Appeals

- 1.5.1 Any person whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board in accordance with Title 7 **Del.C.** Ch. 60, *Environmental Controls*, §6008.
- 1.5.2 Any person or party to an appeal before the Environmental Appeals Board who is substantially affected by a decision of the Environmental Appeals Board may appeal to the Superior Court in accordance with Title 7 **Del.C.** Ch. 60, *Environmental Controls*, §6009.

1.6 Joint and Several Liability

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

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

2.0 Definitions

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

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

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

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

"Agricultural/Farm AST" means an AST less than 40,000 gallons containing a ~~Regulated Substance~~ regulated substance, the contents of which are applied to the soil, crops, or livestock or ingested by livestock and used solely to directly facilitate the production of crops, livestock, livestock products or golf course turf. Crops include fish hatcheries, rangeland, cropland and nurseries including turf grass growing operations. Agricultural/Farm ASTs do not include ASTs used to store substances used in a manufacturing process. A

manufacturing process does not include Agricultural/Farm ASTs used to store and blend ~~Regulated Substances~~ regulated substances for retail sales.

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

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

"API" means American Petroleum Institute.

"ASTM" means American Society for Testing and Materials.

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

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

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

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

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

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

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

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

"Change In Service" means any change to a registered AST to include but not be limited to ~~permanent change in nature of contents, Removal~~ removal, ~~Permanent Change in Contents~~ permanent change in contents, ~~Relocation~~ relocation, ~~Permanent Closure in Place~~ permanent closure in place, change in status from either ~~In-Service~~ In Service Tank or ~~Out-Of-Service~~ Out of Service Tank, conversion to storage of other than ~~Regulated Substances~~ regulated substances or conversion to a use other than as an AST, or when the AST is emptied.

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

"Combustible" means capable of undergoing ~~Combustion~~ combustion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"EPA" means the United States Environmental Protection Agency.

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

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

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

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

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

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

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

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

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

"Flow Through Process Tank" means a tank that contains a ~~Regulated Substance~~ regulated substance or substances and that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of material during the operation of the process. Flow Through Process Tanks include, but are not limited to, seal tanks, surge tanks, bleed tanks, check and delay tanks, phase separator

tanks, or tanks in which physical or chemical change of a material is accomplished. A Flow Through Process Tank does not include: 1) a tank that is used for the storage of material before its introduction into a production process; or 2) a tank that is used for storage of products or by-products from the production process; or 3) a tank that is used only to recirculate materials; or 4) a tank that stores fuel for combustion subsequently used to provide heat for a process.

"Free Product" means immiscible liquid phase ~~Regulated Substance~~ existing in the subsurface with a positive pressure such that it can flow into a well.

"Guarantor" means a business entity that:

- Possesses a controlling interest in the Owner ~~and~~ or Operator; or
- Possesses a controlling interest in a firm that has a controlling interest in the Owner ~~and~~ or Operator; or
- Is an affiliate which is controlled through stock ownership by a common parent firm that possesses a controlling interest in the Owner ~~and~~ or Operator; or
- Is engaged in a substantial business relationship with the Owner ~~and~~ or Operator and is issuing the guarantee as an act incident to that business relationship.

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

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

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

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

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

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

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

"In Service" means an AST that:

- is being actively maintained or operated; or
- contains a ~~Regulated Substance~~ regulated substance or has a ~~Regulated Substance~~ regulated substance regularly added to or withdrawn from the ~~tank~~ AST; or
- is emptied solely for the purpose of cleaning, routine maintenance, or a change in product, for a time period not to exceed ~~45~~ one hundred eighty (180) days.

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

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

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

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

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

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

- Counties, municipalities, townships, separately chartered and operated special districts (including Local Government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by State charter or constitution; and
- Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

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

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

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

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

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

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

"NACE" means National Association of Corrosion Engineers.

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

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

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

"NFPA" means National Fire Protection Association, Inc.

"Noncommercial Purposes" ~~with respect to Motor Fuel or motor oil means the product in the AST is not used for any activities that result in monetary gain~~ means a business or organization whose activities do not result in monetary gain, including but not limited to educational institutions, non-profit organizations under the terms of the Internal Revenue Service code definition in section 501(c), State, Federal and Local governmental entities and religious organizations.

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

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

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

"Orphan Tank" means:

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

"Out-Of-Service Out of Service" means an AST that is:

- designated as ~~[an] Out-Of-Service~~ Out of Service by the Owner and Operator ~~and the Owner and Operator shall provide notification to the Department on a Department registration form; or~~
- an empty tank; ~~or except when the AST is emptied solely for the purpose of cleaning, routine maintenance or a change in product for a time period not to exceed one hundred eighty (180) days.~~
- ~~not in use, in that it has not had, within any 45-day period, a Regulated Substance transferred into or withdrawn from the tank and has been drained of all contents and is empty.~~

"Owner" means a person:

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

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

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

"PEI" means Petroleum Equipment Institute.

"Permanent Change in Contents" means ~~leaving an AST and Ancillary Piping in its installed location, removing the Regulated Substance from the AST and Ancillary Piping, thoroughly cleaning the interior of the AST and the Ancillary Piping, and continuing active use of the AST and Ancillary Piping with the intent of only storing and conveying a non-Regulated Substance in the AST and Ancillary Piping~~ the replacement of one substance stored in an AST and ancillary piping for another substance that would effect a change in the AST and ancillary piping's regulated status based on capacity and substance stored.

"Permanent Closure in Place" or "Permanently Closed in Place" or "Permanently Closing in Place" or "Permanently Closed" means leaving an AST and ~~Ancillary Piping~~ ancillary piping in its installed location,

removing the ~~Regulated Substance~~ regulated substance from the AST and ~~Ancillary Piping~~ ancillary piping, thoroughly cleaning the interior of the AST and the interior of the ~~Ancillary Piping~~ ancillary piping, disconnecting the ~~Ancillary Piping~~ ancillary piping from the AST, securing the AST and the ~~Ancillary Piping~~ ancillary piping to prevent unauthorized access, and discontinuing active use of the AST and ~~Ancillary Piping~~ ancillary piping with the intent of not introducing a ~~Regulated Substance~~ regulated substance into the AST and ~~Ancillary Piping~~ ancillary piping.

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

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

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

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

"Property Damage" shall have the meaning given this term by applicable State law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

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

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

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

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

"Regulated Substance" means a liquid or gas that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"State" means the State of Delaware.

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

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

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

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

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

"UL" means Underwriters Laboratories, Inc.

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

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

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

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

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

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

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

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

3.0 Reference Standards

3.1 Referenced Standards Organizations

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

- 3.1.1.1 American Petroleum Institute (API), 1220 L Street, N.W., Washington, D.C. 20005-4070, (202) 682-8375.
- 3.1.1.2 National Association of Corrosion Engineers (NACE), P. O. Box 218340, Houston, Texas 77218, (713) 492-0535.
- 3.1.1.3 Underwriters Laboratories (UL), 333 Pfingsten Road, Northbrook, Illinois 60062-2096, (847) 272-8800.
- 3.1.1.4 National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269, (617) 770-3000.
- 3.1.1.5 American Society for Non-destructive Testing (ASNT), P.O. Box 28518, 1711 Arlington Lane, Columbus, Ohio 43228-0518, (614-274-6003).
- 3.1.1.6 Steel Tank Institute (STI), ~~570 Oakwood Road,~~ 944 Donata Court, Lake Zurich, Illinois 60047, ~~(847) 438-8265;~~
- 3.1.1.7 American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19429-2959.
- 3.1.1.8 American Society of Mechanical Engineers (ASME), ASME International ~~Three Two~~ Two Park Avenue, New York, NY 10016-5990-0, ~~(800) 843-2763.~~
- 3.1.1.9 National Board Inspection Code, National Board of Boiler and Pressure Vessel Inspectors Testing, 1055 Crupper Drive, Columbus, OH 43229-1183, (614) 888-8320.
- 3.1.1.10 ~~American National Standards Institute (ANSI), 1819 L Street, NW, 6th Floor, Washington, DC 20036~~
- 3.1.1.10 United States Department of Labor, Occupational and Safety and Health Administration (OSHA), 200 Constitution Avenue, Washington, D.C. 20210.

3.2 Applicability

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

3.3 ~~Titles of Documents~~ Standards

3.3.1 American Petroleum Institute (API)

- 3.3.1.1 RPAPI Standard 570, Piping Inspection Code: In-Service Inspection, Rating, Repair, and Alteration, ~~and Rerating of In-Service Piping Systems~~, 3rd Edition, November 2009.
- 3.3.1.2 RPAPI Standard 620, Design and Construction of Large, Welded, Low-Pressure Storage Tanks, 12th Edition, 2013.
- 3.3.1.3 RPAPI Standard 650, Welded Steel Tanks for Oil Storage, 12th Edition, March 2013.
- 3.3.1.4 RPAPI Recommended Practice 651, Cathodic Protection of Aboveground Petroleum Storage Tanks, September 2014 Edition.
- 3.3.1.5 RPAPI Standard 653, Tank Inspection, Repair, Alteration, and Reconstruction, 4th Edition with Addendum #1(2010), Addendum #2 (2012) and Addendum #3 (2013).
- 3.3.1.6 RPAPI Specification 12D, Specification for Field Welded Tanks for Storage of Production Liquid, Edition 11, 2008.
- 3.3.1.7 RPAPI Standard 2000, Venting Atmospheric and Low Pressure Storage Tanks, 7th Edition, 2014.
- 3.3.1.8 API Recommended Practice 1615, Installation of Underground Petroleum Storage Systems, 6th Edition, April 2011.
- 3.3.1.9 API Recommended Practice 2015, Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks, 7th Edition, May 2014.
- 3.3.1.10 API Recommended Practice 2016, Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks, 1st Edition, 2001.

3.3.2 National Association of Corrosion Engineers (NACE)

- 3.3.2.1 NACE ~~RP-01-69-2013~~ Standard Practice 0169-2013, Control of External Corrosion on Underground or Submerged Metallic Piping Systems, 2013 Edition.
- 3.3.2.2 NACE Recommended Practice ~~0193-2011-01-93-2014~~, External Cathodic Protection of On-grade Carbon Steel Storage Tank Bottoms, 2011 Edition.
- 3.3.2.3 NACE ~~RStandard Practice 0294-2006-02-94-2006~~, Design, Fabrication, and Inspection of Tanks for the Storage of Concentrated Sulfuric Acid and Oleum at Ambient Temperatures, 2006 Edition.

3.3.3 Underwriters Laboratory, Inc. (UL)

- 3.3.3.1 UL142, Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids, 9th Edition, December 2006.
- 3.3.3.2 UL971, Standard for Nonmetallic Underground Piping For Flammable Liquids, 1st Edition, 1995 with revisions through March 2006.
- 3.3.3.3 UL2085, Standard for Protected Aboveground Tanks for Flammable and Combustible Liquids, 2nd Edition, December 1997.

3.3.4 National Fire Protection Association (NFPA)

- 3.3.4.1 NFPA 30, Flammable and Combustible Liquids Code, 2015 Edition
- 3.3.4.2 NFPA 303A, Automotive and Marine Service Station Code, 2011 Edition
- 3.3.4.3 NFPA 69, Standards on Explosion Prevention Systems, 2014 Edition.
- 3.3.4.4 NFPA 704, Standard for the Identification of the Fire Hazards of Materials for Emergency Response, 2012 Edition.
- 3.3.4.5 NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2015 Edition.

3.3.5 American Society for Non-destructive Testing (ASNT)

- 3.3.5.1 SNT-TC-1A, Personnel Qualifications and Certification in Nondestructive ~~testing~~ Testing, 2011 Edition.
- 3.3.5.2 ASNT, Central Certification Program NDT Level II, November 2010 Edition.

3.3.6 Steel Tank Institute (STI)

- 3.3.6.1 SP001-03, *Standard for Inspection of In-Service Shop Fabricated Above Ground Tanks for Storage of Combustible and Flammable Liquid*, 5th Edition, September 2011.
- 3.3.6.2 SP031, *Standard for Repair of Shop-Fabricated Aboveground age of Flammable and Combustible Liquids*, 4th Edition, November 2008.

3.3.7 American Society for Testing and Materials (ASTM)

- 3.3.7.1 ASTM D-2517, *Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings*, 2011 Edition.
- 3.3.7.2 ASTM D-2996-04, *Standard Specification for Filament Wound Fiberglass (Glass-Fiber-Reinforced Thermosetting-Resin Thermosetting Resin) Pipe*, 2007 Edition.
- 3.3.7.3 ASTM D-2583-13A, *Standard Test Method for Indentation Hardness of Rigid Plastics by Means of a Barcol Impressor*, 1996 Edition.

3.3.8 American Society of Mechanical Engineers (ASME)

- 3.3.8.1 ASME RTP-1 2000-2002-2013, *Reinforced Thermoset Plastic Corrosion Resistant Equipment*, 2013 Edition.
- 3.3.8.2 ASME, *Boiler and Pressure Vessel Code Section VIII, Division 1, Design & Fabrication of Pressure Vessels*, 2013 Edition.
- 3.3.8.3 ASME B31.1, *Power Piping*, 2014 Edition.
- 3.3.8.4 ASME B31.3, *Process Piping*, 2012 Edition.
- 3.3.8.5 ASME B31.4, *Pipeline Transportation Systems for Liquids and Slurries*, 2012 Edition.

3.9 American National Standards Institute (ANSI)

- 3.9.1 ANSI 31.1, *Power Piping*
- 3.9.2 ANSI 31.3, *Process Piping*
- 3.9.3 ANSI 31.4, *Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols*

3.403.9 National Board Inspection Code (NBIC)

- 3.3.409.1 National Board Inspection Code, *National Board Inspection Code, Part 3, Repairs and Alterations, Appendix 9, Repair, Alteration and Inspection of Fiber Reinforced Thermosetting Plastic Pressure Equipment* 2013 Edition.

3.3.10 Occupational Safety and Health Administration (OSHA)

- 3.3.10.1 OSHA, 29 CFR, 1910.1200, *Occupational Safety and Health Standards, Toxic and Hazardous Substances, Hazard Communication*, May 2012.

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

4.0 ~~Registration And Notification Requirements~~ Tank Registration and Fees

4.1 Registration Requirements

- 4.1.1 Any person that owns or operates an AST, ~~unless specifically exempted in §1 of this Part with the exception of those ASTs listed in Part A, subsection 1.2.2~~ must ~~shall~~ register each AST with the Department ~~on~~ utilizing an AST registration form provided by the Department.
- 4.1.2 ~~Registration of ASTs shall be renewed annually by payment~~ Annual payment of registration fees ~~shall be made~~ in accordance with Part A, Section 4.65 of these Regulations, on or before February 1 of every year and until the Department receives a formal notice that the AST has been ~~Removed removed~~ or ~~Permanently Closed permanently closed~~ or undergone a ~~Permanent Change permanent change~~ in ~~Contents contents~~ in accordance with these Regulations.
- 4.1.3 No person shall own or operate an AST unless the AST is registered with the Department
- 4.1.4 Any person who sells or otherwise transfers ownership of an AST ~~must~~ shall notify the new Owner of the AST registration requirements of ~~this Part A, of these Regulations.~~
- 4.1.5 The Owner shall sign and date all AST registration submittals.
- 4.1.6 The Owner shall notify the Department in writing of any significant change in the information presented on the original registration form utilizing a form provided by the Department, including but not limited to change of address, change of tank ownership, ~~change in tank status, or change in product stored from a Regulated Substance to an unregulated substance~~ change of tank Operator, or a change in service at least ten (10) days prior to the change.

- 4.1.7 Owners may provide notice for multiple ASTs at a single Facility using one AST registration form, but Owners with ASTs located at more than one Facility must file a separate AST registration form for each Facility.
- 4.1.8 Each registration form shall have attached a Safety Data Sheet (SDS) which complies with the definition of such as contained in OSHA, 29 CFR, 1910.1200, Hazard Communication, with the exception of those ASTs storing heating fuel, diesel, kerosene or gasoline.
- 4.1.9 ASTs that are not subject to an annual registration fee as specified in PART A, subsection 4.5 of these Regulations, are not required to have their registrations renewed on an annual basis by the submittal of any documentation. The AST registration remains in effect until the Department is notified of the AST's removal, permanent closure, permanent change in contents, or transfer of ownership.
- 4.2 Existing ASTs
- 4.2.1 Owners and Operators ~~must~~ shall notify the Department of all existing ASTs that have contained a Regulated Substance on or after January 1, 1992, by completing an AST registration form provided by the Department and submitting the form to the Department by September 5, 2002.
- 4.3 Change in ~~In~~ Service, ~~Permanent Closure in Place, Emptying~~ and Removal
- 4.3.1 The Owner and Operator of any AST which would become subject to these Regulations due to a Change In Service shall comply with these Regulations before instituting the changed use.
- 4.3.2 Owners or Operators ~~must~~ shall notify the Department ~~on~~ utilizing a form provided by the Department prior to Removing, Permanently Closing in Place[,], ~~Emptying[,]~~ or making a Change In Service to an AST. The notification form must be received by the Department at least ten (10) days prior to beginning the ~~Removal removal~~ or ~~Permanent permanent~~ closure in Place ~~place~~, ~~emptying~~, or making a Change In Service to the AST, except in the case of a retrofit or upgrade which shall require the notification as specified in PART A, subsection 4.6, unless such action is in response to an imminent threat to human health, safety or the environment.
- 4.3.3 Removal or ~~Permanent permanent~~ closure in Place ~~place~~ or Change In Service of an AST without required notification of the Department is prohibited.
- 4.3.4 Any change in the schedule of work for a Change In Service must be communicated to the Department in writing a minimum of forty eight (48) hours prior to the new scheduled date of work.
- 4.3.5 The Owner shall notify the Department in writing of the actual date of completion of any Change In Service.
- 4.4 Transfer of ~~ownership~~ Ownership
- 4.4.1 When a transfer of ownership of an AST occurs, the new Owner shall submit a ~~transfer of ownership form and a~~ completed registration form all required Safety Data Sheets, and proof of compliance with the financial responsibility requirements in PART D of these Regulations to the Department so that the Department shall receive these forms no later than ~~thirty (30) days~~ seventy two (72) hours after the transfer or in accordance with an alternate schedule approved by the Department.
- 4.4.2 The seller or former Owner shall at the time of ownership transfer, deliver to the buyer/ and new Owner all available documents and information relevant to the AST, ~~such as~~ including but not limited to:
- 4.4.2.1 Regulated Substance storage records;
- 4.4.2.2 Any approved plans for new installations;
- 4.4.2.3 Copies of registration forms;
- 4.4.2.4 Testing data and reports;
- 4.4.2.5 Reports documenting AST Permanent Closure in Place and Removal;
- 4.4.2.6 Tank lining specifications used, if applicable;
- 4.4.2.7 Monitoring reports;
- 4.4.2.8 Soil ~~and/or~~ groundwater sampling and laboratory chemical analyses reports;
- 4.4.2.9 Site assessment reports;
- 4.4.2.10 Equipment maintenance schedules and logs;
- 4.4.2.11 Repair records.
- 4.4.3 ~~Any person who assumes ownership of an AST from a previous registrant must complete and return to the Department a new registration form and a transfer of ownership form. The new Owner and Operator may operate the AST for no more than 72 hours after assuming ownership without the Department having received the new registration form and a transfer of ownership form.~~
- 4.4.4 Any change in the structure of the AST Owner, including but not limited to any change in the corporate form and any change in the form of the business entity, shall constitute a transfer of ownership.
- 4.5 Registration ~~fees~~ Fees

4.5.1 On or before February 1 of each calendar year, Owners and Operators of an AST ~~must~~ shall submit to the Department an annual per tank registration fee in accordance with Title 7 **Del.C.** Ch. 74A, *The Jeffrey Davis Aboveground Storage Tank Act*, §7413A and the table in PART A, subsection 4.5.3 of these Regulations.

4.5.2 A registration fee not received by the Department by October 1, 2002 or by February 1 of each calendar year thereafter is subject to a late charge of 10% of the total fee.

4.5.3 Registration Fee Schedule

<u>Tank Size</u>	<u>Yearly Fee</u>
12,499 – 39,999 gallons	\$300.00
40,000 gallons and greater	\$750.00

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

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

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

4.6 Retrofitting/Upgrade of ASTs or Upgrading of ASTs

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

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

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

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

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

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

5.0 Alternative Procedures Approval Requirements

5.1 Alternative Procedures

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

5.2 Requirements for Requesting an Approval of an Alternative Procedure

- 5.2.1 The Department in its discretion may approve alternative procedures or technology or a combination of alternative procedures or technologies not specified in the Regulations ~~if the following requirements are met~~. The ~~requirements~~ alternative procedure request ~~must~~ shall be submitted in writing and shall set forth as a minimum the following information:
- 5.2.1.1 Name and location of the Facility and the specific AST(s) for which an alternative procedure is sought; and
 - 5.2.1.2 The specific provision of the Regulations for which an alternative procedure is sought; and
 - 5.2.1.3 The contents of the AST; and
 - 5.2.1.4 The basis for the alternative procedure, including but not limited to the technical difficulties that would result from compliance with the established provision; and
 - 5.2.1.5 The alternative procedure or technology for which approval is sought; and
 - 5.2.1.6 Documentation that demonstrates that the alternative procedure or technology meets or exceeds the performance standard for approved technologies and that the alternative procedure or technology offers a no less stringent degree of protection for human health, safety or the environment as would the requirements specifically established in these Regulations.

5.3 Department Response

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

- 5.4 ~~In the case of a denial of a request under this Section the Department will respond to the request stating the justification for the denial.~~

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

6.0 Information Access

6.1 Department Authority to Obtain Information

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

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

6.2 Requirements for Requests for Confidential Data Submission.

- 6.2.1 In submitting data under Title 7 **Del.C.** Ch. 74A, *The Jeffrey Davis Aboveground Storage Tank Act*, and these Regulations, a person required to provide such data may:
- 6.2.1.1 ~~designate~~ Designate the data which the Owner ~~and or~~ Operator believe is entitled to ~~protection~~ protections as business or corporate property ~~under this subsection~~; and

6.2.1.2 ~~submit~~ Submit such designated data separately from other data submitted under these Regulations.

6.3 Protection under United States Code Title 18 Section 1905

6.3.1 Any such records, reports or information obtained shall be entitled to protection under United States Code Title 18 §1905, *Disclosure of confidential information generally*.

6.4 Confidential Business Information Designation and Freedom of Information Act Regulations

6.4.1 Any information submitted to the Department in which a confidential business information designation is requested shall be subject to Part A, Section §98.0 of these Regulations and the *Freedom of Information Act Regulations* adopted pursuant to 29 **Del.C.** Ch. 100 as amended.

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

7.0 Release Preparedness Plan and Release Intervention

7.1 Release Preparedness Plan Requirements

7.1.1 The AST Owner or Operator must prepare a Release Preparedness Plan by June 11, 2005, for ~~Releases~~ releases from ASTs at the Facility. A copy ~~must~~ shall be kept at the ~~facility~~ Facility at all times and be made immediately available to the Department upon request. The ~~contingency plan must~~ Plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden Release of a Regulated Substance to soil, surface water or ground water. The ~~plan must~~ Plan shall contain the following information:

7.1.1.1 A Facility map showing the location of buildings, ASTs and their stored products, and site utilities-, and

7.1.1.2 Emergency contact phone numbers (i.e. fire, police, DNREC, USCG, hospitals, environmental contractors)-, and

7.1.1.3 The general location of area receptors and points of exposure such as natural resources, surface water bodies, public and private supply wells, and residential communities-, and

7.1.1.4 Fire, explosion and health and safety contingencies-, and

7.1.1.5 Contaminated soil excavation, staging, treatment and disposal contingencies-, and

7.1.1.6 Regulated ~~Substance~~ substance removal, containment and recovery contingencies-, and

7.1.1.7 The ~~plan~~ Plan must shall include the actions Facility personnel ~~must~~ shall take to respond to fires, explosions or any unplanned sudden or non-sudden ~~Release~~ release of a ~~Regulated Substance~~ regulated substance to air, soil or surface water at the Facility-, and

7.1.1.8 The ~~plan~~ Plan shall list names, addresses, and office phone numbers of all persons qualified to act as emergency coordinator and this list ~~must~~ shall be kept up to date. Where more than one person is listed, one ~~must~~ shall be named as primary emergency coordinator and others ~~must~~ shall be listed in the order in which they will assume responsibility as alternates. A Facility emergency coordinator ~~must~~ shall be available to respond at all times-, and

7.1.1.9 The ~~plan~~ Plan must shall include a list of all emergency equipment at the Facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list ~~must~~ shall be kept up to date. In addition, the ~~plan~~ Plan must shall include the location and a physical description of each item on the list and a brief outline of its capabilities-, and

7.1.1.10 The ~~plan~~ Plan must shall include an evacuation plan for Facility personnel where there is a possibility that evacuation could be necessary. This plan ~~must~~ shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes in cases where the primary routes could be blocked

7.1.2 A Release ~~preparedness plan~~ Preparedness Plan formulated under the direction of another local, State or federal program or a ~~facility~~ Facility emergency or operational plan that meets the objectives of this Section may be accepted by the Department as proof of compliance with this Section.

7.1.3 The Release Preparedness Plan shall be reviewed and amended if:

7.1.3.1 Applicable regulations are revised.

7.1.3.2 The ~~plan~~ Plan fails after a release.

7.1.3.3 The Facility changes its design or operations.

7.1.3.4 The list of emergency coordinators changes.

7.2 Release Intervention

- 7.2.1 The Department may assume control of any Release when it is determined that the Owner or Operator is not responding in accordance with the Regulations and Title 7 ~~Del.C.~~ Ch. 74A, *The Jeffrey Davis Aboveground Storage Tank Act*. All release liability will remain with the Owner or Operator. The Department may recover all release response intervention costs from the Owner and Operator and initiate enforcement action as necessary to achieve regulatory compliance.

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

8.0 Release and Leak Documentation, Response and Confirmation

8.1 Release Documentation, Response and Confirmation

- 8.1.1 No person shall knowingly allow any Release of a Regulated Substance from an AST to continue. Owners and Operators shall take immediate action to contain any Release so as to minimize the environmental impact of the Release and to immediately identify and mitigate fire, explosion and vapor hazards.
- 8.1.2 A Release of a Regulated Substance from an AST in excess of the reportable quantities specified in the regulations promulgated pursuant to Title 7 ~~Del.C.~~ Ch. 60, §6028, the *Delaware Regulations Governing the Reporting of a Discharge of a Pollutant or an Air Contaminant*, as amended, shall be reported to the Department in accordance with the requirements of Title 7 ~~Del.C.~~ Ch. 60 and the Regulations promulgated thereunder as amended.
- 8.1.3 Documentation on the routine in-service inspection report shall be made at the time of discovery of any Release or a suspected Release of a Regulated Substance from an AST in an amount less than the reportable quantities specified in the regulations promulgated pursuant to Title 7 ~~Del.C.~~ Ch. 60, §6028, the *Delaware Regulations Governing the Reporting of a Discharge of a Pollutant or an Air Contaminant*, as amended, that impacts soil, groundwater, or surface water outside a Secondary Containment area. If the commencement of cleanup activities cannot begin within 24 hours of discovery and cannot be completed within 7 days, the routine in-service inspection report shall be sent to the Tank Management Branch via fax or electronic mail.
- 8.1.4 When documenting a Release or a suspected Release from an AST the Owner and Operator shall describe:
- 8.1.4.1 The chemical name or identity of any substance involved in the Release or suspected Release and the approximate quantity released;
 - 8.1.4.2 The Facility location and the Release or suspected Release location at the Facility;
 - 8.1.4.3 The medium or media into which the Release or suspected Release occurred (i.e., soil, groundwater, surface water);
 - 8.1.4.4 Possible impacted area receptors (i.e., surface water, wells, utilities, basements);
 - 8.1.4.5 All corrective actions undertaken.
- 8.1.5 A suspected Release includes but is not limited to the following:
- 8.1.5.1 The discovery of released Regulated Substance in the area surrounding an AST, such as the presence of stained soils, vapors in soils, basements or utility lines, free product or dissolved product discovered in Monitor Wells or water supply wells, or sheens observed on surface water bodies; or
 - 8.1.5.2 The occurrence of unusual operating conditions observed by the Owner and Operator, such as the sudden loss of Regulated Substance, erratic behavior of Regulated Substance Dispensing System, unless the AST is found to be defective but not leaking and is immediately repaired or replaced; or
 - 8.1.5.3 AST monitoring results from a Leak Detection method or Release detection equipment unless either:
 - 8.1.5.3.1 an equipment failure can be demonstrated and the faulty equipment is immediately repaired or replaced and additional monitoring does not confirm the initial result; or
 - 8.1.5.3.2 in the case of inventory control, a second month of data does not confirm the initial result.
 - 8.1.5.4 The presence of a Regulated Substance, or a signal from a Leak Detection device, or a laboratory report that shows the sample removed from an observation tube or Monitoring Well, or soil/water samples removed from an AST excavation contains a Regulated Substance, shall be evidence of a Release unless the responsible party affirmatively proves that no Release has occurred.
- 8.1.6 Upon an indication of a suspected Release of a Regulated Substance from an AST the Owner and Operator must immediately investigate and within seven (7) days confirm whether or not a Release has occurred. Actions may include but are not limited to:

- 8.1.6.1 Performing a visual inspection of all exposed portions of the AST including but not limited to: the storage tank, piping, loading rack, Dispensing System and ancillary equipment, and surrounding containment areas and ground surfaces;
- 8.1.6.2 Checking inventory records for discrepancies;
- 8.1.6.3 Checking Release detection monitoring devices;
- 8.1.6.4 Checking Monitoring Wells;
- 8.1.6.5 Testing system components, including but not limited to: storage tank bottoms, and underground piping and equipment, for tightness or integrity; Owners and Operators must repair, replace or Upgrade the AST, and begin corrective action in accordance with Part E of these Regulations if the test results of the AST indicate that a Leak exists. Owners and Operators must conduct a site check if the test results for the AST do not indicate that a Leak exists but environmental contamination is the basis for suspecting a Release.
- 8.1.6.6 Owners and Operators must measure for the presence of a Release where contamination is most likely to be present at the AST site. In selecting sample types, sample locations, and measurement methods, Owners and Operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the Release. Site check for the presence of a Release may be conducted by the use of: Monitoring Wells, analysis of soil samples, vapor monitoring (soil gas survey) methods or other methods.
- 8.1.6.7 Complete other actions as necessary to confirm the Release.
- 8.1.7 Within 24 hours of confirming a suspected Release of a Regulated Substance from an AST, Owners and Operators shall take immediate action according to this Section.
- 8.1.8 If a Release, other than those that can comply with §8.1.3 of this Part, is confirmed, the requirements of Part E of these Regulations shall be followed, unless the Owner and Operator is directed to do otherwise by the Department.

8.2 Leak Documentation, Response and Confirmation

- 8.2.1 No person shall knowingly allow any Leak of a Regulated Substance from an AST to continue.
- 8.2.2 A Leak of a Regulated Substance in a quantity less than the reportable quantities specified in the regulations promulgated pursuant to Title 7 ~~Del.C.~~ Ch. 60, §6028, the *Delaware Regulations Governing the Reporting of a Discharge of a Pollutant or an Air Contaminant*, as amended, inside the Secondary Containment area or that does not impact soil, groundwater, or surface water, and cannot be cleaned up within (7) seven days must be reported to the Tank Management Branch as soon as possible but in no instance shall reporting exceed (7) seven days from the time of discovery. Reporting may be made in person or by telephone or by electronic mail.
- 8.2.3 Documentation of the Leak and the calculations of how the amount leaked was determined must be maintained by the Owner and Operator at the Facility for the operational life of the AST.
- 8.2.4 Actions to prevent a reoccurrence of the Leak and actions to mitigate evidence of a Leak shall be initiated within 30 days. These actions shall include but are not limited to:
 - 8.2.4.1 Repairing or replacing defective equipment or;
 - 8.2.4.2 Modifying operating procedures or;
 - 8.2.4.3 Retraining employees.
- 8.2.5 Evidence from a Leak on Secondary Containment surfaces other than soil, shall be mitigated by mechanical and/or chemical means that do not compromise the impermeability of the Secondary Containment and which permit potential future Leaks to be readily discernible from evidence of previous Leaks.
- 8.2.6 Evidence from Leaks on the Secondary Containment surfaces comprised of soil shall be eliminated by excavating all impacted soils or a means by which a new stain is easily detectable and which does not compromise the impermeability of the Secondary Containment. Any area that is excavated shall be backfilled with a material of equal or superior impermeability.

98.0 Submittal Of Confidential Information

8.1 Denial of Claim of Confidentiality

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

8.2 Requirements for Business Confidentiality Claim

~~9.28.2.1~~ A business confidentiality claim ~~must~~ shall be asserted at the time of submission of the information or at the first opportunity provided, and shall be asserted by a person claiming confidentiality, or the Department may release the information without further notice to the person. Business information is entitled to confidential treatment if:

~~9.2.48.2.1.1~~ The business has asserted a business confidentiality claim which has not expired by its terms, nor been waived nor withdrawn, and

~~9.2.28.2.1.2~~ The business has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information and that it intends to continue to take such measures, and

~~9.2.38.2.1.3~~ The information is not, nor has been, reasonably obtainable without the business' consent by other persons (other than governmental bodies) by the use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding), and

~~9.2.48.2.1.4~~ No statute specifically requires disclosure of the information, and

~~9.2.58.2.1.5~~ ~~Either (a) the~~ The business has satisfactorily shown that disclosure is likely to cause substantial harm to its competitive position or ~~(b) the~~ information is voluntarily submitted and its disclosure would likely impair the Department's ability to obtain necessary information in the future.

8.3 Release of information to EPA

~~9.38.3.1~~ Any information to which this ~~section~~ Section applies, which may be entitled to confidential treatment as determined by the Department, may be released upon request to the United States Environmental Protection Agency (EPA).

8.4 Confidentiality and Freedom of Information Act

~~9.48.4.1~~ Any information submitted to the Department in which a confidential business information designation is requested shall be subject to Part A, Section 9 8.0 of these Regulations and the *Freedom of Information Act Regulations* adopted pursuant to 29 **Del.C.** Ch. 100 as amended.

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

409.0 Signage Requirements

9.1 Requirements for Hazard Labeling of ASTs

~~40.19.1.1~~ All ASTs ~~having with~~ a capacity greater than 250 gallons and containing a ~~Regulated Substance~~ regulated substance other than diesel, ~~Heating Fuel~~ heating fuel or kerosene ~~and all ASTs having a capacity greater than 19,999 gallons and containing diesel, Heating Fuel or kerosene shall be labeled using the hazard rating system in accordance with NFPA 704, Standard for the Identification of the Fire Hazards of Materials for Emergency Response.~~

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

9.2 Requirements for Labeling of Empty ASTs

~~40.29.2.1~~ All ASTs ~~having with~~ a capacity greater than 250 gallons and containing a ~~Regulated Substance~~ regulated substance other than diesel, ~~Heating Fuel~~ heating fuel or kerosene ~~and all ASTs having a capacity greater than 19,999 gallons and containing diesel, Heating Fuel or kerosene shall be labeled with the word "Empty" if the tank contents have been removed.~~

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

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

~~40.39.3.1~~ All ASTs ~~having with~~ a capacity greater than 250 gallons and containing a ~~Regulated Substance~~ regulated substance other than diesel, Heating Fuel ~~Heating Fuel~~ heating fuel or kerosene ~~and all ASTs having a capacity greater than 19,999 gallons and containing diesel, Heating Fuel or kerosene shall be labeled with the name of the tank contents or the name of the chemical family associated with the tank contents and the tank identification number as noted on the DNREC registration form.~~

9.3.2 All ASTs ~~having a capacity greater than 19,999 gallons and containing diesel, heating fuel or kerosene shall be labeled with the name of the tank contents or the name of the chemical family associated with the tank contents and the tank identification number as noted on the DNREC registration form.~~

9.4 Compliance Date for Labeling of ASTs

~~40.49.4.1~~ All ASTs existing on February 1, 2006 that are required to have a label in accordance with the ~~Requirements of this Section~~ PART A, subsection 9.1, PART A, subsection 9.2, or PART A, subsection 9.3 shall be appropriately labeled by February 1, 2006.

9.4.2 All ASTs installed or brought into service after February 1, 2006 that are required to have a label in accordance with the requirements of PART A, subsection 9.1, PART A, subsection 9.2, or PART A, subsection 9.3 shall be appropriately labeled before regulated substance is stored in the AST.

9.5 Requirements for Labeling of Permanently Closed AST

9.5.1 All ASTs with a capacity greater than 250 gallons and contained a regulated substance other than diesel, heating fuel or kerosene and which are permanently closed in accordance with the requirements of these Regulations shall be labeled with the words Permanently Closed and the date of permanent closure within thirty (30) days of the closure date, or for ASTs that were permanently closed prior to the most recent effective date of these Regulations, labels must be affixed within ninety (90) days of the most recent effective date of these Regulations.

9.5.2 All ASTs with a capacity greater than 19,999 gallons and contained diesel, heating fuel or kerosene and which are permanently closed in accordance with the requirements of these Regulations shall be labeled with the words Permanently Closed and the date of permanent closure within thirty (30) days of the closure date, or for ASTs that were permanently closed prior to the most recent effective date of these Regulations, labels must be affixed within ninety (90) days of the most recent effective date of these Regulations.

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

~~PART B INSTALLATION AND UPGRADE REQUIREMENTS FOR NEW AND EXISTING ABOVEGROUND STORAGE TANKS~~

PART B INSTALLATION AND UPGRADE REQUIREMENTS FOR NEW AND EXISTING ASTS

1.0 ~~General Requirements For All New ASTs Aboveground Storage Tanks and AST Relocations~~

1.1 General Requirements for All New ASTs and AST Relocations

1.1.1 AST Owners and Operators shall notify the Department at least sixty (60) days ~~prior~~ prior to installation of all proposed New ASTs or Relocated ASTs used for storing Regulated Substances. Notice shall specify as a minimum:

1.1.1.1 the date of commencement of installation activities;

1.1.1.2 location including the address and a plan view dimensioned drawings of the ~~facility~~ Facility of sufficient detail to locate the AST's with respect to the property lines and buildings or other structures located on the property and showing the relation of the AST to the site and the site to the surrounding area;

1.1.1.3 drawings, design data, and material cut sheets for the type of AST and piping Leak Detection ~~system~~ systems;

1.1.1.4 description of the Regulated Substance to be stored including, Safety Data Sheet which complies with the definition of such as contained in OSHA, 29 CFR, 1910.1200, Hazard Communication, with the exception of those ASTs storing heating fuel, diesel, kerosene or gasoline and CAS registry number or numbers if available;

1.1.1.5 type of overfill protection device, including drawings and manufacturer specifications;

1.1.1.6 detail showing the proposed method of drawing of the secondary containment including the calculations demonstrating the capacity;

1.1.1.7 the design drawing of the proposed Cathodic Protection System showing the layout, calculations on the Cathodic Protection System, material cut sheets including anodes, cables, rectifier, hour meter and backfill, if as applicable;

1.1.1.8 description and drawings of the AST(s) and foundation to be installed, including dimensions, capacity, material of construction, manufacturer's name and address, model number, supplier's name and address, and any other information that completely describes the AST and foundation;

1.1.1.9 description of piping to be used, including Pipe pipe diameters, materials, connections, manufacturer specifications and piping diagrams, as applicable;

1.1.1.10 any other information that ~~will~~ shall accurately convey the intended AST configuration.

1.1.1.11 type of measuring gauge, and drawings and manufacturer specifications detailing the measuring gauge;

1.1.1.12 drawings, design data, material cut sheets detailing the release prevention barrier;

1.1.1.13 drawings, design data, and calculations for all normal and emergency venting systems;

1.1.1.14 design data for exterior corrosion protection.

- 1.1.2 No new ASTs shall be constructed of wood or concrete after ~~the effective date of these Regulations June 11, 2004.~~
- 1.1.3 Upon notification by the AST Owner ~~and or~~ Operator, a review by the Department of the notification and accompanying documents ~~must shall~~ be made for compliance with the requirements for new ASTs or ~~Relocate~~ relocated ASTs ~~as applicable, and-~~
- 1.1.3.1 A formal letter of approval or denial of the installation shall be issued by the Department to the Owner and Operator within sixty (60) days of the Department's receipt of the installation notification and supporting documentation as specified in PART B, subsection § 1.1 of this Part.
- 1.1.3.2 If a denial is issued, all required corrections and compliance with the new AST requirements or ~~Relocated~~ relocated AST requirements, as applicable, must shall be met before the installation can be approved.
- 1.1.3.3 If within the sixty (60) day notification period, the Department or its designee issued a formal letter of approval, the installation of the AST may begin.
- 1.1.4 Approval letters ~~must shall~~ be posted at the construction site at the ~~facility~~ Facility where the new AST installation or AST ~~Relocation~~ relocation is in progress.
- 1.1.5 During construction, an Owner ~~and or~~ Operator shall not cause or allow a substantial design change which is not in accordance with the approved plans and all terms and conditions of the Department's approval.
- 1.1.6 The design ~~e~~Engineer of record ~~must shall~~ approve in writing any and all substantial design changes and resubmit to the Department for formal approval.
- 1.1.7 A formal approval of installation shall be valid for one year from the date of approval. If construction of the AST is not initiated within one year of issuance of the Department's letter of approval, the Owner or Operator shall request an extension in writing, including the cause for the delay and the expected date of construction initiation, ~~or~~ the approval shall lapse. For the purpose of this rule, initiated shall mean construction equipment commonly used in Facility or ~~system~~ AST construction has been mobilized to the site and that materials used in the construction of the Facility or AST have been delivered to the site and construction has begun.
- 1.1.8 Department approval for installation of an AST shall not eliminate the need to obtain applicable approvals and/ or permits from the authority(ies) enforcing the ~~State Fire Prevention Regulations~~ State Fire Prevention Regulations, local building codes or other State or Federal laws or regulations.
- 1.9 The Department shall assess a one-time construction permit fee for a New AST based on the schedule below for an AST constructed after the effective date of the Regulations promulgated pursuant to Title 7 ~~Del.C., Ch. 74A, The Jeffrey Davis Aboveground Storage Tank Act, §7414A.~~ Any person required to pay a fee under Title 16 ~~Del.C., Ch. 66, Fire Prevention,~~ to the State Fire Marshal related to an AST shall receive a 10% reduction in the construction permit fee.

Construction Fee Schedule

<u>Tank Size-</u>	<u>Construction Permit Fee</u>
12,499 – 39,999 gallons	\$1,500.00
40,000 gallons and greater	\$3,750.00

- 1.1.9 All ASTs, piping, appurtenances and secondary containment shall be compatible with the regulated substance stored in the AST.
- 1.1.10 After the most recent Effective Date of these Regulations new ASTs shall not be installed within a minimum distance of a one hundred and fifty (150) foot radius from a public or industrial well, unless otherwise approved by the Department. A retrofit or upgrade of an AST shall not be considered a new installation for the purposes of this section.
- 1.1.11 After the most recent Effective Date of these Regulations new ASTs shall not be installed within a minimum distance of a one hundred (100) foot radius from a domestic well, unless otherwise approved by the Department. A retrofit or upgrade of an AST shall not be considered a new installation for the purposes of this section.
- 1.1.12 The Owner shall notify the Department in writing within seven (7) days after the date of final completion of a new installation. The Department shall complete a final on-site inspection within ten (10) days of receipt of the written notice of final installation completion. The Department shall issue written approval to operate or send a letter detailing deficiencies within ten (10) days after the final Department on-site inspection. If the Owner does not receive written notification from the Department within the ten (10) days, the Owner may commence tank operations provided that:
- 1.1.12.1 The Owner notifies the Department in writing of the date tank operations will commence; and

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

1.2 Construction Permit Fees

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

Construction Permit Fee Schedule

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

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

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

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

2.0 Design ~~A~~and Construction Requirements ~~F~~for New Metallic Field-~~c~~Constructed ASTs

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

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

2.1.1.1 Be of welded construction.

2.1.2-3.2 Meet or exceed the following design or manufacturing standards, as applicable:

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

2.1.2.1.2.2 API Standard 650, *Welded [Steel] Tanks for Oil Storage*;

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

2.1.2.1.2.4 NACE RP0294-94 ~~SP0294~~; *Design, Fabrication, and Inspection of Tanks for the Storage of Concentrated Sulfuric Acid and Oleum at Ambient Temperatures*;

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

2.1.2.1.2.6 Other standards approved by the Department.

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

2.1.3 All metallic Field-Constructed ASTs installed after ~~the effective date of these Regulations~~ June 11, 2004 with tank bottoms in contact with soil shall be protected from corrosion in accordance with § Part B, Section 5.0 of this Part.

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

2.1.4.1 An ~~Imperious~~ imperious soil layer or geosynthetic clay liner with a permeability of ~~10⁻⁷~~ 1 x 10⁻⁷ cm/sec or less; or

- 2.1.4.2 An ~~Impervious~~ impervious geosynthetic liner installed in accordance with manufacturer's ~~recommendations~~ recommendations such as a 60 mil unreinforced liner, 40 mil reinforced liner, or a material of similar or more stringent specifications ~~and~~ that is compatible with the Regulated Substance being stored; or
- 2.1.4.3 A double bottom with Leak Detection monitoring for the presence of a leak of a Regulated Substance ~~regulated substance leakage~~; or
- 2.1.4.4 An ~~Impervious~~ impervious concrete slab foundation.
- 2.1.5 All metallic Field-Constructed ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ shall have ~~Secondary Containment~~ secondary containment installed in accordance with PART B, Section §7.0 of this Part.
- 2.1.6 All metallic Field-Constructed ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ shall have base line data including:
 - 2.1.6.1 Floor and wall/shell thickness measurements which shall be kept on file by the Owner for the life of the AST and which shall be made available to the Department upon request.
 - 2.1.6.2 Material certifications which shall be kept on file by the Owner for the life of the AST and which shall be made available to the Department upon request.
- 2.1.7 A report including the welding procedures, welding certification reports, and any non-destructive testing performed on the AST shall be kept on file by the Owner for the life of the AST and which shall be submitted to the Department prior to placing the AST in service.
- 2.1.8 All metallic Field-Constructed ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ constructed for the purpose of storing sulfuric acid or Spent Acid or Spent Caustic or other ~~Regulated Substances~~ regulated substances with similar corrosive properties, shall be subject to additional design consideration including but not limited to NACE Standard RPSP0294, material compatibility, coating requirements and additional non-destructive examination (NDE).
- 2.1.9 All metallic Field-Constructed ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ shall provide a method of ~~Leak Detection~~ leak detection in accordance with PART B, Section §9.0 of this Part.
- 2.1.10 All metallic Field-Constructed ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ shall be equipped with an overfill prevention and spill containment system in accordance with PART B, Section §8.0 of this Part.
- 2.1.11 All ASTs regulated under this ~~s~~Section shall be equipped with normal and emergency venting in accordance with API 2000 and NFPA 30.
- 2.1.12 All metallic Field-Constructed ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ shall be inspected and tested in accordance with API 650 or the design standard(s) under which the AST was constructed as applicable before being placed ~~in~~ sService.
- 2.1.13 All exposed exterior surfaces of all metallic Field-Constructed ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ shall be protected from corrosion.
- 2.1.14 The completed installation of all metallic Field-Constructed ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ is to be inspected and certified by a Certified API 653 Inspector.

3.0 **Design ~~And~~ Construction Requirements ~~F~~for New Metallic ~~Shop-fabricated~~ Shop-Fabricated ASTs**

- 3.1 General Requirements for Design and Construction of New Metallic Shop-Fabricated ASTs
 - 3.1.1 All new metallic Shop-Fabricated ASTs that will contain ~~Regulated Substances~~ regulated substances shall meet or exceed the following design or manufacturing standards, as applicable:
 - 3.1.1.1 UL 2085, *Protected Aboveground Tanks for Flammable and Combustible Liquids*;
 - 3.1.1.2 UL 142, *Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids*;
 - 3.1.1.3 API 650 ~~Appendix~~ Annex J, *Shop-Assembled Storage Tanks*;
 - 3.1.1.4 NFPA 30, *Flammable and Combustible Liquids Code*;
 - 3.1.1.5 ASME, *Boiler & and Pressure Vessel Code, Section VIII, Division 4*, *Design & Fabrication of Pressure Vessels*;
 - 3.1.1.6 Other standards approved by the Department.
 - 3.1.2 All metallic ~~Shop-Fabricated~~ shop-fabricated ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ shall have a suitable foundation capable of supporting the ~~tank~~ AST full of ~~Regulated Substance~~ regulated substance or the test media without excessive differential settlement as defined in API 653 or manufacturer's recommendation. The foundation design and construction shall be based on

sound engineering practices. The foundation design shall provide positive drainage of water away from the base. ASTs located in areas subject to flooding ~~must~~ shall be protected from flotation.

- 3.1.3 All metallic shop-fabricated ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ with tank bottoms in contact with soil shall be protected from corrosion in accordance with PART B, Section §5.0 of this Part.
- 3.1.4 All metallic Shop-Fabricated ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ shall be placed on a release prevention barrier. The integrity of the Release Prevention Barrier shall not deteriorate due to exposure to the elements or soil in the presence of ~~Regulated Substances~~ regulated substances. The following are acceptable release prevention barriers:
- 3.1.4.1 An Impervious soil layer, or geosynthetic clay liner with a permeability of ~~10⁻⁷~~ 1x10⁻⁷ cm/sec or less; or
- 3.1.4.2 An Impervious geosynthetic liner installed in accordance with manufacturer's recommendations such as a 60 mil unreinforced liner, 40 mil reinforced liner, or a material of similar or more stringent specifications that is compatible with the Regulated Substance being stored; or
- 3.1.4.3 A double bottom or double wall with Leak Detection monitoring for the presence of a leak of a Regulated Substance ~~regulated substance~~ leakage; or
- 3.1.4.4 An ~~Impervious~~ impervious concrete slab foundation; ~~and or~~
- 3.1.4.5 An AST that is in a saddle or other suitable support may utilize steel containment.
- 3.1.5 All metallic Shop-Fabricated ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ shall have ~~Secondary Containment~~ secondary containment installed in accordance with PART B, Section §7.0 of this Part.
- 3.1.6 Installation of all metallic Shop-Fabricated ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ constructed for the purpose of storing sulfuric acid, Spent Acid or Spent Caustic or other ~~Regulated Substances~~ regulated substances with similar corrosive properties shall be subject to additional design consideration including but not limited to NACE Standard ~~RPSP0294~~, material compatibility, coating requirements and additional non-destructive examination (NDE).
- 3.1.7 All metallic Shop-Fabricated ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ shall provide a method of ~~Leak Detection~~ leak detection in accordance with PART B, Section §9.0 of this Part.
- 3.1.8 All metallic Shop-Fabricated ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ shall be equipped with an overfill prevention and spill containment system in accordance with PART B, Section §8.0 of this Part.
- 3.1.9 All metallic shop-fabricated ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ shall be equipped with normal and emergency venting in accordance with API 2000, NFPA 30, UL 142 and UL 2085, as applicable.
- 3.1.10 All metallic shop-fabricated ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ ASTs shall be tested in accordance with industry standards and manufacturer's recommendations before being placed in service.
- 3.1.11 All exposed exterior surfaces of all metallic shop-fabricated ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ shall be protected from corrosion.
- 3.1.12 The completed installation of every metallic shop-fabricated AST installed after ~~the effective date of these Regulations June 11, 2004~~ is to be inspected and certified by an inspector familiar with Shop-Fabricated ASTs such as certified STI-SP001 Inspectors and qualified by experience for such inspections.
- 3.1.13 All metallic Shop-Fabricated ASTs installed after ~~the effective date of these Regulations June 11, 2004~~ shall have base line data including:
- 3.1.13.1 Floor and wall/shell thickness measurements which shall be kept on file by the Owner for the life of the AST and which shall be made available to the Department upon request.
- 3.1.13.2 Material certifications which shall be kept on file by the Owner for the life of the AST and which shall be submitted to the Department prior to placing the AST in service.
- 3.1.14.13.3 A report including the welding procedures, welding certification reports, and any non-destructive testing performed on the AST shall be kept on file by the Owner for the life of the AST and which shall be submitted to the Department prior to placing the AST in service.

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

4.0 ~~Design And Construction Requirements Ffor New Non-metallic~~ Non-Metallic Shop-fabricated Shop-Fabricated And Field-constructed Field-Constructed ASTs

4.1 General Requirements for Design and Construction of New Non-Metallic Shop-Fabricated and Field-Constructed ASTs

- 4.1.1 All new non-metallic ASTs shall be designed, fabricated, inspected, stamped and installed in accordance with ASME, RTP-1 *Reinforced Thermoset Plastic Corrosion Resistant Equipment*.
- 4.1.2 No new ASTs ~~may~~ shall be constructed of wood or concrete after ~~the effective date of these Regulations~~ June 11, 2004.
- 4.1.3 Flammable substances shall not be stored in non-metallic ASTs without specific approval from the Department.
- 4.1.4 All non-metallic ASTs installed after ~~the effective date of these Regulations~~ June 11, 2004 shall have a suitable foundation capable of supporting the ~~tank~~ AST full of ~~Regulated Substance~~ regulated substance or the test media without excessive differential settlement as defined in API 653 or manufacturer's recommendations. The foundation design and construction shall be based on sound engineering practices. The foundation design shall provide positive drainage of water away from the base. ASTs located in areas subject to flooding ~~must~~ shall be protected from flotation.
- 4.1.5 All non-metallic ASTs installed after ~~the effective date of these Regulations~~ June 11, 2004 shall be placed on a release prevention barrier. The integrity of the ~~barrier~~ release prevention barrier shall not deteriorate due to exposure to the elements or soil in the presence of ~~Regulated Substances~~ regulated substances. The following are acceptable release prevention barriers:
 - 4.1.5.1 An ~~Impervious~~ impervious soil layer, or geosynthetic clay liner with a permeability of ~~10⁻⁷~~ 1x10⁻⁷ cm/sec or less; or
 - 4.1.5.2 An ~~Impervious~~ impervious geosynthetic liner installed in accordance with manufacturer's recommendations such as a 60 mil ~~non-unreinforced~~ liner, 40 mil reinforced liner, or a material of similar or more stringent specifications and that is compatible with the ~~product~~ regulated substance being stored; or
 - 4.1.5.3 A double bottom or double wall with Leak Detection monitoring for the presence of a leak of a Regulated Substance ~~regulated substance~~ leakage; or
 - 4.1.5.4 An ~~Impervious~~ impervious concrete slab foundation.
- 4.1.6 All non-metallic ASTs installed after ~~the effective date of these Regulations~~ June 11, 2004 shall have ~~Secondary Containment~~ secondary containment installed in accordance with PART B, Section §7.0 of this Part.
- 4.1.7 All non-metallic ASTs installed after ~~the effective date of these Regulations~~ June 11, 2004 shall have base line data including:
 - 4.1.7.1 Floor and wall/shell thickness measurements which shall be kept on file by the Owner for the life of the AST and which shall be made available to the Department upon request.
 - 4.1.7.2 Material certifications which shall be kept on file by the Owner for the life of the AST and which shall be submitted to the Department prior to placing the AST in service.
- 4.1.8 Installation of all non-metallic ASTs installed after ~~the effective date of these Regulations~~ June 11, 2004 constructed for the purpose of storing sulfuric acid, Spent Acid or Spent Caustic or other ~~Regulations~~ Substances ~~regulated substances~~ with similar corrosive properties shall be subject to additional design consideration including but not limited to NACE ~~Standard FPSP0294~~, material compatibility, coating requirements and additional non-destructive examination (NDE).
- 4.1.9 All non-metallic ASTs installed after ~~the effective date of these Regulations~~ June 11, 2004 shall provide a method of ~~Leak Detection~~ leak detection in accordance with PART B, Section §9.0 of this Part.
- 4.1.10 All non-metallic ASTs installed after ~~the effective date of these Regulations~~ June 11, 2004 shall be equipped with an overfill prevention and spill containment system in accordance with PART B, Section §8.0 of this Part.
- 4.1.11 All non-metallic ASTs installed after ~~the effective date of these Regulations~~ June 11, 2004 shall be equipped with normal and emergency venting in accordance with API 2000 and NFPA 30.
- 4.1.12 All non-metallic ASTs installed after ~~the effective date of these Regulations~~ June 11, 2004 shall be tested in accordance with industry standards and manufacturer's recommendations before being placed in service.
- 4.1.13 All exposed exterior surfaces of non-metallic ASTs installed after ~~the effective date of these Regulations~~ must June 11, 2004 shall be protected from corrosion or deterioration.
- 4.1.14 The completed installation of all non-metallic ASTs installed after ~~the effective date of these Regulations~~ June 11, 2004 shall be inspected in accordance with ASME RTP-1 and the NBIC, ~~Appendix 9~~ Part 3 Supplement 4.

5.0 Design And Installation Requirements For Cathodic Protection Systems For ASTs

5.1 General Requirements for Design and Installation of Cathodic Protection Systems for AST

- 5.1.1 All New metallic ASTs including double bottom ASTs installed on foundations consisting of sand, soil or other material that can allow moisture penetration and corrosion, shall install a Cathodic Protection System to mitigate external corrosion of the tank bottom.
- 5.1.2 A Cathodic Protection System for the external bottom of a ~~n~~New or ~~e~~Existing metallic AST ~~must~~ shall be designed, installed, inspected and maintained to meet or exceed the requirements of the most recent edition of the following industry standards, as applicable:
 - 5.1.2.1 NACE Standard ~~RP01-93~~ SP0193 *External Cathodic Protection of On-Grade Carbon Steel Storage Tank Bottoms*;
 - 5.1.2.2 API Recommended Practice 651 - *Cathodic Protection of Aboveground Petroleum Storage Tanks*[:];
 - 5.1.2.3 NACE Standard ~~RP~~SP0169 - *Control of External Corrosion on Underground or Submerged Metallic Piping Systems*

5.2 Required Qualifications of Personnel Designing Cathodic Protection Systems

- 5.2.1 Cathodic Protection Systems shall be designed by individuals who have obtained a NACE Cathodic Protection ~~Level-3 Specialist~~ Certification and have relevant work experience in the design of Cathodic Protection Systems for ASTs.

5.3 Design and Installation Requirements for Cathodic Protection Systems

- 5.3.1 Cathodic Protection Systems shall be installed ~~and operating within one year after installation at the time of installation or upgrade of a metallic AST and shall be operational at the completion of the new installation or upgrade, or other schedule as approved by the Department.~~
- 5.3.2 Each Cathodic Protection System ~~must~~ shall be designed and installed with test stations or other methods to enable the Owner ~~and~~[/]~~or~~ Operator to monitor the operation of the Cathodic Protection System.
- 5.3.3 Consideration for monitoring the cathodic protection status of the underside of the AST bottom ~~must~~ shall be provided for in the design.
- 5.3.4 Cathodic Protection Systems shall be designed to provide corrosion protection for the expected active life of the AST or have provisions to allow for the periodic rehabilitation of the Cathodic Protection System.
- 5.3.5 ~~After installation of a Sacrificial Anode System, [mM]easurements of AST to soil AST to soil potential must shall be made no sooner than sixty (60) days and no later than one hundred and eighty (180) days after installation of the Cathodic Protection System in accordance with the requirements of PART C, Section 5.0. If inadequate cathodic protection is indicated, the cause shall be determined, and necessary repairs shall be made within ninety (90) days, or other schedule approved by the Department, in accordance with one of the industry standards referenced in §5.1.2 of this Part.~~

5.4 Cathodic Protection Criteria

- 5.4.1 The criteria for determining the effectiveness of cathodic protection shall be as indicated in NACE Standard ~~RP~~SP0193.

6.0 Design, Construction, And and Repair Requirements For for Underground Piping

6.1 General Requirements for New Underground Piping—General Requirements

- 6.1.1 All underground piping installed after ~~the effective date of these Regulations~~ June 11, 2004 shall comply with the requirements of this ~~section~~ Section.
- 6.1.2 All underground piping, fittings and connections that are either in contact with the ~~Regulated Substance~~ regulated substance or completely buried shall:
 - 6.1.2.1 Be constructed of fiberglass reinforced epoxy, carbon steel, thermoplastic material extrusions, stainless steel, or galvanized steel; or
 - 6.1.2.2 Be constructed of other materials as approved by the Department.
- 6.1.3 All underground piping and piping ~~Secondary Containment~~ secondary containment materials shall be compatible with the Regulated Substance that is to be stored in the AST.
- 6.1.4 The underground piping layout shall be designed to minimize crossed lines and interference with conduit and other AST components. If crossing of lines is unavoidable, adequate clearance ~~must~~ shall be provided to prevent contact.

- 6.1.5 All fill pipes leading to a pump-filled AST shall be equipped with a properly functioning check valve or equivalent device which provides automatic protection against backflow whenever the piping arrangement of the fill pipe is such that backflow from the AST is possible.
- 6.1.6 Each AST connection through which a ~~Regulated Substance~~ regulated substance can normally flow shall be equipped with an operating isolation valve to control flow unless the AST connection is located at a point higher than the highest liquid level in the AST, such as at the top of a horizontal AST. The valve shall be located on a nozzle welded to the shell of the AST.
- 6.1.7 Pipe joints ~~must shall~~ be cut accurately and deburred to provide liquid-tight seals. No threaded or flanged connections shall be in contact with the soil.
- 6.1.8 New underground piping systems shall be designed, constructed, and installed with access and isolation points to permit pressure testing of piping without the need for excavation.
- 6.1.9 Copper or brass tubing or malleable iron shall not be used in AST underground piping.
- 6.1.10 All new underground piping shall be tested in accordance with API 570 prior to introduction of any ~~Regulated Substance~~ regulated substance into the piping.
- 6.1.11 ~~Metallic Underground~~ underground ~~metallic~~ piping that penetrates earthen or concrete dike walls or other structures ~~must shall~~ be sleeved and electrically isolated from the sleeve.
- 6.2 Requirements for New Non - Metallic Underground Piping
 - 6.2.1 New Non-metallic underground piping shall be designed and constructed in accordance with:
 - 6.2.1.1 ASTM Specification ~~D-2996-74~~ D-2996, *Standard Specification for Filament Wound RTRP*; and
 - 6.2.1.2 UL 971, *Standard for Nonmetallic Underground Piping for Flammable Liquids*.
 - 6.2.2 The ultimate shear strength of all adhesive and curing agents shall be in compliance with ASTM D-2517, as approved and supplied by the manufacturer.
 - 6.2.3 Thermoplastic extrusion flexible underground piping shall be designed and constructed in accordance with:
 - 6.2.3.1 UL 971, *Standard for Nonmetallic Underground Piping for Flammable Liquids*.
 - 6.2.4 Other non-metallic underground piping may be approved by the Department.
- 6.3 Requirements for New Steel Underground Piping
 - 6.3.1 New Steel Underground Piping:
 - 6.3.1.1 shall be standard weight or heavier; and
 - 6.3.1.2 shall be installed in accordance with:
 - 6.3.1.2.1 API Recommended Practice 1615, *Installation of Underground Petroleum Storage Systems*; and
 - 6.3.1.2.2 ~~[A]NSI ASME B31.1, Power Piping~~; and
 - 6.3.1.2.3 ~~[A]NSI ASME B31.3, Process Piping~~; and
 - 6.3.1.2.4 ~~ANSI ASME B31.4, Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols~~ Pipeline Transportation Systems for Liquids and Slurries; and
 - 6.3.1.3 shall have a protective coating and be cathodically protected in accordance with PART B, subsection §6.5 of this Part; or
 - 6.3.1.4 shall have non-metallic ~~Secondary Containment~~ secondary containment; or
 - 6.3.1.5 shall have metallic ~~Secondary Containment~~ secondary containment that shall have protective wrapping or dielectric coating and shall be cathodically protected by an Impressed Current Cathodic Protection System or Sacrificial Anode Cathodic Protection System unless the metallic secondary containment is not in contact with the soil and is in a non-corrosive environment; or
 - 6.3.1.6 shall not require the addition of cathodic protection if the steel Underground Pipe is not in contact with the soil and is in a non-corrosive environment.
- 6.4 Requirements for New Other Metallic Underground Piping
 - 6.4.1 Metallic underground piping other than steel shall:
 - 6.4.1.1 be schedule 40 or heavier thickness; and
 - 6.4.1.2 be approved by the Department prior to installation.
- 6.5 Requirements for Corrosion Protection for New Steel Underground Piping
 - 6.5.1 Corrosion protection for steel ~~Underground Piping~~ underground piping in contact with the soil shall:
 - 6.5.1.1 consist of a Sacrificial Anode Cathodic Protection System or an Impressed Current Cathodic Protection System designed, fabricated, and installed in accordance with nationally recognized

standards including but not limited to API ~~recommended practice~~ RP651, NACE ~~standard number~~ RP-0285-85, and NACE ~~RP-01-69~~ SP0169; and

- 6.5.1.2 have a Cathodic Protection System designed by individuals who have obtained a NACE Cathodic Protection ~~Level 3~~ Specialist Certification and have relevant work experience in the design of Cathodic Protection Systems for Underground Piping; and
- 6.5.1.3 be designed to provide corrosion protection for the expected active life of the AST system or have provisions to allow for the periodic rehabilitation of the Cathodic Protection System; and
- 6.5.1.4 have a test station or other method of monitoring which enables the Operator to confirm that the Cathodic Protection System is operating properly.

6.5.2 ~~After installation of a Sacrificial Anode System, m~~Measurements of Underground Pipe-to-soil potential ~~must shall~~ be made no sooner than sixty (60) days and no later than one hundred and eighty (180) days after installation of the Cathodic Protection System in accordance with the requirements of PART C, Section 5.0. If inadequate cathodic protection is indicated, the cause shall be determined, and necessary repairs shall be made within ninety (90) days or other schedule approved by the Department in accordance with one of the industry standards referenced in §5.1.2 of this Part.

6.6 Requirements for Backfill Material for New Underground Piping Installations

6.6.1 Backfill material adjacent to the underground piping ~~must shall~~ consist of sand or pea gravel. The material ~~must shall~~ be clean, washed, inert, free flowing, homogeneous, well granulated, non-corrosive, and free of debris, rock, ice, snow or organic material. Particle length shall be no more than 3/8-3/4" in size and shall comply with the manufacturer's specifications. Mixing of the backfill adjacent to the underground pipe with native substance and/or foreign objects is prohibited.

6.7 Repair Requirements for Underground Piping

6.7.1 Any repairs to Underground Pipe ~~that must be repaired~~ shall be ~~repaired~~ made to equal or exceed standards of ~~its~~ the original condition of the underground piping.

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

6.7.3 Permanent repairs shall be:

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

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

7.0 ~~Design A~~nd Construction Requirements ~~F~~or Secondary Containment and Spill Containment ~~F~~or New ASTs

7.1 General Requirements for Secondary Containment for ASTs.

7.1.1 Secondary ~~Containment~~ containment shall be required for all New ASTs constructed after ~~the effective date of these Regulations~~ June 11, 2004.

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

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

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

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

7.1.6 ASTs installed between June 11, 2004 and the most recent effective date of these Regulations, shall have all regulated substance transfer areas equipped with a spill containment system capable of containing and

collecting those spills and overfills and preventing a release where filling connections are made with vehicles.

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

7.2 Secondary Containment Options for ASTs

7.2.1 Requirements for Diking Configuration as secondary containment

- 7.2.1.1 Dikes shall be constructed of materials compatible with the contents of the AST and which ~~will~~ shall retain any Regulated Substance that leaves the primary containment including an AST and ~~Ancillary Piping ancillary piping~~ and prevent any ~~Regulated Substance regulated substance~~ from reaching the surface water, groundwater, or adjacent land before cleanup occurs.
- 7.2.1.2 There ~~must shall~~ be no openings or unsealed penetrations of the walls or floor of the dike. Any exceptions will be ~~tank~~ AST specific and ~~will shall~~ require Department approval.
- 7.2.1.3 All dikes ~~must shall~~ have a minimum capacity to contain 110% of the volume of the largest AST within the diked area or 100% of the volume of the largest AST plus six inches of freeboard for precipitation, regardless of engineering controls or design.
- 7.2.1.4 The extent of the diked area ~~should shall~~ be sufficient to capture overflows, splashing caused by overfilling and/or the trajectory of sidewall leaks.
- 7.2.1.5 Sumps ~~should shall~~ be installed as part of all dikes and the dike floors sloped to the sumps to enhance material removal.
- 7.2.1.6 Pumps which are permanently installed for the removal of collected material to areas outside the dike area ~~should shall~~ be locked in the off position when not in use and ~~should shall~~ be monitored when in use to avoid discharging ~~Regulated Substances regulated substances~~ to the environment. Portable pumps which are used for the removal of collected material to areas outside of dikes ~~should shall~~ be monitored while in use to avoid discharging ~~Regulated Substances regulated substances~~ to the environment. Pumps which discharge material back to the ASTs within the diked area need not be locked when not in use, but pumps which pump in either direction ~~must shall~~ have valve locks to control discharges outside the dike, and when discharging outside the dike ~~should shall~~ be monitored.
- 7.2.1.7 An inspection and maintenance plan shall be developed to periodically review the condition of the ~~Secondary Containment secondary containment~~ system.
- 7.2.1.8 ~~A Permanent permanent~~ walkway, stairway or ramp ~~must shall~~ provide access to prevent dike wall degradation.

7.2.2 Requirements for Curbing/Paving as Secondary Containment

- 7.2.2.1 The paving/curbing combination, to be considered ~~Secondary Containment secondary containment~~, ~~must be able to contain shall have a minimum capacity to contain 110% of the volume of the largest AST[,]~~ or 100% of the volume of the largest AST plus six inches of freeboard for precipitation[,] or [be able] to direct spilled or leaked materials to a containment structure that has the ability ~~[shall have a minimum capacity to contain 110% of the volume of the largest AST or 100% of the volume of the largest AST plus six inches of freeboard for precipitation meets these requirements]~~, regardless of engineering controls or design.
- 7.2.2.2 The curbing and/or paving ~~must shall~~ be constructed of materials compatible with the contents of the ASTs around which they are installed. If necessary, the curbing and paving shall be coated with a protective material.
- 7.2.2.3 To provide a liquid tight seal, curbing ~~must shall~~ be installed as either part of the paving (integrally poured) or, if installed later, ~~must shall~~ have a liquid barrier included in the installation.
- 7.2.2.4 The extent of the curbed area ~~should shall~~ be sufficient to capture overflows, splashing caused by overfilling and/or the trajectory of sidewall leaks.
- 7.2.2.5 Sumps ~~should shall~~ be installed as part of all curbs and the floors sloped to the sumps to enhance material removal.

7.2.3 Requirements for Underground Vaults as Secondary Containment

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

- 7.2.3.2 All lines to and from ASTs installed in Vaults ~~must~~ shall pass through the roof of the Vault. No lines ~~may~~ shall penetrate the walls or floor of the Vault.
- 7.2.3.3 Each AST shall have its own Vault. Adjacent ASTs may share common walls.
- 7.2.3.4 Vaults shall be designed according to sound engineering practices.
 - 7.2.3.4.1 The floor shall be designed and constructed to withstand stress resulting from fully loaded ASTs within the Vault.
 - 7.2.3.4.2 The top, walls, and floor shall be designed to withstand the anticipated loading including loading from traffic, soil, and groundwater.
 - 7.2.3.4.3 The Vault shall be constructed to be liquid tight.
- 7.2.3.5 The AST and Vault shall be suitably anchored to withstand uplifting by either water or a ~~Regulated Substance~~ regulated substance, including when the AST is empty.
- 7.2.3.6 The only openings in a Vault are those necessary for access, inspection, filling, emptying and venting of the AST.
- 7.2.3.7 There ~~may~~ shall be no backfill around the AST and there shall be sufficient space between the AST and the vault to allow inspection of the AST and equipment. ASTs designed for underground use ~~may~~ shall not be used in Vaults.
- 7.2.3.8 Each ~~Vault~~ vault shall be equipped with Continuous Leak Detection and be capable of detecting vapors and liquids.
- 7.2.3.9 A means to admit a suitable fire suppression agent shall be provided for each ~~Vault~~ vault that contains ~~Flammable~~ flammable or ~~Combustible~~ combustible substances.
- 7.2.3.10 Each ~~Vault~~ vault shall have a means for personnel entry.
- 7.2.4 Requirements for Double-walled ASTs as Secondary Containment
 - 7.2.4.1 A double walled AST may be used to fulfill the requirements for ~~Secondary Containment~~ secondary containment if the AST is installed with all of the following:
 - 7.2.4.1.1 Overfill prevention as required in PART B, Section §8.0 of this Part; and
 - 7.2.4.1.2 Leak ~~Detection~~ detection as required in PART B, Section §9.0 of this Part; and
 - 7.2.4.1.3 Where an AST roof is involved, the outer wall of the double walled AST shall be designed to contain 100% of the volume of the AST. If there is an open top, the total containment ~~must~~ shall be constructed to contain 110% of the volume of the largest AST within the system or 100% of the volume of the largest AST plus six inches of freeboard for precipitation, regardless of engineering controls or design.
 - 7.2.4.2 The outer containment wall shall be compatible with and capable of containing the ~~Regulated Substance~~ regulated substance stored.
- 7.2.5 Requirements for Secondary Containment External Liners
 - 7.2.5.1 ~~An external liner is a liner of a material compatible with the contents of the AST which is installed inside an existing Secondary Containment structure, such as a dike, to provide additional assurance of impermeability. External liners are usually installed inside earthen dikes and under an AST.~~
 - 7.2.5.21 Secondary ~~C~~ontainment ~~lining materials~~ external liners shall be constructed and maintained to retain any Regulated Substance that leaves the primary containment including an AST and Ancillary Piping and prevent any Regulated Substance from reaching the surface water, groundwater, or adjacent land before cleanup occurs for the operational life of the ASTs.
 - 7.2.5.32 External Lining materials ~~must~~ shall be compatible with the ~~Regulated Substance~~ regulated substance stored in the AST.

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

8.0 Design ~~A~~nd Installation Requirements for Overfill and Spill Prevention

- 8.1 General Requirements for Design and Installation of Overfill and Spill Protection
 - 8.1.1 Owners ~~and or~~ Operators shall institute safe fill, shutdown and transfer procedures or equivalent measures established by the Department, that ~~will~~ shall ensure that spills resulting from AST overfills or other Regulated Substance transfer operations do not occur.
 - 8.1.2 Overfill equipment shall be installed on all ASTs constructed after the most recent date of promulgation of these Regulations.
 - 8.1.3 Overfill equipment shall be installed on all ASTs reactivated per PART B, Section 16.3 after the most recent date of promulgation of these Regulations.

- 8.1.24 Receipts of Regulated Substance shall be authorized by the Operator, or ~~Facility~~ personnel trained by the Operator ~~and~~ or Owner. The authorizing person shall ensure the volume available in the AST(s) is greater than the volume of Regulated Substance to be transferred to the AST(s) before the transfer operation commences. The Operator ~~and~~ Owner shall ensure that all AST fill valves not in use are secured and that only the AST(s) designated is receiving Regulated Substance. The Operator ~~and~~ Owner shall ensure that the transfer operation is monitored either by manual or automatic means to prevent an overfill.
- 8.1.35 If the transfer operations are not being continuously monitored by a transfer operator Operator appropriately trained in safe transfer procedures, the AST ~~must~~ shall be equipped with overfill prevention equipment that ~~will~~ shall automatically shut off the flow into the AST when the AST is no more than 95% full or other safe fill level approved by the Department. All automatic shutoff equipment shall be equipped with a fail-safe mechanism that ~~will~~ shall function in the event of power failure, malfunction or similar event.
- 8.1.46 If the transfer operations are being continuously monitored by a transfer operator appropriately trained in safe transfer procedures, the AST ~~must~~ shall be equipped with a high level alarm or other automatic mechanism approved by the Department, that ~~will~~ shall immediately alert the Operator to prevent an overfill event.
- 8.1.46.1 The high level alarm shall be monitored continuously and upon alert the Operator ~~will~~ shall implement safe shut down procedures to prevent an overfill.
- 8.1.46.2 The alarm shall consist of a visual and audible device capable of alerting the transfer operator Operator both by sight and hearing, to prevent an overfill situation. If the operator Operator is in a surveillance station, this alarm shall cause a warning light and audible signal in that station to activate. In addition, this system shall alarm on failure, malfunction or power loss.
- 8.1.5 ~~All Regulated Substance transfer areas where filling connections are made with vehicles shall be equipped with a spill containment system capable of containing and collecting those spills and overfills and preventing a Release.~~
- 8.1.67 If installed, an automatic shutdown system utilized during transfer of ~~Regulated Substance~~ a regulated substance shall include the capability to direct the flow of ~~a Regulated Substance~~ regulated substance to another AST capable of receiving the transferred ~~Regulated Substance~~ regulated substance or the capability to shut down the pumping or transfer system.
- 8.1.78 All ASTs shall be equipped with a gauge or other measuring device that is readily visible and accurately indicates the level of ~~Regulated Substance~~ [a the] regulated substance or quantity of ~~Regulated Substance~~ [the] regulated substance in the AST.
- 8.1.89 The overfill prevention and measuring device ~~must be~~ shall operate independently of each other.

9.0 Leak Detection Requirements ~~F~~for New ASTs

9.1 General Requirements ~~for~~ Leak Detection

- 9.1.1 A ~~Leak~~ leak of ~~Regulated Substances~~ regulated substances ~~must~~ shall be detected and contained before contamination of soil outside the containment area or water resources occurs.
- 9.1.2 New ASTs shall have a method, or combination of methods, of ~~Leak Detection~~ leak detection that can detect a ~~Leak~~ leak from any portion of the AST. Leak detection methods shall be separate from the method utilized to comply with the requirements for overfill prevention in PART B, Section 8.
- 9.1.3 ~~Leak Detection~~ detection methods ~~other than visual~~ shall be installed, calibrated, tested, operated and maintained in accordance with the manufacturer's instructions, including routine maintenance checks for operability to ensure that the device is functioning as designed.
- 9.1.4 All manufacturers' instructions, and the performance claims and their manner of determination described in writing by the equipment manufacturer or installer shall be retained at the Facility for the life of the AST.
- 9.1.5 ~~Leak Detection~~ detection systems require approval by the Department prior to installation. A ~~Leak Detection~~ leak detection response level shall be described in writing for each method or combination of methods of ~~Leak Detection~~ leak detection used for an AST.
- 9.1.6 The ~~Leak Detection~~ leak detection method or combination of methods used shall be capable of being inspected at least every seven (7) days to determine if a ~~Leak~~ leak from the AST has occurred.
- 9.1.7 Any interstitial spaces, including but not limited to those located in double-walled ASTs, double-walled piping, and double bottoms that are installed as part of a new or an Upgraded upgraded AST, shall be equipped with interstitial monitoring equipment capable of detecting a discharge of ~~Regulated Substance~~ a regulated substance into the interstitial space under all operating conditions.
- 9.1.8 The requirements of PART B, subsection §9.1.2, PART B, subsection §9.1.6 and PART B, subsection §9.1.7 shall not apply to double-walled ASTs that are not in contact with the soil and that additionally meet

the requirements for ~~Secondary Containment~~ secondary containment in accordance with PART B, Section §7.0 of this Part.

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

10.0 Relocation, Repairs ~~And~~ Modifications Requirements for ASTs

10.1 General Requirements for Relocation, Repairs and Modifications

- 10.1.1 Repairs, modifications and ~~Relocations~~ relocations shall be performed, inspected and tested in accordance with API 653 or STI-SP001 or STI-SP031 or NACE ~~RPSP0294~~ or ASME RTP-1 as applicable or other standards approved by the Department.

10.2 Additional Requirements for Relocated ASTs[.]

- 10.2.1 All ~~Relocated~~ relocated ASTs shall ~~meets~~ the standards for New ASTs[.] as applicable, with the exception that the Department may approve the use of the existing material of construction, and shall meet the following requirements before, the AST is utilized for storage of ~~Regulated Substances~~ regulated substances:

- 10.2.1.1 The Owner ~~and~~ or Operator shall notify the Department of the scheduled ~~Relocation~~ relocation and shall have received a formal letter of approval according to the requirements of PART B, Section §1.0 of this Part; and
- 10.2.1.2 A thorough internal and external cleaning and inspection performed by a Certified API 653 Inspector or a Certified STI-SP001 Inspector or individual certified under ASME RTP-1 or National Board Inspection Code, as applicable, determines in its new location that the AST is free of defects per the requirements of the applicable code; and
- 10.2.1.3 The AST is determined to be structurally sound in its new location by a Professional Engineer or an inspector certified per the applicable code such as but not limited to, a Certified API 653 Inspector or a Certified STI-SP001 Inspector, or qualified by training and experience in the absence of a code certification process.

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

11.0 Upgrade Requirements for Existing ASTs

11.1 General Requirements for Upgrading Existing ASTs

- 11.1.1 ~~Within one (1) year of the effective date of these Regulations~~ By June 11, 2005, all ASTs shall be equipped with a gauge or other measuring device that accurately shows the level of ~~Regulated Substance~~ regulated substance or the quantity of ~~Regulated Substance~~ regulated substance in the AST.
- 11.1.2 ~~Within one (1) year of the effective date of these Regulations~~ By June 11, 2005, all ASTs shall have an overfill prevention procedure per the requirements in PART B, Section §8.0 of this Part.
- 11.1.3 ~~Within three (3) years of the effective date of these Regulations~~, By June 11, 2007, all ASTs shall have normal and emergency venting installed in accordance with API 2000 or NFPA 30 or UL142 or **[UL2085 UL 2085]** as applicable.
- 11.1.4 ~~Within ten (10) years of the effective date of these Regulations~~, By June 11, 2014, the required overfill prevention equipment and the measuring device ~~must~~ shall function independently of each other per the requirements in PART B, Section §8.0 of this Part.
- 11.1.5 ~~Within seven (7) years of the effective date of these Regulations~~, By June 11, 2011, an AST which is not equipped with cathodic protection or an internal liner approved by the Department and documented to be capable of preventing a release, shall be ~~Upgraded~~ upgraded to meet the requirements of PART B, subsection §11.1.7 of this Part.
- 11.1.6 ~~Within fifteen (15) years of the effective date of these Regulations~~, By June 11, 2019, an AST which is equipped with cathodic protection in accordance with PART B, Section §5.0 of this Part, or an internal liner approved by the Department and documented to be capable of preventing a Release, shall be ~~Upgraded~~ upgraded to meet the requirements of PART B, subsection §11.1.7 of this Part.
- 11.1.7 All ASTs shall be equipped with or comply with at least one of the following per the schedule in PART B, subsection §11.1.5 or PART B, subsection §11.1.6 of this Part:
 - 11.1.7.1 Leak ~~Detection~~ detection equipment in accordance with the requirements of PART B, Section §9.0 or alternate method approved by the Department; or
 - 11.1.7.2 release prevention barrier in accordance with the requirements of ~~this Part~~ PART B; or
 - 11.1.7.3 Double bottom in accordance with the requirements of ~~this Part~~ PART B; or
 - 11.1.7.4 Annual in service test or inspection approved by the Department; or

- 11.1.7.5 Annual internal inspection in accordance with API 653 or other applicable standard.
- 11.1.8 ~~Within three (3) years of the effective date of these Regulations, By June 11, 2007, all ASTs must shall~~ comply with the ~~Inerting inerting~~ requirements of ~~PART B, Section §12.0 of this Part.~~
- 11.1.9 ~~Within one (1) year of the most recent Effective Date of these Regulations, all ASTs, piping,~~ appurtenances and secondary containment shall be compatible with the regulated substance stored in the AST.
- 11.2 Upgrade Requirements for Existing Underground Piping Systems
- 11.2.1 ~~Within ten (10) years of the effective date of these Regulations, By June 11, 2014, all existing~~ Underground Piping underground piping that does not meet the requirements for new Underground Piping underground piping as required in PART B, Section §6.0 of this Part must shall be Upgraded upgraded to meet such requirements.
- 11.3 Upgrade Requirements for Tanks Built Prior to the ~~Effective Date of the Regulations June 11, 2004,~~ Converting to Storage of a Regulated Substance
- 11.3.1 Persons, who own an aboveground storage tank installed prior to ~~the effective date of the Regulations June 11, 2004;~~ which ~~have has~~ only stored ~~non-Regulated regulated~~ Substances substances; who intend to convert the aboveground storage tank to the storage of a Regulated Substance regulated substance and the conversion will make the tank subject to these Regulations, shall notify the Department of the ~~Change-In-Service change in service~~ on an AST registration form provided by the Department at least ~~ten (10)~~ sixty (60) days prior to initiating the ~~Change-In-Service change in service.~~ The form shall be accompanied with documentation that the tank shall comply with the following requirements:
- 11.3.1.1 The tank shall be subjected to a thorough internal and external cleaning and a inspection performed by a Certified API 653 Inspector or a Certified STI-SP001 Inspector or individual certified under ASME RTP-1 or National Board Inspection Code, as applicable, determining that the tank is free of ~~pinholes, cracks, structural damage, or excessive corrosion defects per the applicable code;~~ and
- 11.3.1.2 All aboveground and underground piping connected to the tank which ~~will shall~~ convey a Regulated Substance regulated substance shall comply with an API 570 external visual inspection and API 570 pressure test as applicable; ~~and~~
- 11.3.1.3 The tank is determined to be structurally sound by a Professional Engineer or an inspector certified per the applicable code such as but not limited to a Certified API 653 Inspector or a Certified STI-SP001 Inspector or individual certified under ASME RTP-1 or National Board Inspection Code, or qualified by training and experience in the absence of a code certification process; and
- 11.3.1.4 The tank and underground piping shall comply with the schedule of ~~R~~requirements specified in PART B, subsection §11.1 and PART B, subsection §11.2 of this Section.
- 11.3.2 If within the ~~ten (10) sixty (60)~~ day period, the required notification to the Department is completely satisfied, the conversion to storage of a Regulated Substance regulated substance may proceed without waiting for the expiration of the ~~ten (10) sixty (60)~~ days.
- 11.4 Upgrade Requirements for Tanks Built After the ~~Effective Date of the Regulations June 11, 2004~~ Converting to Storage of a Regulated Substance
- 11.4.1 Persons, who own an aboveground storage tank installed after ~~the effective date of the Regulations June 11, 2004;~~ which ~~have has~~ only stored ~~non-Regulated Substances non-regulated substances~~; who intend to convert the aboveground storage tank to the storage of a Regulated Substance regulated substance and the conversion will make the tank subject to these Regulations, shall notify the Department of the ~~Change-In-Service on change in service on utilizing~~ an AST registration form provided by the Department at least ~~ten (10) sixty (60)~~ days prior to initiating the ~~Change-In-Service change in service.~~ The form shall be accompanied with documentation that the tank shall comply with the following requirements:
- 11.4.1.1 The tank shall meet the standards for ~~New new~~ ASTs as specified in ~~this Part~~ PART B, as applicable; and
- 11.4.1.2 The tank shall be subjected to a thorough internal and external cleaning and a inspection performed by a Certified API 653 Inspector or a Certified STI-SP001 Inspector or individual certified under ASME RTP-1 or National Board Inspection Code, as applicable, determining that the tank is free of ~~pinholes, cracks, structural damage, or excessive corrosion defects per the applicable code;~~ and
- 11.4.1.3 All aboveground and underground piping connected to the tank which ~~will shall~~ convey a Regulated Substance regulated substance shall comply with an API 570 external visual inspection and API 570 pressure test as applicable.

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

11.4.2 If within the ~~ten (10)~~ sixty (60) days period, the required notification to the Department is completely satisfied, the conversion to storage of a ~~Regulated Substance~~ regulated substance may proceed without waiting for the expiration of the ~~ten (10)~~ sixty (60) days.

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

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

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

12.1 General Requirements **[For Inerting an AST without a Floating Roof]**

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

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

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

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

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

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

12.1.2.5 New ~~Field-Constructed~~ field-constructed horizontal or vertical ASTs used for Dispensing that meet the requirements of API 650 and API 2000 and the requirements of the Delaware State Fire Prevention Regulations.

12.1.3 An automatic system shall be continuously in place, in use, and operating to designed specifications whenever an AST is in service and has the potential for a ~~Flammable~~ flammable atmosphere. The system shall be in place, in use and operated to designed specifications unless the AST has been cleaned sufficiently and purged of ~~Flammable~~ flammable vapors to safely permit hot work in, on or around the AST.

12.1.4 An automatic system shall be in place, in use, and operating to designed specifications that continuously monitors the LOC or alternate monitoring parameters as approved by the Department so that whenever the required LOC or alternate monitoring parameters is not met the system shall:

12.1.4.1 Energize an audible and a visual alarm at the location where the operating parameters of the affected AST are monitored and controlled; and

12.1.4.2 Be equipped with an emergency system capable of discontinuing the energy supply to any pumps engaged in moving liquid into or out of the affected AST.

12.1.5 Work to return the system to specified operating parameters shall begin immediately after an alarm is registered. If the AST cannot be returned to the required LOC within 24 hours, the Department ~~must~~ shall be notified and be given an indication of when the AST can be returned to the required LOC.

12.1.6 During the time period that the system is not operating within the required LOC no actions shall be taken which unreasonably increase the probability of a ~~Deflagration~~ deflagration occurring within the affected **[tank AST]**.

- 12.1.7 The system shall be repaired within a time frame mutually agreed to by the Department and the ~~tank~~ AST Owner and or Operator.
- 12.1.8 The Department shall be notified within 24 hours when the affected AST is returned to the required LOC.
- 12.1.9 The gases exhausted or vented from a regulated AST operating under an Inerting system shall be treated in a manner which is compliant with all applicable Department Regulations and Permits.

13.0 Out of Service Requirements

13.1 General Requirements for out of service ASTs

13.1.1 An AST is ~~Out-of-Service~~ out of service if the AST:

- 13.1.1.1 has been designated as ~~Out-of-Service~~ out of service by the Owner and or Operator; or
- 13.1.1.2 is an empty tank except when the AST is emptied solely for the purpose of cleaning, routine maintenance or a change in product for a time period not to exceed one hundred eighty (180) days; or
- 13.1.1.3 ~~is not in use, in that it has not had, within any 45-day period, a Regulated Substance transferred into or withdrawn from the AST and has been drained of all contents and is empty.~~

13.1.2 The Owner and Operator shall notify the Department, ~~on~~ utilizing a form provided by the Department, upon taking an AST ~~Out-of-Service~~ out of service unless the AST is empty or ~~Out-of-Service~~ out of service because of scheduled testing or inspection per these Regulations.

13.1.3 The Owner and Operator of an AST that has remained out of service for greater than eighteen (18) months shall:

- 13.1.3.1 ~~Remove all the Regulated Substance from~~ Disconnect the AST and isolate ~~connected~~ from all piping; and
- 13.1.3.2 Secure the AST to prevent unauthorized entrance or tampering so that a Regulated Substance is not accidentally or intentionally introduced into the AST; and
- 13.1.3.3 ~~Thoroughly clean the interior of Empty~~ the AST and all ~~Ancillary Piping~~ ancillary piping of all sludge, solids, and residual Regulated Substance and retain documentation of the proper disposition of the removed sludge, liquids, solids and residual Regulated Substance ~~regulated substance~~.

13.1.4 The Owner and or Operator of an AST that has remained ~~Out-of-Service~~ Out of Service out of service for a period greater than three (3) years shall assess the site to determine whether there is soil or groundwater contamination attributable to the AST as per the requirements of PART B, Section §14.0 of this Part.

13.1.5 An AST that is out of service, but is not empty, shall be in compliance with all the applicable requirements of these Regulations, until the AST is removed, permanently closed in place, has undergone a permanent change in contents to a non-regulated substance, or is converted to another use in accordance with these Regulations.

13.1.6 An AST that is out of service and is empty is not required to be in compliance with the inspection, monitoring, testing and record keeping requirements of PART C, with the exception of PART C, Section 5.0 as applicable, only during the time the AST is out of service and empty.

13.1.7 When an AST has been out of service, is empty, and a site assessment has been performed in accordance with these Regulations, the AST is determined by the Department to be permanently closed.

13.1.8 ASTs that are used periodically, such as for seasonal use or an emergency storage or overflow containment AST that is expeditiously emptied, are not "out of service" even when they do not contain a regulated substance. The AST Owner or Operator must submit a request in writing to the Department to be designated as a seasonal or emergency storage or overflow containment AST.

13.2 Reactivating ~~Out-of-Service~~ Out of Service AST

13.2.1 ~~An AST which has been taken Out-of-Service and for which notice is required under §13.1.2 of this Part shall not be placed back into service, nor shall a Regulated Substance be introduced into the AST until the Owner and Operator certifies to the Department in writing that the AST is in compliance with all applicable statutes and Regulations.~~

13.2.2 An AST Owner and or Operator who reactivates an AST, which has been ~~Out-of-Service~~ out of service per PART B, subsection §13.1.1 shall notify the Department ~~by amending the AST registration form required by Part A, §4,~~ utilizing a form provided by the Department ten (10) days prior to putting the AST back into service.

13.2.3 Prior to placing an AST which has been ~~Out-of-Service~~ out of service for more than 1 year and empty, back into service, the Owner and or Operator shall thoroughly inspect and test the AST and appurtenances per the required time frames in PART C of these Regulations, ~~for evidence of the following conditions:~~

- 13.2.3.1 Corrosion of the interior or exterior of the AST or ancillary piping; and
- 13.2.3.2 Abnormal thinning of the AST walls or bottom; and
- 13.2.3.3 Perforations through the AST walls or bottom; and
- 13.2.3.4 Any other condition that would indicate a weakening of the structural integrity of the AST or identify a situation which could result in a Release of Regulated Substance from the AST.

13.2.3 An AST which was out of service prior to June 11, 2004 and is intended to be placed into service must comply with all new AST standards in these Regulations including payment of required construction fees in PART B, Section 1.2 and submission of installation documentation in accordance with PART B prior to being placed back In Service.

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

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

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

~~14.1.1 If, d~~During an any AST Removal, Permanent Closure in Place, Permanent Change in Contents, converting the AST to another use, or when an AST has been Out of Service for more than three years activity, when there is evidence of soil or groundwater contamination from a ~~Regulated Substance~~ regulated substance attributable to the AST, detected by site assessment, observation, or analysis, the Owner ~~and or~~ Operator shall notify the Department immediately of any evidence of soil or groundwater contamination from a regulated substance and shall comply with all notification and corrective action requirements of Part E of these Regulations.

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

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

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

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

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

14.2.3 The soil and groundwater samples shall be submitted to ~~an appropriately-certified a~~ a laboratory for certified to perform the required analyses analysis. ~~The samples shall include a sample obtained from the location with the highest concentration of volatile organics.~~

14.2.4 ~~Samples~~ Analytes shall be ~~analyzed~~ selected based upon any and all ~~Regulated Substances~~ regulated substances stored in the AST over its lifetime. Laboratory analysis methods for the analytes shall be methods approved by the Department.

14.2.5 ~~Laboratory analysis methods for the analyses required in §14.2.4 of this Part shall be as to the method approved by the Department~~ The samples shall be obtained from the locations with the suspected highest concentration of contaminants of concern.

~~14.2.6 A site assessment must be completed within thirty (30) days of a Permanent Change in Contents, or Removal or Permanent Closure in Place, or Relocation, or the Out-Of-Service requirement specified in §14.2.1.1, or converting the AST to a use other than an AST and the results of the required site assessment must be submitted to the Department within thirty (30) days of the completion of the site assessment.~~

14.2.6 A Site Assessment shall not commence without prior written approval by the Department.

14.2.7 The Owner or Operator shall complete a site assessment and submit the results to the Department within ninety (90) days of the completion of the activities referenced in PART B, subsection 14.2.2.

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

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

15.0 AST Removal Requirements

15.1 General Requirements for AST Removal

~~15.1.1 An The AST Owner and or Operator shall notify the Department of the scheduled Removal removal of an AST on utilizing a form provided by the Department not later than ten (10) days prior to the Removal removal of an AST.~~

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

~~15.1.3 An The AST Owner and or Operator shall comply with the requirements of PART B, Section §14.0 of this Part.~~

15.2 Additional Requirements for AST Removal

~~15.2.1 To Remove remove an AST, an Owner and or Operator shall at a minimum comply with the following requirements:~~

~~15.2.1.1 Remove all the Regulated Substance regulated substance from the AST and Ancillary Piping ancillary piping; and~~

~~15.2.1.2 Thoroughly clean the interior of the AST and all Ancillary Piping ancillary piping of all sludge, solids, and residual Regulated Substance regulated substance with documentation of the proper disposition of the removed sludge, solids and residual Regulated Substance regulated substance; and~~

~~15.2.1.3 Completely displace the AST and Ancillary Piping ancillary piping from its installed location, and render the AST and Ancillary Piping ancillary piping permanently non-useable or discontinue use of the AST and Ancillary Piping ancillary piping as an AST and Ancillary Piping ancillary piping with the intent of not introducing a Regulated Substance regulated substance into the AST and Ancillary Piping ancillary piping.~~

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

16.0 Permanent Closure in Place Requirements

16.1 General Requirements for Permanent Closure in Place of ASTs

~~16.1.1 An The Owner and or Operator shall notify the Department of the scheduled Permanent Closure in Place permanent closure in place of an AST on utilizing a form provided by the Department not later than ten (10) days prior to the Permanent Closure in Place permanent closure in place of an AST.~~

~~16.1.2 An Owner and Operator shall comply with the requirements of §14 of this Part. An AST and ancillary piping may be treated as separate entities for the purpose of removal, permanent closure in place or permanent change in contents.~~

16.1.3 The AST Owner or Operator shall comply with the requirements of PART B, Section 14.0.

16.2 Additional Requirements for Permanent Closure in Place of ASTs

~~16.2.1 To Permanently Close in Place Permanently close in Place an AST, an the AST Owner and or Operator shall at a minimum comply with the following requirements:~~

~~16.2.1.1 Remove all the Regulated Substance from the AST and Ancillary Piping; Empty the AST and all ancillary piping of all regulated substances in accordance with API RP2015 and API RP2016 and retain documentation of the proper disposition of the removed sludge, liquids, solids and residual regulated substance for a minimum of three (3) years; and~~

~~16.2.1.2 Thoroughly clean the interior of the AST and all Ancillary Piping of all sludge, solids, and residual Regulated Substance with documentation of the proper disposition of the removed sludge, solids and residual Regulated Substance; Secure the AST to prevent unauthorized entrance or~~

tampering so that a regulated substance is not accidentally or intentionally introduced into the AST; and

- 16.2.1.3 ~~Secure the AST and Ancillary Piping to prevent unauthorized entrance or tampering so that a Regulated Substance is not accidentally or intentionally introduced into the AST and Ancillary Piping, by means such as securely bolting and locking or welding all manways and valves or capping or plugging fill lines, gauge openings, or pump lines and disconnecting and blanking all Ancillary Piping; All permanently closed ASTs shall be labeled in accordance with PART A, subsection 9.5.~~

16.3 Reactivating a Permanently Closed AST

- 16.3.1 An AST Owner or Operator who reactivates an AST, which has been permanently closed per this Part, shall notify the Department utilizing a form provided by the Department in accordance with PART B, subsection 1.1, prior to putting the AST back into service.
- 16.3.2 Prior to placing an AST which has been permanently closed back into service, the Owner or Operator shall meet all new AST standards in these Regulations.
- 16.3.3 An AST which was permanently closed prior to June 11, 2004 and is intended to be placed into service must comply with all new AST standards in these Regulations including payment of required construction fees in PART B, subsection 1.2 and submission of installation documentation in accordance with PART B.

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

17.0 Permanent Change in Contents Requirements

17.1 General Requirements for Permanent Change in Contents

- 17.1.1 ~~An The AST Owner and or Operator shall notify the Department of the scheduled Permanent Change in Contents permanent change in contents of an AST on utilizing a form provided by the Department not later than ten (10) days prior to the Permanent Change in Contents permanent change in contents of an AST.~~
- 17.1.2 ~~An Owner and Operator shall comply with the requirements of §14 of this Part. An AST and ancillary piping may be treated as separate entities for the purpose of removal, permanent closure in place or permanent change in contents.~~
- 17.1.3 The AST Owner or Operator shall comply with the requirements of PART B, Section 14.0.

17.2 Additional Requirements for Permanent Change in Contents

- 17.2.1 ~~To undergo a Permanent Change in Contents permanent change in contents in an AST, an the AST Owner and or Operator shall at a minimum comply with the following requirements:~~
- 17.2.1.1 ~~Remove all the Regulated Substance regulated substance from the AST and Ancillary Piping ancillary piping; and~~
- 17.2.1.2 ~~Thoroughly clean the interior of the AST and all Ancillary Piping ancillary piping of all sludge, solids, and residual Regulated Substance regulated substance with documentation of the proper disposition of the removed sludge, solids and residual Regulated Substance regulated substance; and~~
- 17.2.1.3 ~~Continue active use of the AST and Ancillary Piping ancillary piping with the intent of only storing and conveying a non-Regulated Substance regulated substance in the AST and Ancillary Piping ancillary piping.~~

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

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

1.0 Inventory Control Requirements

1.1 General Requirements for Inventory Control

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

- 1.1.1.1 Description and quantity of the Regulated Substance in the AST. The equipment used **[must shall]** be capable of measuring the level of ~~Regulated Substance~~ regulated substance over the full entire operating range of the AST's height.
- 1.1.2 ~~Each By July 11, 2004~~ AST Owners and or Operators shall institute inventory control procedures ~~within thirty (30) days of the effective date of these Regulations~~ capable of detecting a significant variation of inventory. A significant variation shall be considered as a gain or a loss in excess of 1% of the throughput or storage capacity of each individual AST on a thirty (30) day or monthly basis.
 - 1.1.2.1 Reconciliations of inventory measurements shall be conducted monthly or every thirty (30) days. If the significant variation persists for two consecutive months or two consecutive thirty (30) day periods, the Owner ~~and or~~ Operator shall conduct an investigation to determine the cause of the variation. This investigation shall be completed within ten (10) working days of the end of the second reconciliation period that shows significant variation. If this investigation does not reveal the cause of the inventory variation the Owner ~~and or~~ Operator shall notify the Department and shall adhere to the ~~reporting requirements of Part A, §8 and the~~ corrective action requirements of Part E of these Regulations.
 - 1.1.2.2 If the AST is equipped with a Continuous Leak Detection monitoring system and cathodic protection of the AST and ~~Ancillary Piping~~ ancillary piping, a significant variation of inventory for this section shall be considered as a gain or a loss in excess of 3% of the throughput or storage capacity of each individual AST on a monthly or thirty (30) day basis.
 - 1.1.2.3 Inventory records shall be maintained for a period of not less than three (3) years and shall be made available for Department inspection within ten (10) days upon request.

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

2.0 Inspection Requirements for Secondary Containment

- 2.1 General Requirements [for] Secondary Containment Inspection
 - 2.1.1 ~~Secondary Containment~~ containment for all ASTs subject to these Regulations shall be inspected as a part of external inspections and routine ~~in-service~~ in service inspections ~~within 180 days of the effective date of these Regulations~~ beginning no later than December 8, 2004.
 - 2.1.2 If the ~~Secondary Containment~~ secondary containment has been tested or inspected and fails to meet the criteria established in Part B, § Section 7.0 of these Regulations, the Owner ~~and or~~ Operator ~~will~~ shall have sixty (60) days from the date of the inspection identifying the problem to correct the problem or other schedule approved by the Department. Temporary safety measures shall be instituted as required by the Department.
 - 2.1.3 Owners and Operators of ASTs shall adhere to the reporting ~~requirements of Part A §8, and the~~ corrective action requirements of Part E of these Regulations ~~at any time~~ anytime evidence of a leak or Rrelease from ~~Ssecondary C~~containment is noted during the course of an inspection.
 - 2.1.4 If a significant change in the structure of the ~~Secondary Containment~~ secondary containment occurs, the Owner ~~and or~~ Operator shall verify that the ~~Secondary Containment~~ secondary containment meets or exceeds the criteria established in Part B, § Section 7.0 of these Regulations.
- 2.2 Routine In-Service Inspections Requirements for Secondary Containment
 - 2.2.1 The routine ~~in-service~~ in service inspection shall monitor the condition of the ~~Secondary Containment~~ secondary containment at an interval not to exceed ~~thirty-one~~ (31) days.
 - 2.2.2 The routine ~~in-service~~ in service inspection of the ~~Secondary Containment~~ secondary containment shall include visual inspection from the ground.
- 2.3 External Inspections Requirements for Secondary Containment
 - 2.3.1 External inspections of the ~~Secondary Containment~~ secondary containment shall monitor the condition of the ~~Secondary Containment~~ secondary containment at an interval not to exceed five (5) years.
 - 2.3.2 External inspections of ~~Secondary Containment~~ secondary containment shall be performed by inspectors familiar with ~~Secondary Containment~~ secondary containment and qualified by experience for such inspections.
 - 2.3.3 ~~Secondary Containment~~ containment shall be inspected to ensure that it has been maintained in a condition that shall ensure it is capable of retaining any ~~Regulated Substance~~ regulated substance that leaves the primary containment including an AST and ~~Ancillary Piping~~ ancillary piping and prevent any ~~Regulated Substance~~ regulated substance from reaching the surface water, groundwater, or soil outside the ~~Secondary Containment~~ secondary containment before cleanup occurs.

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

3.0 Testing Requirements for Overfill Protection and Gauges

3.1 General Requirements for Overfill Protection Testing

- 3.1.1 The overfill prevention system required in Part B, § Section 8.0 shall be tested no less frequently than every ninety-three (93) days to ensure proper function and records of testing shall be maintained at the Facility for three (3) years.
- 3.1.2 Existing ASTs with overfill prevention systems shall implement the testing requirements as required in PART C, subsection §3.1.1 of this Part within thirty (30) days of the effective date of these Regulations by July 11, 2004.
- 3.1.3 The gauge or measuring device required in Part B, § Section 8.0 shall be calibrated no less frequently than once every twelve (12) months and records of testing shall be maintained at the Facility for three (3) years.
- 3.1.4 Existing ASTs with a gauge or measuring device shall implement the calibration requirements as required in PART C, subsection §3.1.3 of this Part within thirty (30) days of the effective date of these Regulations by July 11, 2004.
- 3.1.5 The gauge or measuring device as required in PART B, Section 8.0 shall be calibrated, tested, operated and maintained in accordance with the manufacturer's specifications, including routine maintenance checks for operability to ensure that the device is functioning as designed.
- 3.1.6 All manufacturer's instructions and performance claims and their manner of determination described in writing by the equipment manufacturer or installer for the gauge or measuring device shall be retained at the Facility for the life of the gauge or measuring device.
- 3.1.7 If the manufacturer of the gauge or measuring device cannot be determined, or no standard is available, the gauge or measuring device shall be calibrated to 1% of the volume of the AST.
- 3.1.8 The overfill protection system shall be calibrated, tested, operated and maintained in accordance with the manufacturer's specifications, including routine maintenance checks for operability to ensure that the overfill protection system is functioning as designed.
- 3.1.9 All manufacturer's instructions and performance claims and their manner of determination described in writing by the equipment manufacturer or installer for the overfill protection system shall be retained at the Facility for the life of the overfill protection system.

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

4.0 Inspection, Monitoring and Testing Requirements ~~For~~ for Underground Piping

4.1 General Requirements for Underground Piping Inspection, Monitoring and Testing

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

of additional ~~Regulated Substances~~ regulated substances into the ~~Underground Piping~~ underground piping, within 24 hours and evacuated as soon as practicable. Faulty ~~Underground Piping~~ underground piping shall remain ~~out of service~~ out of service until repaired. Release reporting and corrective actions shall be accomplished in accordance with ~~Part A, §8 and~~ Part E of these Regulations.

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

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

5.1 General Requirements for ASTs and Underground Piping Cathodic Protection Systems

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

5.2 Requirements for Impressed Current Cathodic Protection Systems

- 5.2.1 The source of protective current for an Impressed Current Cathodic Protection System shall be monitored in accordance with one of the Standards referenced in PART C, subsection §5.1.2, ~~of this Part every sixty-three (63) but in no case shall the monitoring frequency be less than at least once every thirty-one (31) days,~~ and the results recorded. If any inspection or monitoring indicates that the system is not functioning properly and the AST or ~~Underground Piping~~ underground piping are not being adequately protected in accordance with one of the Standards referenced in PART C, subsection §5.1.2 ~~of this Part~~, the cause shall be determined and the necessary repairs shall be made within ~~ninety sixty (960)~~ ninety sixty (960) days or other schedule approved by the Department, in accordance with one of the Standards referenced in PART C, subsection §5.1.2 ~~of this Part~~.
- 5.2.2 All Impressed Current Cathodic Protection Systems shall be inspected and tested every twelve (12) months as part of a preventative maintenance program to minimize in-service failure. The inspection and tests shall include a check for electrical shorts, ground connections, meter accuracy, and circuit resistance. The effectiveness of isolating devices, continuity bonds, and insulators shall be evaluated during this inspection.
- 5.2.3 Impressed Current Cathodic Protection Systems that are not operating as required shall be repaired or replaced within ~~ninety sixty (960)~~ ninety sixty (960) days or other schedule approved by the Department, or the AST and ~~Underground Piping~~ underground piping which has the non-operational system shall be drained of its ~~Regulated Substance~~ regulated substance and placed ~~out of service~~ out of service in accordance with **[Part B, §]** PART B, Section 13.0 ~~of these Regulations~~ until the Impressed Current System is repaired or replaced.
- 5.2.4 The impressed current source shall not be **[de-energized de-energized]** at any time including periods when the Facility is closed (except during power failures or during service work on the AST or ~~Underground Piping~~ underground piping or the Impressed Current Cathodic Protection System), and the impressed current source shall be equipped with a continuously operating meter or meters which displays voltage, amperage and run time to show that the system is working.
- 5.2.5 Records of the continuous operation, inspection, and testing of Impressed Current Cathodic Protection Systems shall be maintained at the Facility for the operational life of the AST and ~~Underground Piping~~ underground piping.

5.3 Requirements for Sacrificial Anode Cathodic Protection Systems.

- 5.3.1 Sacrificial Anode Cathodic Protection Systems shall be inspected and tested at a minimum of once every 12 months, in accordance with industry Standards as referenced in PART C, subsection §5.1.2 ~~of this Part~~.

Sufficient AST-to-soil and ~~Underground Piping~~ underground piping-to-soil potential measurements shall be made and recorded to determine if the AST and ~~Underground Piping~~ underground piping is protected in accordance with one of the industry Standards referenced in PART C, subsection §5.1.2 of this Part. If any inspection and test indicates that the system is not functioning properly and the AST or ~~Underground Piping~~ underground piping are not being adequately protected in accordance with one of the Standards referenced in PART C, subsection §5.1.2 of this Part, the cause shall be determined and the necessary repairs shall be made within ~~ninety sixty~~ (960) days or other schedule approved by the Department, in accordance with one of the Standards referenced in PART C, subsection §5.1.2 of this Part

5.3.2 Sacrificial Anode Cathodic Protection Systems that are not operating as required shall be repaired or replaced within ~~sixty ninety~~ (960) days or other schedule approved by the Department, or the AST and ~~Underground Piping~~ underground piping which has the non-operational system shall be drained of its ~~Regulated Substance~~ regulated substance and placed out of service in accordance with Part B, Section §13.0 of these Regulations until the Sacrificial Anode **[Cathodic Protection]** System is repaired or replaced.

5.3.3 Records of the operation, inspection, and testing of Sacrificial Anode Cathodic Protection Systems shall be maintained at the Facility for the operational life of the AST and ~~Underground Piping~~ underground piping.

5.4 Required Qualifications of Personnel Designing, Maintaining and Repairing Cathodic Protection Systems

5.4.1 Cathodic Protection Systems shall be designed by individuals who have obtained a NACE Cathodic Protection ~~Level 3 Specialist~~ Specialist Certification and have relevant work experience in the design of Cathodic Protection Systems for ASTs and ~~Underground Piping~~ underground piping.

5.4.2 For the maintenance and repair of existing Cathodic Protection Systems, or the replacement of an existing system component with a similar component, excluding minor maintenance procedures that do not substantially change the system such as replacement of fuses, the individual shall be certified by NACE for Cathodic Protection at ~~Level 1, Level 2, or Level 3~~ the CP Technician, CP Technologist, or CP Specialist level and have specific knowledge and experience in the maintenance and repair of Cathodic Protection Systems for ASTs and ~~Underground Piping~~ underground piping. The NACE certified individual performing a specific task on a Cathodic Protection System shall be qualified at the appropriate Certification Level for that specific task as defined by NACE.

5.4.3 For the inspection of Cathodic Protection Systems such as identifying damaged components or the recording of rectifier readings the individual does not need to be certified by NACE for Cathodic Protection.

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6.0 Inspection Requirements for Metallic Field-constructed ASTS

6.1 General Requirements for Metallic Field-Constructed AST Inspections

6.1.1 All ~~New new~~ and ~~Existing existing~~ metallic Field-Constructed field-constructed ASTs shall meet or exceed the applicable standards or recommendations in API 653 and, as applicable, NACE ~~RSP0294~~ SP0294 or the requirements in this Section, whichever are more stringent. Where multiple standards may be applied during the course of a tank inspection, only one (1) standard shall be utilized.

6.1.2 Owners and Operators shall notify the Department in writing ten (10) days prior to work commencing when all ~~New new~~ and ~~Existing existing~~ metallic Field-Constructed field-constructed ASTs subject to these Regulations are emptied for maintenance, repairs, or removed from service.

6.1.3 All ~~New new~~ metallic Field-Constructed field-constructed ASTs and ~~Existing existing~~ metallic Field-Constructed field-constructed ASTs with new tank bottoms, shall complete an internal inspection in accordance with PART C, subsection §6.4 of this Part, within ten (10) years of the date of completion of the installation of the AST or completion of the installation of the new tank bottom. All ~~Existing existing~~ metallic Field-Constructed field-constructed ASTs shall complete an internal inspection in accordance with PART C, subsection §6.4 of this Part, ~~within three (3) years of the effective date of these Regulations, by June 11, 2007~~ except those ASTs that are in compliance with an established, documented API 653 or NACE ~~RP0294SP0294~~ SP0294 inspection schedule, as of ~~the effective date of these Regulations June 11, 2004.~~

6.1.4 All ~~New new~~ metallic Field-Constructed field-constructed ASTs shall complete an external inspection in accordance with PART C, subsection §6.3 of this Part, within five (5) years of the date of completion of the installation. All ~~Existing existing~~ metallic Field-Constructed field-constructed ASTs shall complete an external inspection in accordance with PART C, subsection §6.3 of this Part, ~~within one year of the effective date of these Regulations by June 11, 2005,~~ except those ASTs that are in compliance with an established, documented API 653 or NACE ~~RP0294SP0294~~ SP0294 inspection schedule, as of ~~the effective date of these Regulations June 11, 2004.~~

- 6.1.5 When an AST has been tested or inspected as required by these Regulations, the Owner ~~and or~~ Operator shall immediately initiate the actions required or recommended by the report of the Certified API 653 Inspector, including but not limited to requirements or recommendations for repair or removal from service.
- 6.1.6 A report of the findings of any API 653 inspection that concludes the AST is not fit for service shall be submitted to the Department and the AST Owner ~~and or~~ Operator within thirty (30) days of the conclusion of the inspection. The Owner ~~and or~~ Operator shall submit to the Department with the API 653 inspection report an additional report detailing a proposed course of action including but not limited to removal of the AST contents and a schedule for repairs prior to the AST being returned to service. Removal of the AST contents shall commence within five (5) days of the conclusion that the AST is not fit for service and completion of the removal of the AST contents shall not exceed ninety (90) days, unless an alternative schedule is approved by the Department.
- 6.1.7 Any ~~Existing~~ existing metallic ~~Field-Constructed~~ field-constructed AST not meeting the material specification requirements of API 650 and API 653 shall be reviewed and analyzed by the appropriate professional engineering disciplines to determine the AST's fitness for service. In no instance shall the review exceed ninety (90) days. A report shall be written and submitted to the AST Owner and Operator and the Department within thirty (30) days of the conclusion of the review detailing the findings of the review and shall propose a course of action. The Department shall review the report and issue an approval or denial for the continued use of the AST to store a regulated substance, within thirty (30) days of the Department's receipt of the report.
- 6.1.8 Owners and Operators of ASTs shall adhere to the reporting requirements of ~~Part A §8~~, and the corrective action requirements of Part E at any time evidence of a ~~Release~~ release or ~~Leak~~ leak is noted during the course of an inspection.
- 6.1.9 Underground ~~Pipe~~ pipe is not subject to the requirements of Part C, ~~§Section 6.0 of these Regulations~~.
- 6.2 Requirements for Routine ~~In-Service~~ In Service Inspections for Metallic Field-Constructed ASTs
 - 6.2.1 A routine ~~in-service~~ in service inspection shall monitor the external condition of the AST and all aboveground ~~Ancillary Piping~~ ancillary piping at an interval not to exceed thirty-one (31) days.
 - 6.2.2 The routine ~~in-service~~ in service inspection shall at a minimum be completed in accordance with the guidance contained in API 653 and API 570 or other equivalent procedure approved by the Department. An appropriate check list containing at a minimum the criteria in API 653 ~~Appendix Annex C, Tank In-service Inspection Checklist~~ and API 570 ~~Appendix D Annex A, External Inspection Checklist for Process Piping~~ and including the condition of the ~~Secondary Containment~~ secondary containment shall be developed and completed for each AST and aboveground ~~Ancillary Piping~~ ancillary piping at each routine ~~in-service~~ in service inspection. For ASTs equipped with a Release Prevention Barrier or a double bottom, the checklist ~~must~~ shall include criteria for visual inspection for evidence of ~~Releases~~ releases and ~~Leaks~~ leaks.
 - 6.2.3 The routine ~~in-service~~ in service inspection may be completed by the Owner ~~and or~~ Operator designated personnel other than an API certified inspector. If designated personnel are not specifically certified in accordance with API 653, training shall include but is not limited to the following:
 - 6.2.3.1 Basic information regarding occupational safety, hazard recognition, personnel protection, and Facility operations; and
 - 6.2.3.2 The procedures to be followed in conducting the daily visual and weekly Facility inspections; and
 - 6.2.3.3 The procedures to be followed upon recognition of a hazard or the potential for a hazard; and
 - 6.2.3.4 The procedure for evaluating the condition of the AST and appurtenances; and
 - 6.2.3.5 The procedures for responding to ~~Releases~~ releases and ~~Leaks~~ leaks of a ~~Regulated Substance~~ regulated substance.
 - 6.2.3.6 Records of training shall be maintained at the Facility by the Owner ~~and or~~ Operator for five (5) years after the termination date of employment for personnel and shall be made available for review at the Department's request.
 - 6.2.4 The routine ~~in-service~~ in service inspection shall include close visual inspection from the ground.
 - 6.2.5 Routine ~~in-service~~ in service inspection reports shall be retained at the Facility by the Owner ~~[and or]~~ Operator for five (5) years after the routine ~~in-service~~ in service inspection and shall be made available for review at the Department's request.
 - 6.2.6 The routine ~~in-service~~ in service inspection program shall be developed and implemented ~~within 180 days of the effective date of these Regulations~~ by December 8, 2004.
- 6.3 Requirements for External Inspections for Metallic Field-Constructed ASTs

- 6.3.1 External inspections shall at a minimum follow the ~~latest approved~~ edition referenced in PART A, Section 3.0, of nationally recognized codes, standards, guidelines or recommended practices including but not limited to API 653, API 570, and NACE ~~RSP-0294~~.
- 6.3.2 External inspection frequencies for ASTs and aboveground ~~Ancillary Piping~~ ancillary piping shall follow the recommended guidelines, codes, standards or recommended practices referenced in PART C, subsection §6.3.1 of this Part, including but not limited to the calculated corrosion rate, but in no instance shall the external inspection frequency exceed five (5) years.
- 6.3.3 Only Certified API 653 Inspectors and Certified API 570 Inspectors shall perform external inspections. An appropriate check list containing at a minimum the criteria in API 653 ~~Appendix Annex C, Tank In-service In Service Inspection Checklist~~ and API 570 ~~Appendix D Annex A, External Inspection Checklist for Process Piping~~ and including the condition of the ~~Secondary Containment~~ secondary containment, shall be developed and completed for each AST and aboveground ~~Ancillary Piping~~ ancillary piping at each external inspection. Where material thickness measurements are performed, only qualified American Society for Non Destructive Testing (ASNT) SNT-TC-1A, ~~latest edition~~, Level II technicians or ASNT Central Certification Program Level II technicians or Certified API 653 Inspectors with experience in performing material thickness measurements shall perform the test.
- 6.3.4 External inspection reports including calibration of material thickness testing equipment shall be retained at the Facility for the life of the AST by current and future Owners and Operators.
- 6.4 Requirements for Internal Inspections for Metallic Field-Constructed ASTs
- 6.4.1 Internal inspections shall at a minimum follow the ~~latest approved~~ edition referenced in PART A, Section 3.0, of nationally recognized standards, guidelines or recommended practices including but not limited to API 653 and, if applicable, NACE ~~RSP-0294~~.
- 6.4.2 The internal inspection shall at a minimum be completed in accordance with the recommended guidelines, codes, standards or recommended practices referenced in PART C, subsection §6.4.1 of this Part or other equivalent procedure approved by the Department. An appropriate check list containing at a minimum the criteria in API 653 ~~Appendix Annex C, Tank Out-Of-Service Inspection Checklist~~ shall be developed and completed for each AST at each internal inspection.
- 6.4.3 Internal inspection frequencies for ASTs with an established documented corrosion rate, as of ~~the effective date of these Regulations June 11, 2004~~, shall follow the inspection frequency of API 653 or NACE ~~RP-0294~~ SP0294 as applicable including but not limited to the use of calculated corrosion rates.
- 6.4.4 The AST corrosion rates shall not be based on experience with ASTs in similar service unless previously approved by the Department.
- 6.4.5 Only Certified API 653 Inspectors shall perform the internal inspections. Where non-destructive testing methods are performed, only qualified American Society for Non Destructive Testing (ASNT) SNT-TC-1A, latest edition, Level II technician or ASNT Central Certification Program Level II technician or Certified API 653 Inspectors with experience in performing non-destructive testing shall perform the test.
- 6.4.6 Alternative internal inspection intervals may be established as outlined in API 653 using the ~~Risk Based~~ inspection procedures, robotics, statistical analysis and related methods allowed by API 653, only for ASTs with 110% secondary containment dikes and a continuous method of Leak detection. Any alternative method shall be approved in writing by the Department prior to implementation.
- 6.4.7 Internal inspection reports shall be submitted to the Department within thirty (30) days of inspection completion and shall be retained at the Facility for the life of the AST by current and future Owners and Operators.
- 6.4.8 The internal inspection report shall at a minimum include the following:
- 6.4.8.1 The report shall be typed, not written by hand; and
- 6.4.8.2 The report shall state the date(s) that the inspection was conducted; and
- 6.4.8.3 The report shall state that the inspection was an internal inspection and what industry inspection standard was utilized; and
- 6.4.8.4 The report shall contain the name, address, and phone number of the inspection company that conducted the inspection; and
- 6.4.8.5 The report shall contain the printed name of the certified inspector, the inspector's certification number or copy of the certification certificate, and the signature of the certified inspector; and
- 6.4.8.6 The report shall list the tank data including but not limited to, the tank diameter, tank height, regulated substance stored, date of tank construction, construction code, material of tank construction, tank orientation, tank identification number as listed on the DNREC AST registration form, type of foundation, type of roof, presence or absence of secondary containment, material of construction of secondary containment, notation of type of tank bottom as single or double,

presence or absence of Leak Detection, type of Leak Detection if present, presence or absence of tank insulation, presence or absence of cathodic protection, and type of cathodic protection if present; and

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

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

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

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

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

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

7.0 Inspection Requirements for Metallic Shop-Fabricated ASTs

7.1 General Requirements for Metallic Shop-Fabricated AST Inspections

7.1.1 All ~~New new~~ and ~~Existing existing~~ metallic ~~Shop-Fabricated shop-fabricated~~ ASTs shall meet or exceed the applicable standards or recommendations in API 653 or STI-SP001 or NACE RSP0294 or the requirements in this Section whichever are more stringent. Where multiple standards may be applied during the course of a tank inspection, only one (1) standard shall be applied.

7.1.2 Owners and Operators shall notify the Department in writing ten (10) days prior to work commencing when all ~~New new~~ and ~~Existing existing~~ metallic ~~Shop-Fabricated shop-fabricated~~ ASTs subject to these Regulations are emptied for maintenance, repairs, or removed from service.

7.1.3 All ~~New new~~ metallic ~~Shop-Fabricated shop-fabricated~~ ASTs shall complete an internal inspection in accordance with PART C, Section §7.4 7.0 of this Part, within ten years of the date of completion of the installation. All ~~Existing existing~~ metallic ~~Shop-Fabricated shop-fabricated~~ ASTs shall complete an internal inspection in accordance with PART C, Section §7.4 of this Part, ~~within three (3) years of the effective date of these Regulations by June 11, 2007~~, except those ASTs that are in compliance with an established, documented API 653 or STI-SP001 or NACE RP0294SP0294 inspection schedule.

7.1.4 All ~~New new~~ metallic ~~Shop-Fabricated shop-fabricated~~ ASTs shall complete an external inspection in accordance with PART C, subsection §7.3 of this Part, within five years of the date of completion of the installation. All ~~Existing existing~~ metallic ~~Shop-Fabricated shop-fabricated~~ ASTs shall complete an external inspection in accordance with PART C, subsection §7.3 of this Part, ~~within one year of the effective date of these Regulations by June 11, 2005~~, except those ASTs that are in compliance with an established, documented API 653 or STI-SP001 or NACE RP0294SP0294 inspection schedule.

7.1.5 When an AST has been tested or inspected as required by these Regulations, the Owner ~~and~~ Operator shall immediately initiate the actions required or recommended by the report of the Certified API 653 Inspector or the Certified STI-SP001 Inspector, including but not limited to recommendations for repair or removal from service.

7.1.6 A report of the findings of any API 653 or STI - SP001 inspection that concludes the AST is not fit for service shall be submitted to the Department and the AST Owner ~~and~~ Operator within thirty (30) days of the conclusion of the inspection. The Owner ~~and~~ Operator shall submit to the Department with the API 653 or STI-SP001 inspection report an additional report detailing a proposed course of action including but not limited to removal of the AST contents and a schedule for repairs prior to the AST being returned to service. Removal of the AST contents shall commence within five (5) days of the conclusion that the AST is not fit for service and completion of the removal of the AST contents shall not exceed ninety (90) days, unless an alternative schedule is approved by the Department.

7.1.7 Any ~~Existing existing~~ metallic ~~Shop-Fabricated shop-fabricated~~ AST not meeting the material specification requirements of UL 2085, UL 142, or API 650 ~~Appendix Form J~~, shall be reviewed and analyzed by the appropriate professional engineering disciplines to determine the AST's fitness for service. In no instance shall the review exceed ninety (90) days. A report shall be written and submitted to the AST Owner and Operator and the Department within thirty (30) days of the conclusion of the review detailing the findings of the review and shall propose a course of action. The Department shall review the report and issue an approval or denial for the continued use of the AST to store a ~~Regulated Substance~~ regulated substance within thirty (30) days of the Department's receipt of the report.

- 7.1.8 Owners and Operators of ASTs shall adhere to the reporting requirements of ~~Part A §8~~, and the corrective action requirements of Part E at any time evidence of a ~~Release~~ release or ~~Leak~~ leak is noted during the course of an inspection.
- 7.1.9 Underground ~~Pipe~~ pipe is not subject to the requirements of Part C, ~~§ Section 7.0 of these Regulations~~.
- 7.2 Requirements for Routine In-Service Inspections for Shop-Fabricated ASTs
- 7.2.1 The routine in-service inspection shall monitor the external condition of the AST and all aboveground ~~Ancillary Piping~~ ancillary piping at an interval not to exceed thirty (30) days.
- 7.2.2 The routine ~~in-service~~ in service inspection shall at a minimum be completed in accordance with the guidance contained in API 653 or ~~STI-SP001~~ STI SP001 and API 570 or other equivalent procedure approved by the Department. An appropriate check list containing at a minimum the criteria in API 653 ~~Appendix Annex C, Tank In-service Inspection Checklist~~ and API 570 ~~Appendix D Annex A, External Inspection Checklist for Process Piping~~ and including the condition of the Secondary Containment shall be developed and completed for each AST and aboveground Ancillary Piping at each routine ~~in-service~~ in service inspection. For ASTs equipped with a Release Prevention Barrier or a double bottom, the checklist **[must shall]** include criteria for visual inspection for evidence of Releases and Leaks.
- 7.2.3 The routine ~~in-service~~ in service inspection may be completed by Owner ~~and or~~ Operator designated personnel other than an API or STI certified inspector. If designated personnel are not specifically certified in accordance with API 653 or STI-SP001, training shall include but is not limited to the following:
- 7.2.3.1 Basic information regarding occupational safety, hazard recognition, personnel protection, and Facility operations; and
- 7.2.3.2 The procedures to be followed in conducting the daily visual and weekly Facility inspections; and
- 7.2.3.3 The procedures to be followed upon recognition of a hazard or the potential for a hazard; and
- 7.2.3.4 The procedure for evaluating the condition of the AST and appurtenances; and
- 7.2.3.5 The procedures for responding to ~~Releases and Leaks~~ releases and leaks of a ~~Regulated Substance~~ regulated substance; and
- 7.2.3.6 Records of training shall be maintained at the Facility by the Owner ~~and or~~ Operator for five (5) years after the termination date of employment for personnel and shall be made available for review at the Department's request.
- 7.2.4 The routine ~~in-service~~ in service inspection shall include close visual inspection from the ground.
- 7.2.5 Routine ~~in-service~~ in service inspection reports shall be retained at the Facility by the Owner ~~and or~~ Operator for five (5) years after the routine ~~in-service~~ in service inspection and shall be made available for review at the Department's request.
- 7.2.6 The routine ~~in-service~~ in service inspection program shall be developed and implemented ~~within 180 days of the effective date of these Regulations~~ by December 8, 2004.
- 7.3 Requirements for External Inspections
- 7.3.1 External inspections shall at a minimum follow the latest approved edition of nationally recognized codes, standards, guidelines or recommended practices including but not limited to API 653, API 570, and NACE ~~RP-294 SP0294~~ or ~~STI-SP001~~ STI SP001.
- 7.3.2 External inspection frequencies for ASTs and aboveground ~~Ancillary Piping~~ ancillary piping shall follow the recommended guidelines, codes, standards or recommended practices referenced in ~~PART C, subsection §7.3.1 of this Part~~ including but not limited to the calculated corrosion rate, but in no instance shall the external inspection frequency exceed five (5) years.
- 7.3.3 Only Certified API 653 Inspectors or Certified STI-SP001 Inspectors or Certified API 570 Inspectors shall perform external inspections. An appropriate check list containing at a minimum the criteria in API 653 ~~Appendix Annex C, Tank In-service In Service Inspection Checklist~~ and API 570 ~~Appendix D Annex A, External Inspection Checklist for Process Piping~~ and including the condition of the ~~Secondary Containment~~ secondary containment, shall be developed and completed for each AST and aboveground ~~Ancillary Piping~~ ancillary piping at each external inspection. Where material thickness measurements are performed, only qualified American Society for Non Destructive Testing (ASNT) SNT-TC-1A, ~~latest edition~~, Level II technicians or ASNT Central Certification Program Level II technicians or Certified API 653 Inspectors with experience in performing material thickness measurements shall perform the test.
- 7.3.4 External inspection reports shall be retained at the Facility for the life of the AST by current and future Owners and Operators.
- 7.4 Requirements Internal Inspections

- 7.4.1 Internal inspections shall follow the latest approved edition of nationally recognized standards, guidelines or recommended practices including but not limited to API 653 and, if applicable, NACE ~~RP-0294~~SP0294 or STI-SP001.
- 7.4.2 The internal inspection shall at a minimum be completed in accordance with the recommended guidelines, codes, standards or recommended practices referenced in PART C, subsection §7.4.1 of this Part or other equivalent procedure approved by the Department. An appropriate check list containing at a minimum the criteria in API 653 ~~Appendix Annex C, Tank Out-of-sService Inspection Checklist~~ shall be developed and completed for each AST at each internal inspection.
- 7.4.3 Internal inspection frequencies for ASTs with an established documented corrosion rate, as of the ~~effective date of these Regulations, June 11, 2004~~ shall follow the inspection frequency of API 653, or NACE ~~RP-0294~~SP0294, or STI-SP001 STI SP001 as applicable including but not limited to the use of calculated corrosion rates.
- 7.4.4 The AST corrosion rate shall not be determined based upon experience with tanks in similar service, unless previously approved by the Department.
- 7.4.5 Only Certified API 653 Inspectors or Certified STI-SP001 Inspectors shall perform the internal inspections. Where non-destructive testing methods are performed, only qualified SNT-TC-1A, ~~latest edition~~, Level II technicians or ASNT Central Certification Program Level II technicians or Certified API 653 Inspectors with experience in performing non-destructive testing shall perform the test.
- 7.4.6 Alternative internal inspection intervals may be established as outlined in API 653 using the ~~Risk Based Inspection~~ risk based inspection procedures, robotics, statistical analysis and related methods allowed by API 653. Any alternative method shall be approved by the Department prior to implementation.
- 7.4.7 Internal inspection reports shall be submitted to the Department and shall be retained at the Facility for the life of the AST by current and future Owners and Operators.
- 7.4.8 The internal inspection report shall at a minimum include the following:
 - 7.4.8.1 The report shall be typed, not written by hand; and
 - 7.4.8.2 The report shall state the date(s) that the inspection was conducted; and
 - 7.4.8.3 The report shall state the inspection was an internal inspection and what industry inspection standard was utilized; and
 - 7.4.8.4 The report shall contain the name, address, and phone number of the inspection company that conducted the inspection; and
 - 7.4.8.5 The report shall contain the printed name of the certified inspector, the inspector's certification number or copy of certification certificate, and the signature of the certified inspector; and
 - 7.4.8.6 The report shall list the tank data including but not limited to, the tank diameter, tank height, regulated substance stored, date of tank construction, construction code, material of tank construction, tank orientation, tank identification number as listed on the DNREC AST registration form, type of foundation, type of roof, presence or absence of secondary containment, material of construction of secondary containment, notation of type of tank bottom as single or double, presence or absence of leak detection, type of leak detection if present, presence or absence of tank insulation, presence or absence of cathodic protection, and type of cathodic protection if present.
 - 7.4.8.7 The report shall list all data collected including but not limited to, thickness measurements, settlement measurements, out of round measurements and cathodic protection testing results; and
 - 7.4.8.8 The report shall include all repairs required by industry standards; and
 - 7.4.8.9 The report shall include all recommendations for repairs and upgrades not required by industry standards but recommended by the certified inspector; and
 - 7.4.8.10 The report shall include details of any repairs or upgrades made to the tank as required or recommended by the certified inspector and any records of inspections of the repair or upgrade.
 - 7.4.8.11 The report shall state the date the next inspection is due according to the inspection code utilized for the inspection.

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

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

8.1.1 General Requirements

- 8.1.1.1 All non-metallic ~~Field-Constructed~~ field-constructed or ~~Shop-Fabricated~~ shop-fabricated ASTs constructed of fiber reinforced thermosetting plastic (FRTP) shall meet or exceed the

~~Requirements~~ requirements in this Section or the ~~Reference Standards~~ reference standards in this Section whichever are more stringent. Where multiple standards may be applied during the course of a tank inspection, only one (1) standard shall be utilized.

- 8.1.1.2 Inspections shall only be performed by inspectors familiar with ASTs constructed of fiber reinforced thermosetting plastic and qualified by experience for such inspections, including but not limited to those individuals certified under:

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

8.1.1.2.2 National Board Inspection Code (NBIC).

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

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

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

- 8.1.1.6 Owners and Operators of ASTs shall adhere to the reporting requirements of ~~Part A §8,~~ and the corrective action requirements of Part E at any time evidence of a ~~Release release~~ or ~~Leak leak~~ is noted during the course of an inspection.

8.1.2 Applicability and Scope of Inspections

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

- 8.1.2.2 All exposed surfaces shall be visually examined during external and internal inspections for defects, and mechanical and environmental damage in the liner or the laminate. Classification and acceptance of any defects in the liner or laminate shall be according to Table 1 in NBIC, Part 3, Supplement 4 Appendix 9. Defects to look for shall include but are not limited to:

8.1.2.2.1 Cracks;

8.1.2.2.2 Separation of secondary edges;

8.1.2.2.3 Leaks, especially around nozzles;

8.1.2.2.4 Discolored areas;

8.1.2.2.5 Areas of mechanical damage such as impacts or gouges;

8.1.2.2.6 Surface deterioration or fiber exposure;

8.1.2.2.7 Cracked or broken attachments;

8.1.2.2.8 Damage due to dynamic loading;

8.1.2.2.9 Defective supports;

8.1.2.2.10 Delaminations;

8.1.2.2.11 Blisters;

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

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

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

8.1.3 Inspector Qualifications for External and Internal Inspections

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

8.1.4 Initial Inspection Requirements

8.1.4.1 Internal Inspection Requirements

- 8.1.4.1.1 All ~~New new~~ Fiber Reinforced Thermosetting Plastic ~~Shop-Fabricated~~ shop-fabricated and ~~Field-Constructed~~ field-constructed ASTs shall complete an internal inspection in accordance with Part C, subsection 8.1.7 §8.1.7 of this Part, within one year of being placed into service.
- 8.1.4.1.2 All ~~Existing existing~~ Fiber Reinforced Thermosetting Plastic ~~Shop-Fabricated~~ shop-fabricated and ~~Field-Constructed~~ field constructed ASTs shall complete an internal inspection in accordance with PART C, subsection §8.1.7 of this Part within three (3) years of the effective date of these Regulations by June 11, 2007, except those ASTs that have an established, documented inspection schedule that includes the inspection criteria and frequency established in this Section.

8.1.4.2 External Inspection Requirements

- 8.1.4.2.1 All ~~New new~~ Fiber Reinforced Thermosetting Plastic ~~Shop-Fabricated~~ shop-fabricated and ~~Field-Constructed~~ field constructed ASTs shall complete an external inspection in accordance with PART C, subsection §8.1.6 of this Part, within three (3) years of the date of the AST being placed into service.
- 8.1.4.2.2 All ~~Existing existing~~ Fiber Reinforced Thermosetting Plastic ~~Shop-Fabricated~~ shop-fabricated and ~~Field-Constructed~~ field constructed ASTs shall complete an external inspection in accordance with PART C, subsection §8.1.6 of this Part, within three (3) years of the effective date of these Regulations, by June 11, 2007 except ASTs that have an established, documented inspection schedule that includes the inspection criteria and frequency established in this Section.

8.1.5 Routine ~~In-Service~~ In Service Inspections

- 8.1.5.1 A routine ~~in-service~~ in service inspection shall monitor the external condition of the AST and all aboveground Ancillary Piping at an interval not to exceed thirty-one (31) days.
- 8.1.5.2 The routine ~~in-service~~ in service inspection shall include a visual external inspection of the AST's exterior surfaces. An appropriate check list containing at a minimum the criteria in PART C, subsection §8.1.5.3.4 of this Part and API 653 Appendix Annex C, Tank In-sService Inspection Checklist and API 5704 Appendix D Annex A, External Inspection Checklist for Process Piping and including the condition of the ~~Secondary Containment~~ secondary containment, will be developed and completed for each AST at each routine ~~in-service~~ in service inspection. For ASTs equipped with a Release Prevention Barrier or a double bottom, the checklist ~~must~~ shall include criteria for visual inspection for evidence of ~~Releases~~ releases and ~~Leaks~~ leaks.
- 8.1.5.3 The routine ~~in-service~~ in service inspection may be completed by Owner ~~and or~~ Operator designated personnel other than an API, STI, ASME RTP-1, or NBIC certified inspector. If designated personnel are not specifically trained in accordance with a nationally recognized certification program, training shall include but is not limited to the following:
 - 8.1.5.3.1 Basic information regarding occupational safety, hazard recognition, personnel protection, and Facility operations; and

- 8.1.5.3.2 The procedures to be followed in conducting the daily visual and weekly Facility inspections; and
- 8.1.5.3.3 The procedures to be followed upon recognition of a hazard or the potential for a hazard; and
- 8.1.5.3.4 The procedures for evaluating the condition of the AST and appurtenances including but not limited to the following:

- 8.1.5.3.4.1 Shell distortations;
- 8.1.5.3.4.2 Signs of settlement;
- 8.1.5.3.4.3 Condition of the foundation;
- 8.1.5.3.4.4 Condition of the insulation;
- 8.1.5.3.4.5 Cracks;
- 8.1.5.3.4.6 Separation of secondary edges;
- 8.1.5.3.4.7 Discolored areas;
- 8.1.5.3.4.8 Areas of mechanical damage such as impacts and gouges;
- 8.1.5.3.4.9 Surface deterioration and fiber exposure;
- 8.1.5.3.4.10 Damage due to dynamic loading;
- 8.1.5.3.4.11 Defective supports;
- 8.1.5.3.4.12 Delaminations;
- 8.1.5.3.4.13 Blisters;

~~8.1.5.48.1.5.3.5~~ The procedures for responding to ~~Releases and Leaks~~ releases and leaks of a ~~Regulated Substance~~ regulated substance.

~~8.1.5.58.1.5.3.6~~ Records of training shall be maintained at the Facility by the Owner ~~and or~~ Operator for five (5) years after the termination date of employment for personnel and shall be made available for review at the Department's request.

8.1.5.64 The routine ~~in-service~~ in service inspection shall include close visual inspection from the ground.

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

8.1.5.86 The routine ~~in-service~~ in service inspection program shall be developed and implemented ~~within 180 days of the effective date of these Regulations~~ by December 8, 2004.

8.1.6 External Inspections

8.1.6.1 General Requirements

- 8.1.6.1.1 External inspections shall at a minimum follow the ~~Requirements~~ requirements of this Section.
- 8.1.6.1.2 External inspection frequencies shall at a minimum follow the ~~Requirements~~ requirements of this Section, but in no instance shall the external inspection frequency exceed five (5) years.
- 8.1.6.1.3 Where material thickness measurements are performed, only qualified American Society for Non Destructive Testing (ASNT) SNT-TC-1A, ~~latest edition~~, Level II technicians or ASNT Central Certification Program Level II technicians or Certified API 653 Inspectors with experience in performing material thickness measurements shall perform the test.
- 8.1.6.1.4 External inspection reports including calibration of material thickness testing equipment shall be retained at the Facility for the life of the AST by current and future Owners and Operators.

8.1.6.2 Specific Requirements for External Inspections

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

- 8.1.6.2.1.1 Nozzle attachments;
- 8.1.6.2.1.2 Gusset attachments;
- 8.1.6.2.1.3 Flanges;

- 8.1.6.2.1.4 Secondary joints;
- 8.1.6.2.1.5 Hold down lugs;
- 8.1.6.2.1.6 Lifting lugs;
- 8.1.6.2.1.7 Gauge attachments;
- 8.1.6.2.2 Attachments of legs, saddles, skirts, or other components shall be examined for cracks where the component attaches to or contacts the AST. The exterior surface of the AST in the vicinity of the attached component shall be examined for cracks.
- 8.1.6.2.3 Piping loads on nozzles may be excessive. Therefore, all nozzles shall be closely examined for cracks.
- 8.1.6.2.4 The location of all external damage shall be noted so that the opposing internal surface at that location can be examined. For example, an impact load applied to the outer surface may be transmitted through the laminate causing a star crack in the inner surface.
- 8.1.6.2.5 If known upsets occur ~~which~~ that are outside the AST's designed specifications, then an external inspection shall be performed within thirty (30) days of the upset to ensure the integrity of the AST.
- 8.1.6.2.6 The following factors shall be considered when determining whether the initial external inspection interval after being placed in service and subsequent external inspections intervals need to be shortened to ensure the integrity of the AST:
 - 8.1.6.2.6.1 The distance between the AST and personnel and other equipment;
 - 8.1.6.2.6.2 Contains Regulated Substances or is subject to conditions known to degrade or shorten the life of the laminates or liner;
 - 8.1.6.2.6.3 Past experience has shown that more frequent external inspection are necessary;
 - 8.1.6.2.6.4 Insurance or other regulatory requirements.
- 8.1.7 Internal Inspections
 - 8.1.7.1 General Requirements
 - 8.1.7.1.1 Internal inspections shall, at a minimum, follow the ~~Requirements~~ requirements of this Section.
 - 8.1.7.1.2 Internal inspection frequencies shall at a minimum follow the ~~Requirements~~ requirements of this Section, but in no instance shall the internal inspection frequency exceed ten (10) years, or other schedule approved by the Department.
 - 8.1.7.1.3 Where non-destructive testing methods are performed, only qualified SNT-TC-1A, ~~latest edition~~, Level II technicians or ASNT Central Certification Program Level II technicians or Certified API 653 Inspectors with experience in performing non-destructive testing methods shall perform the test.
 - 8.1.7.1.4 Internal inspection reports shall be submitted to the Department and shall be retained at the Facility for the life of the AST by current and future Owners and Operators.
 - 8.1.7.2 Specific Requirements for Internal Inspections
 - 8.1.7.2.1 The internal inspection shall include examination of the AST to ensure the integrity of the liner and the structural laminate has not been compromised. The laminate shall be examined for damage caused by the following conditions:
 - 8.1.7.2.1.1 Excessive service temperature;
 - 8.1.7.2.1.2 Mechanical or service abuse;
 - 8.1.7.2.1.3 Ultraviolet light.
 - 8.1.7.2.2 Surfaces shall be dry and clean for the internal inspection. Every effort shall be made to minimize damage to the liner, if the AST is so equipped, during the internal inspection. Defects or damage to look for during the internal inspection shall include but is not limited to the following:
 - 8.1.7.2.2.1 Indentations;
 - 8.1.7.2.2.2 Cracks;
 - 8.1.7.2.2.3 Porosity;
 - 8.1.7.2.2.4 Exposed fibers;
 - 8.1.7.2.2.5 Lack of resin;
 - 8.1.7.2.2.6 Delamination;
 - 8.1.7.2.2.7 Thinning at points of fluid impingement;
 - 8.1.7.2.2.8 Blisters;

- 8.1.7.2.2.9 Scratches;
- 8.1.7.2.2.10 Gouges;
- 8.1.7.2.2.11 Discolorations.
- 8.1.7.2.3 All surfaces shall be examined with both direct and oblique illumination. Color differences, opacity, stains, wetness, roughness, or any deviation from the original surface (based upon the original cutout sample) condition shall be noted and investigated. Liquid level lines shall be defined so the laminate condition in both the wet and dry zones can be determined. The following areas shall be closely examined for cracks, porosity, or chemical attacks on the liner or laminate:
 - 8.1.7.2.3.1 Fittings;
 - 8.1.7.2.3.2 Changes in shape;
 - 8.1.7.2.3.3 Baffles;
 - 8.1.7.2.3.4 Secondary overlays;
 - 8.1.7.2.3.5 Nozzles;
 - 8.1.7.2.3.6 Cut edges;
 - 8.1.7.2.3.7 Supports and internal structures and areas of attachment.
- 8.1.7.2.4 The inspector shall look for cracks, porosity, and any indication of deterioration of the liner and laminate. Liquid penetrant examination per RT-630 of ASME Section X may be used to locate and determine the extent of cracks. Deterioration of the surface may include softening of fiber prominence.
- 8.1.7.2.5 A Barcol 934-1 hardness test, which can be found in the Standard ASTM D-2583, shall be performed on areas of suspected laminate degeneration. The resin hardness values shall be used to monitor the condition of the laminate over time as compared to the initial hardness value. If the corrosion resistant barrier shows such severe attack (for example, loose chopped strand glass mat fibers) that penetration of the corrosion barrier appears imminent before the next scheduled internal inspection, then the corrosion barrier shall be replaced.
- 8.1.7.2.6 If known upsets occur ~~which that~~ are outside the AST's design specifications then an internal inspection shall be performed within thirty (30) days of the upset to ensure the integrity of the AST.
- 8.1.7.2.7 The following factors shall be considered when determining whether the initial internal inspection interval after being placed in service and subsequent external inspections intervals need to be shortened to ensure the integrity of the AST:
 - 8.1.7.2.7.1 The distance between the AST and personnel and other equipment;
 - 8.1.7.2.7.2 Contains ~~Regulated Substances~~ regulated substances or is subject to conditions known to degrade or shorten the life of the laminates or liner;
 - 8.1.7.2.7.3 Past experience has shown that more frequent external inspections are necessary;
 - 8.1.7.2.7.4 Insurance or other regulatory requirements.
- 8.1.7.3 Internal Inspection Report Requirements
 - 8.1.7.3.1 The internal inspection report shall at a minimum include the following:
 - 8.1.7.3.1.1 The report shall be typed, not written by hand; and
 - 8.1.7.3.1.2 The report shall state the date(s) that the inspection was conducted; and
 - 8.1.7.3.1.3 The report shall state the inspection was an internal inspection and what industry inspection standard was utilized; and
 - 8.1.7.3.1.4 The report shall contain the name, address, and phone number of the inspection company that conducted the inspection; and
 - 8.1.7.3.1.5 The report shall contain the printed name of the certified inspector, the inspector's certification number or copy of certification certificate, and the signature of the certified inspector; and
 - 8.1.7.3.1.6 The report shall list the tank data including but not limited to, the tank diameter, tank height, regulated substance stored, date of tank construction, construction code, material of tank construction, tank orientation, tank identification number as listed on the DNREC AST registration form, type of foundation, type of roof, presence or absence of secondary containment, material of construction of secondary containment, notation of type of tank bottom as single or double, presence or absence of leak detection, type of leak detection if

present, presence or absence of tank insulation, presence or absence of cathodic protection, and type of cathodic protection if present.

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

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

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

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

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

8.1.8 Underground Pipe Requirements

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

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

8.2.1 General Requirements

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

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

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

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

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

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

8.2.1.5.2 National Board Inspection Code (NBIC).

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

9.0 Inspection and Monitoring Requirements for Leak Detection

9.1 General Requirements

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

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

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

9.2 Leak Detection Inspection and Monitoring

- 9.2.1 The Leak Detection method or combination of methods used, except for those ASTs equipped with a Release Prevention Barrier or a double bottom, shall be inspected and monitored at least weekly to determine if a Leak from the AST has occurred. A checklist for each Leak Detection monitoring point ~~must~~ shall be generated to document whether a Leak did or did not occur.
- 9.2.1.1 Leak Detection checklists that did not document a Leak shall be retained at the Facility by the Owner ~~and or~~ Operator for five (5) years after the Leak Detection inspection and shall be made available for review at the Department's request.
- 9.2.1.2 Leak Detection checklists that did document a Leak shall be retained at the Facility by the Owner ~~and or~~ Operator for the life of the AST by current and future Owners ~~and or~~ Operators.
- 9.2.1.3 Owners ~~and or~~ Operators shall adhere to the reporting requirements of ~~Part A §8~~, and the corrective action requirements of Part E at any time evidence of a Leak leak or release is noted during the course of an inspection.

10.0 Inspection and Monitoring Requirements for Inerting and Deflagration Prevention Systems

10.1 General Requirements

- 10.1.1 All ASTs subject to the Inerting Requirements of these Regulations shall have the Inerting system or other Department approved Deflagration prevention system continuously in place, in use, and operating to design specifications whenever an AST is in service and has the potential for a Flammable atmosphere. The system shall be in place, in use and operated to design specifications unless the AST has been cleaned sufficiently and purged of Flammable vapors to safely permit hot work in, on or around the AST.
- 10.1.2 Owners ~~and or~~ Operators of ASTs subject to the Inerting Requirements of these Regulations shall adhere to the reporting requirements of Part B Section §12 at any time the Inerting system or other Department approved Deflagration prevention system is not operating in compliance with the requirements of Part B Section §12.

10.2 Inspection and Monitoring

- 10.2.1 Inerting systems and other Department approved Deflagration prevention systems shall be calibrated, tested, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance checks for operability to ensure that the system is functioning as designed. However, in no instance shall the calibration and testing of the Inerting system or other Department approved Deflagration system exceed one year.
- ~~10.2.1.1~~ 10.2.2 Records of the calibration, testing, and maintenance of Inerting systems and other Department approved Deflagration prevention systems shall be made and shall be retained at the Facility by the Owner ~~and or~~ Operator for five (5) years after the report was generated. Reports shall be made available for review at the Department's request.
- 10.2.2 10.2.3 All manufacturers' instructions, and the performance claims and their manner of determination described in writing by the equipment manufacturer or installer for the Inerting system or Deflagration prevention system shall be retained at the Facility for the life of the AST.

PART D FINANCIAL RESPONSIBILITY REQUIREMENTS FOR ABOVEGROUND STORAGE TANKS AS SPECIFIED IN ~~PART A, SECTION 4~~ ASTs

1.0 ~~Applicability~~ General Requirements for Financial Responsibility

1.1 Applicability

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

- 1.1.5 If the Owner and Operator of an AST are separate ~~Persons~~ persons, only one ~~Person~~ person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance is established in ~~§2 of this Part~~ PART D, Section 2.0.

2.0 Compliance Dates and Documentation of Compliance

2.1 Required Financial Responsibility Documentation and Dates of Compliance

- 2.1.1 Owners and Operators of ASTs shall comply with the requirements of ~~this Part~~ PART D by June 1, 2005.
- 2.1.2 ~~The Owners and Operators must shall~~ submit the appropriate documentation as referenced in ~~§§5-15 and PART D, Sections 5.0 through 15.0 and Forms A through Q Appendices A- of this Part on an annual basis once every twelve (12) months~~ to the Department as proof of compliance with the financial ~~assurance responsibility~~ requirements of this Part. ~~The Owners and Operators shall maintain a copy of all documentation as referenced in §§5-15 PART D, Sections 5.0~~ [thought through] 15.0 and Appendices Forms A-through Q of this Part PART D.
- 2.1.3 Owners and Operators ~~must shall~~ maintain evidence of all current and historical financial ~~assurance responsibility~~ mechanisms used to demonstrate financial responsibility under ~~this Part~~ PART D until released from the requirements under ~~§49 PART D, Section 19.0 of this Part~~.
- 2.1.4 Records documenting compliance with the ~~Ffinancial Rresponsibility~~ requirements of this Part ~~must shall~~ be made available upon the request of the Department.
- 2.1.5 Owners and Operators shall submit to the Department documentation of the current mechanism within thirty (30) days of confirmation of a release from the AST.
- 2.1.6 No AST shall contain a regulated substance without a current and valid financial responsibility mechanism in accordance with the applicable requirements of these Regulations.

3.0 Amount and Scope of Required Financial Responsibility

3.1 Required Amount of Financial Responsibility by Aggregate Storage Capacity

- 3.1.1 Owners and Operators of ASTs ~~must shall~~ demonstrate financial responsibility for taking corrective action and for compensating third parties for ~~Bodily Injury~~ bodily injury and ~~Property Damage~~ property damage caused by ~~Accidental Releases~~ accidental releases from the operation of ASTs in at least the following amounts. Aggregate storage capacities used to establish the following levels of financial responsibility are the total storage capacity of all applicable ASTs in the State of Delaware:
- 3.1.1.1 For a ~~Person~~ person owning aggregate storage capacity less than or equal to 500,000 gallons, the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of \$500,000 per occurrence and \$1 million ~~Annual Aggregate~~ annual aggregate.
- 3.1.1.2 For a ~~Person~~ person owning aggregate storage capacity of greater than 500,000 gallons and less than or equal to 1,000,000 gallons, the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of \$1 million per occurrence and \$1 million ~~Annual Aggregate~~ annual aggregate.
- 3.1.1.3 For a ~~Person~~ person owning aggregate storage capacity of greater than 1,000,000 gallons and less than or equal to 3,000,000 gallons, the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of \$1 million per occurrence and \$2 million ~~Annual Aggregate~~ annual aggregate.
- 3.1.1.4 For a ~~Person~~ person owning aggregate storage capacity of greater than 3,000,000 gallons and less than or equal to 5,000,000 gallons, the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of \$2 million per occurrence and \$4 million ~~Annual Aggregate~~ annual aggregate.
- 3.1.1.5 For a ~~Person~~ person owning aggregate storage of greater than 5,000,000 gallons, the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of \$3 million per occurrence and \$6 million ~~Annual Aggregate~~ annual aggregate.

3.2 Additional Financial Responsibility Requirements

- 3.2.1 The amount of financial responsibility required under this Section excludes legal defense and administrative costs.
- 3.2.2 The required per ~~Occurrence~~ occurrence and ~~Annual Aggregate~~ annual aggregate coverage amounts do not in any way limit the liability of the Owner ~~and/or~~ Operator.
- 3.2.3 The ~~Annual Aggregate~~ annual aggregate on ASTs is separate from the ~~Annual Aggregate~~ annual aggregate on underground storage tanks.

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

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

4.0 Allowable Mechanisms and Combinations of Mechanisms

4.1 Allowable Financial Responsibility Mechanisms

4.1.1 Except as provided by ~~§§4.2 and 4.3 of this Section~~ Part D, subsection 4.1.2 and PART D, subsection 4.1.3:

4.1.1.1 An Owner ~~and~~ or Operator may use any one or combination of the mechanisms listed in ~~§§ PART D, Sections 5.0 through 10.0 of this Part~~, inclusive, to satisfy the requirements of ~~§3 of this Part~~ PART D, Section 3.0.

4.1.1.2 A Local Government Owner ~~and~~ or Operator may use any one or combination of the mechanisms listed in ~~§§ PART D, Sections 5.0 through 14.0 of this Part~~, inclusive, to satisfy the requirements of ~~§3 of this Part~~ PART D, Section 3.0.

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

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

4.1.3.1 Taking corrective action; and

4.1.3.2 Compensating third parties for ~~Bodily Injury~~ bodily injury and ~~Property Damage~~ property damage caused by ~~Accidental Releases~~ accidental releases; the amount of financial responsibility provided by the combination of mechanisms ~~must shall~~ be in the full amount specified in ~~§3.1 of this PART D, Ssubsection 3.1.~~

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

5.0 Self-Insurance Self-Insurance

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

5.1.1 To satisfy the requirements of ~~§3 PART D, Section 3.0 of this Part~~ by ~~self insurance~~ Self-Insurance, the Owner, Operator, or Guarantor ~~must shall~~:

5.1.1.1 Meet the financial test in ~~§5.2 or §5.3 of this Section~~ PART D, subsection 5.1.2 or PART D, subsection 5.1.3 based on year-end financial statements for the latest completed Financial Reporting Year; and,

5.1.1.2 Complete ~~Appendix PART D, Section 21.0 Form A of this Part~~ exactly as shown, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted; and,

5.1.1.3 Submit the completed ~~Appendix PART D, Section 21.0, Form A of this Part~~ to the Department, signed by the Chief Financial Officer of the Owner, Operator, or Guarantor, within one hundred and twenty (120) days of the close of each fiscal year.

5.1.2 Alternative I - Net Worth Test

5.1.2.1 The Owner, Operator, or Guarantor, ~~must shall~~ have a ~~Tangible Net Worth~~ tangible net worth of at least \$10 million; and

5.1.2.2 The Owner, Operator, or Guarantor, ~~must shall~~ have a ~~Tangible Net Worth~~ tangible net worth of at least ten times the sum of the following:

5.1.2.2.1 The applicable ~~Annual Aggregate~~ annual aggregate amount required by ~~§3 of this Part~~ PART D, Section 3.0 less the amount obtained through another mechanism or combination of mechanisms in accordance with ~~§4 of this Part~~ PART D, Section 4.0, for which a financial test is used to demonstrate financial responsibility to the Department under this Section; and

5.1.2.2.2 Any other liability coverage for which the Owner or Operator is using the test to demonstrate financial responsibility to the State or EPA, (this includes but is not limited to Subtitle C Hazardous waste facilities, SDWA hazardous waste injection wells, Subtitle I Underground Storage Tank facilities), and

5.1.2.3 The Owner, Operator, or Guarantor, ~~must shall~~ either:

- 5.1.2.3.1 File financial statements annually with the U.S. Securities and Exchange Commission (SEC), the Energy Information Administration (EIA), or the Rural Utilities Service (RUS), ~~the Board of Governors of the Federal Reserve System, the Comptroller of the Currency or the Federal Deposit Insurance Corporation;~~ or
- 5.1.2.3.2 Annually report the firm's ~~Tangible Net Worth~~ tangible net worth to Dun & Bradstreet, and Dun & Bradstreet ~~must~~ shall have assigned the firm a financial strength rating of 4A or 5A, and
- 5.1.2.4 The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a going concern qualification.
- 5.1.3 Alternative II - Net Working Capital Test
 - 5.1.3.1 The Owner, Operator, or Guarantor ~~must~~ shall have a ~~Tangible Net Worth~~ tangible net worth of at least \$10 million; and
 - 5.1.3.2 The Owner, Operator, or Guarantor ~~must~~ shall have a ~~Tangible Net Worth~~ tangible net worth of six times the sum of the following:
 - 5.1.3.2.1 The applicable ~~Annual Aggregate~~ annual aggregate amount required by ~~§3 of this Part~~ PART D, Section 3.0 less the amount obtained through another mechanism or combination of mechanisms in accordance with ~~§4 of this Part~~ PART D, Section 4.0, for which a financial test is used to demonstrate financial responsibility to the Department under this Section; and
 - 5.1.3.2.2 Any other liability coverage for which the Owner or Operator is using the test to demonstrate financial responsibility to the State or EPA, (this includes but is not limited to Subtitle C Hazardous ~~waste~~ Waste facilities Facilities, SDWA hazardous ~~Hazardous waste~~ Waste injection ~~Injection~~ Injection wells Wells, Subtitle I Underground Storage Tank facilities); and
 - 5.1.3.3 The Owner, Operator, or Guarantor ~~must~~ shall have either:
 - 5.1.3.3.1 At least 90 percent of assets are in the United States, or
 - 5.1.3.3.2 U.S. assets are at least six times the sum of the following:
 - 5.1.3.3.2.1 The applicable ~~Annual Aggregate~~ annual aggregate amount required by ~~§3 of this Part~~ PART D, Section 3.0 less the amount obtained through another mechanism or combination of mechanisms in accordance with ~~§4 of this Part~~ PART D, Section 4.0, for which a financial test is used to demonstrate financial responsibility to the Department under this Section; and
 - 5.1.3.3.2.2 Any other liability coverage for which the Owner or Operator is using the test to demonstrate financial responsibility to the State or EPA, (this includes but is not limited to Subtitle C Hazardous ~~waste~~ Waste facilities Facilities, SDWA hazardous ~~Hazardous waste~~ Waste injection ~~Injection~~ Injection wells Wells, Subtitle I Underground Storage Tank facilities); and
 - 5.1.3.4 The Owner, Operator, or Guarantor ~~must~~ shall have either
 - 5.1.3.4.1 Net working capital of at least six times the sum of the following:
 - 5.1.3.4.1.1 The applicable ~~Annual Aggregate~~ annual aggregate amount required by ~~§3 of this Part~~ PART D, Section 3.0 less the amount obtained through another mechanism or combination of mechanisms in accordance with ~~§4 of this Part~~ PART D, Section 4.0, for which a financial test is used to demonstrate financial responsibility to the Department under this Section; and
 - 5.1.3.4.1.2 Any other liability coverage for which the Owner or Operator is using the test to demonstrate financial responsibility to the State or EPA, (this includes but is not limited to Subtitle C Hazardous ~~waste~~ Waste facilities Facilities, SDWA hazardous ~~Hazardous waste~~ Waste injection ~~Injection~~ Injection wells Wells, Subtitle I Underground Storage Tank facilities); or
 - 5.1.3.4.2 A current Standard & Poor's bond rating of AAA, AA, A or BBB, or a current Moody's bond rating of Aaa, Aa, A or Baa for the most recent bond issuance, and
 - 5.1.3.5 The fiscal year end financial statements of the Owner, Operator, or Guarantor, shall be independently audited, and cannot include an adverse auditor's opinion, a disclaimer of opinion, or a going concern qualification, and
 - 5.1.3.6 If the financial statements of the Owner, Operator, or Guarantor are not submitted annually to the U.S. Securities and Exchange Commission (SEC), the Energy Information Administration (EIA) or the Rural Utilities Service (RUS), the Owner, Operator, or Guarantor using the Alternative II test, ~~must~~ shall obtain a special report by an independent certified public accountant which contains the accountant's certification that there are no material differences between the financial data in the submission required under ~~§ 5.1.3 of this Part~~ PART D, subsection 5.1.2.4 and the independently audited year-end financial statements and footnotes for the latest completed Financial Reporting Year.

- 5.1.4 If an Owner or Operator finds that he or she no longer meets the requirements of ~~§ 5.1.1 of this Part~~ PART D, subsection 5.1, the Owner or Operator ~~must shall~~ obtain alternative coverage within one hundred fifty (150) days of the latest completed Financial Reporting Year.
- 5.1.5 The Department may require reports of financial condition at any time from the Owner, Operator, or Guarantor. If the Department finds, on the basis of such reports or other information, that the Owner, Operator, or Guarantor no longer meets the requirements of ~~§ 5.1.1 of this Part~~ PART D, subsection 5.1, the Owner or Operator ~~must shall~~ obtain alternate coverage within 30 days after notification by ~~Verifiable Service~~ verifiable service of such a finding.
- 5.1.6 If the Owner and Operator fail to obtain alternate coverage within one hundred fifty (150) days of finding that he or she no longer meets the requirements of ~~§ 5.1.1 of this Part~~ PART D, subsection 5.1, or within ~~thirty [30] (30)]~~ thirty (30)] days of notification by the Department that he or she no longer meets the requirements of ~~§ 5.1.1 of this Part~~ PART D, subsection 5.1, the Owner ~~and or~~ Operator ~~must shall~~ notify the Secretary of such failure within ten (10) days.

6.0 Guarantee

6.1 Requirements for Use of Guarantee to Comply with Financial Responsibility

- 6.1.1 An Owner or Operator may satisfy the requirements of ~~§ PART D, Section 3.0 of this Part~~ by obtaining a guarantee that conforms to the requirements of this Section. The Guarantor must be a business entity that:
 - 6.1.1.1 Possesses a ~~Controlling Interest~~ controlling interest in the Owner or Operator; or
 - 6.1.1.2 Possesses a ~~Controlling Interest~~ controlling interest in a firm that has a ~~Controlling Interest~~ controlling interest in the Owner or Operator; or
 - 6.1.1.3 Is an affiliate which is controlled through stock ownership by a common parent firm that possesses a ~~Controlling Interest~~ controlling interest in the Owner or Operator; or
 - 6.1.1.4 Is engaged in a Substantial Business Relationship with the Owner or Operator and is issuing the guarantee as an act incident to that business relationship.
- 6.1.2 The Guarantor ~~must shall~~:
 - 6.1.2.1 Comply with PART D, Section §5.0 of this Part; and
 - 6.1.2.2 Complete ~~Appendix PART D, Section 22.0, Form B of this Part~~, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; and
 - 6.1.2.3 Submit the completed ~~Appendix PART D, Section 22.0, Form B of this Part~~ to the Department together with their submission under PART D, Section §5.0 of this Part; and
 - 6.1.2.4 Provide the Owner or Operator with copies of their submissions under PART D, Ssubsections 6.1.2.1 and PART D, subsection 6.1.2.3 of this Part.
- 6.1.3 If the Guarantor fails to meet the requirements of the financial test at the end of any Financial Reporting Year, within one hundred twenty (120) days of the end of that Financial Reporting Year the Guarantor shall send by ~~Verifiable Service~~ verifiable service, before cancellation or non renewal of the guarantee, notice to the Owner and Operator and to the Department. The guarantee will terminate no less than one hundred twenty (120) days after the date the Owner and Operator receives the notification, as evidenced by ~~Verifiable Service~~ verifiable service. The Owner or Operator ~~must shall~~ obtain alternative coverage as specified in § subsection 17.2 of this Part.
- 6.1.4 If the Department notifies the Guarantor that he no longer meets the requirements of ~~PART D § subsection 5.1.1.1 of this Part~~, the Guarantor ~~must shall~~ notify the Owner and Operator by Verifiable Service within ten (10) days of receiving such notification from the Department. The guarantee will terminate no less than one hundred twenty (120) days after the date the Owner and Operator receives the notification, as evidenced by Verifiable Service. The Owner or Operator ~~must shall~~ obtain alternative coverage as specified in § PART D, subsection 17.2 of this Part.
- 6.1.5 The Owner or Operator who uses a guarantee to satisfy the requirements of ~~§ PART D Section 3.0 of this Part~~ must shall also establish a standby trust fund at the same time that the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the Guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Department under PART D, Section §18.0 of this Part. This standby trust fund ~~must shall~~ meet the requirements specified in PART D, Section §15.0 of this Part.
- 6.1.6 An Owner or Operator may use a guarantee to establish financial responsibility only if the State's Attorney General has submitted a written statement to the Department that a guarantee executed as described in this Section is a legally valid and enforceable obligation in the State of Delaware.

7.0 Insurance and Risk Retention Group Coverage

7.1 Requirements for Use of Insurance or Risk Retention Group to Comply with Financial Responsibility

- 7.1.1 An Owner or Operator may satisfy the requirements of PART D, Section §3.0 of this Part by obtaining liability insurance that conforms to the requirements of this Section. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.
- 7.1.2 Each insurance policy ~~must~~ shall be amended by an endorsement worded as specified in Appendix PART D, Section 22.0, Form C of this Part or evidenced by a certificate of insurance worded as specified in Appendix PART D, Section 23.0, Form D of this Part except that instructions in brackets ~~must~~ shall be replaced with the relevant information and the brackets deleted.
- 7.1.3 Each insurance policy ~~must~~ shall be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more States and has a current Standard & Poor's rating of AAA, AA, A or BBB, or a current Moody's rating of Aaa, Aa, A or Baa.

8.0 Surety Bond

8.1 Requirements for Use of Surety Bond to Comply with Financial Responsibility

- 8.1.1 An Owner or Operator may satisfy the requirements of PART D, Section §3.1, of this Part by obtaining a surety bond that conforms to the requirements of this Section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.
- 8.1.2 The surety bond ~~must~~ shall be worded as shown in Appendix PART D, Section 24.0, Form E of this Part, except that instructions in brackets ~~must~~ shall be replaced with the relevant information and the brackets deleted.
- 8.1.3 Under the terms of the bond, the surety will become liable on the bond obligation when the Owner or Operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the levels of financial responsibility required by PART D, Section §3.0 of this Part.
- 8.1.4 The Owner or Operator who uses a surety bond to satisfy the requirements of PART D, Section §3.0 of this Part ~~must~~ shall also establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Secretary under PART D, Section §20 18.0 of this Part. This standby trust fund ~~must~~ shall meet the requirements specified in PART D, Section §15.0 of this Part.
- 8.1.5 An Owner or Operator may use a surety bond to establish financial responsibility only if the State's Attorney General has submitted a written statement to the Department that a surety bond executed as described in this Section is a legally valid and enforceable obligation in the State of Delaware.
- 8.1.6 The ~~Surety(ies)~~ surety(ies) company may cancel the bond by sending notice of cancellation to the Owner and Operator and the Department by Verifiable Service, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Owner and Operator as evidenced by Verifiable Service. The Owner or Operator ~~must~~ shall obtain alternative coverage as specified in PART D, subsection §17.2 of this Part.
- 8.1.7 If the Department notifies the Owner or Operator that the ~~Surety(ies)~~ surety(ies) company no longer meets the requirements of this Section, the Owner or Operator ~~must~~ shall obtain alternative coverage as specified in PART D, subsection §17.2 of this Part.

9.0 Letter of Credit

9.1 Requirements for Use of Letter of Credit to Comply with Financial Responsibility

- 9.1.1 An Owner or Operator may satisfy the requirements of PART D, Section §3.0 of this Part by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Section and is issued by an institution that has authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or State agency.
- 9.1.2 The letter of credit ~~must~~ shall be worded as shown in Appendix PART D, Section 25.0, Form F of this Part except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- 9.1.3 An Owner or Operator who uses a letter of credit to satisfy the requirements of PART D, Section §3.0 of this Part ~~must~~ shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department

under PART D, Section §18.0 of this Part. This standby trust fund ~~must~~ shall meet the requirements specified in PART D, Section §15.0 of this Part.

- 9.1.4 The letter of credit ~~must~~ shall be irrevocable with a term specified by the issuing institution. The letter of credit ~~must~~ shall provide that credit be automatically renewed from the same term as the original term, unless, at least one hundred and twenty (120) days before the current expiration date, the issuing institution notifies the Owner and Operator by ~~Verifiable Service~~ verifiable service of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred and twenty (120) days will begin on the date when the Owner and Operator receives the notice, as evidenced by the ~~Verifiable Service~~ verifiable service.

10.0 Trust Fund

10.1 Requirements for Use of Trust Fund to Comply with Financial Responsibility

- 10.1.1 An Owner or Operator may satisfy the requirements of PART D, Section §3.0 of this Part by establishing a trust fund that conforms to the requirements of this Section. The trustee ~~must~~ shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the State in which the fund is established.
- 10.1.2 The wording of the trust agreement ~~must~~ shall be identical to the wording specified in Appendix PART D, Section 26.0, Form G of this Part except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and ~~must~~ shall be accompanied by a formal certification of acknowledgment as specified in Appendix PART D, Section 26.0, Form G of this Part.
- 10.1.3 The trust fund, when established, ~~must~~ shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.
- 10.1.4 If the value of the trust fund is greater than the required amount of coverage, the Owner or Operator may submit a written request by ~~Verifiable Service~~ verifiable service to the Secretary for ~~Release~~ release of the excess.
- 10.1.5 If other financial ~~assurance responsibility~~ as specified in this Section is substituted for part of the trust fund, the Owner or Operator may submit a written request by ~~Verifiable Service~~ verifiable service to the Secretary for release of the excess.
- 10.1.6 Within sixty (60) days after receiving a request from the Owner or Operator for Release of funds as specified in §§ PART D, subsection 10.1.4 or PART D, subsection 10.1.5 ~~above~~, the Department will instruct the trustee to Release to the Owner or Operator such funds as the Department specifies in writing by ~~Verifiable Service~~ verifiable service.

11.0 Local Government Bond Rating Test

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

- 11.1.1 A general purpose ~~L~~ocal ~~G~~overnment Owner or Operator and/or ~~L~~ocal ~~G~~overnment serving as a Guarantor may satisfy the requirements of PART D, Section §3.0 of this Part by having a currently outstanding issue or issues of general obligation bonds of at least the minimum Annual Aggregate amount required in PART D, Section §3.0 of this Part excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a ~~L~~ocal ~~G~~overnment has multiple outstanding issues, or where a ~~L~~ocal ~~G~~overnment's bonds are rated by both Moody's and Standard & Poor's, the lowest rating ~~must~~ shall be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance ~~may~~ shall not be considered in determining the amount of applicable bonds outstanding.
- 11.1.2 A ~~L~~ocal ~~G~~overnment Owner or Operator or ~~L~~ocal ~~G~~overnment serving as a Guarantor that (i) is not a general purpose ~~L~~ocal ~~G~~overnment and (ii) does not have the legal authority to issue general obligation bonds may satisfy the requirements of PART D, Section §3.0 of this Part by:
- 11.1.2.1 having a currently outstanding issue or issues of revenue bonds of at least the minimum Annual Aggregate amount required in PART D, Section §3.0 of this Part excluding refunded issues and
- 11.1.2.2 having a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the ~~L~~ocal ~~G~~overnment. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.
- 11.1.3 The ~~L~~ocal ~~G~~overnment Owner or Operator and/or Guarantor ~~must~~ shall maintain a copy of its bond rating published within the last twelve (12) months by Moody's or Standard & Poor's.

- 11.1.4 To demonstrate that it meets the ~~Local~~ Government bond rating test, the Chief Financial Officer of a general purpose ~~Local~~ Government Owner or Operator and/or Guarantor ~~must~~ shall have a letter signed by the Chief Financial Officer worded as specified in ~~Appendix PART D, Section 27.0, Form J of this Part~~ except that instructions in brackets are to be replaced by the relevant information and the brackets deleted.
- 11.1.5 To demonstrate that it meets the ~~Local~~ Government bond rating test, the Chief Financial Officer of ~~Local~~ Government Owner, Operator, or Guarantor other than a general purpose government ~~must~~ shall have a letter signed by the Chief Financial Officer worded as specified in ~~Appendix PART D, Section 28.0, Form K of this Part~~ except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
- 11.1.6 The Department may require reports of financial condition at any time from the ~~Local~~ Government Owner, Operator, or ~~Local~~ Government Guarantor. If the Department finds, on the basis of such reports or other information, that the ~~Local~~ Government Owner, Operator, or Guarantor, no longer meets the ~~Local~~ Government bond rating test requirements of this Section, the ~~Local~~ Government Owner or Operator ~~must~~ shall obtain alternative coverage within thirty (30) days after notification of such a finding.
- 11.1.7 If a ~~Local~~ Government Owner or Operator using the bond rating test to provide financial ~~assurance responsibility~~ finds that it no longer meets the bond rating test requirements, the ~~Local~~ Government Owner ~~and/or~~ Operator ~~must~~ shall obtain alternative coverage within one hundred and fifty (150) days of the change in status.
- 11.1.8 A ~~Local~~ Government Owner or Operator using the Local Government bond rating test under PART D, Section §11 ~~of this Part must~~ shall maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.

12.0 Local Government Financial Test

12.1 Requirements for Use of Local Government Financial Test to Comply with Financial Responsibility

- 12.1.1 A ~~Local~~ Government Owner or Operator may satisfy the requirements of PART D, Section §3.0 ~~of this Part~~ by passing the financial test specified in this Section. To be eligible to use the financial test, the ~~Local~~ Government Owner or Operator ~~must~~ shall have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the ~~Local~~ Government financial test, the Owner or Operator ~~must~~ shall meet the criteria of PART D, subsection §12.1.3 and PART D, subsection §12.1.4 ~~of this Part~~ based on year-end year-end financial statements for the latest completed Financial Reporting Year.
- 12.1.2 The ~~Local~~ Government Owner or Operator ~~must~~ shall have the following information available, as shown in the year-end year-end financial statements for the latest completed fiscal year:
- 12.1.2.1 Total Revenues: Consists of the sum of general fund operating and ~~non-operating non-operating~~ revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the ~~Local~~ Government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.
- 12.1.2.2 Total Expenditures: Consists of the sum of general fund operating and ~~non-operating non-operating~~ expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the ~~Local~~ Government using the financial test (interfund transfers).
- 12.1.2.3 Local Revenues: Consists of total revenues (as defined in PART D, Ssubsection 12.1.2.1 ~~of this Part~~) minus the sum of all transfers from other governmental entities, including all monies received from Federal, State, or ~~Local~~ Government sources.
- 12.1.2.4 Debt Service: Consists of the sum of all interest and principal payments on all ~~long-term long-term~~ credit obligations and all ~~interest-bearing short-term~~ 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 non-interest bearing short-term~~ obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

- 12.1.2.5 Total Funds: Consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the Llocal Ggovernment's Financial Reporting Year. Includes Federal securities, Federal agency securities, State and Llocal Ggovernment securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other ~~non-security non-security~~ assets.
- 12.1.2.6 Population: Consists of the number of people in the area served by the Llocal Ggovernment.
- 12.1.3 The Llocal Ggovernment's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The Llocal Ggovernment cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.
- 12.1.4 The Llocal Ggovernment Owner or Operator ~~must~~ shall have a letter signed by the Chief Financial Officer worded as specified in Appendix PART D, Section 29.0, Form L of this Part except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
- 12.1.5 To demonstrate that it meets the financial test under PART D, subsection §12.1.2 of this Part, the Chief Financial Officer of the Llocal Ggovernment Owner or Operator, ~~must~~ shall sign, within one hundred and twenty (120) days of the close of each Financial Reporting Year, as defined by the twelve month period for which financial statements used to support the financial test are prepared, a letter worded as specified in Appendix PART D, Section 29.0, Form L of this Part except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
- 12.1.6 If a Llocal Ggovernment Owner or Operator using the test to provide financial ~~assurance~~ responsibility finds that it no longer meets the requirements of the financial test based on the ~~year-end year-end~~ financial statements, the Owner or Operator ~~must~~ shall obtain alternative coverage within one hundred and fifty [one] (150) days of the end of the year for which financial statements have been prepared.
- 12.1.7 The Department may require reports of financial condition at any time from the Llocal Ggovernment Owner or Operator. If the Department finds, on the basis of such reports or other information, that the Llocal Ggovernment Owner or Operator no longer meets the financial test requirements of PART D, subsection §§12.1.2 and PART D, subsection 12.1.5 of this Part, the Owner or Operator ~~must~~ shall obtain alternate coverage within thirty (30) days after notification of such a finding.
- 12.1.8 If the Llocal Ggovernment Owner ~~and/or~~ Operator fails to obtain alternate assurance within one hundred and fifty (150) days of finding that it no longer meets the requirements of the financial test based on the ~~year-end year-end~~ financial statements or within thirty (30) days of notification by the Department that it no longer meets the requirements of the financial test, the Owner ~~and or~~ Operator ~~must~~ shall notify the Department of such failure within ten (10) days.

13.0 Local Government Guarantee

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

- 13.1.1 A Llocal Ggovernment Owner or Operator may satisfy the requirements of PART D, Section §3.0 of this Part by obtaining a guarantee that conforms to the requirements of this Section. The Guarantor ~~must~~ shall be either the State in which the Llocal Ggovernment Owner or Operator is located or a Llocal Ggovernment having a "~~Substantial Business Relationship~~" substantial business relationship with the Owner or Operator and issuing the guarantee as an act incident to that relationship. A Llocal Ggovernment acting as the Guarantor ~~must~~ shall:
- 13.1.1.1 Demonstrate that it meets the bond rating test requirement of PART D, Section §11.0 of this Part and deliver a copy of the completed Chief Financial Officer's letter as contained in Appendix PART D, Section 27.0, Form J of this Part to the Llocal Ggovernment Owner or Operator; or
- 13.1.1.2 Demonstrate that it meets the worksheet test requirements of PART D, Section §12.0 of this Part and deliver a copy of the completed Chief Financial Officer's letter as contained in Appendix PART D, Section 28.0, Form K of this Part to the Llocal Ggovernment Owner and Operator; or
- 13.1.1.3 Demonstrate that it meets the Llocal Ggovernment fund requirements of PART D, subsection §§14.1.1, PART D, subsection 14.1.2 or PART D, subsection 14.1.3 of this Part and deliver a copy of the completed Chief Financial Officer's letter as contained in Appendix PART D Section 31.0, Form Q of this Part to the Llocal Ggovernment Owner and Operator.
- 13.1.2 If the Llocal Ggovernment Guarantor is unable to demonstrate financial ~~assurance~~ responsibility under any of the mechanisms in PART D, Section §11.0, PART D, Section §12.0 or PART D, Section §14.0 of this

~~Part~~, at the end of the Financial Reporting Year, the Guarantor shall send by ~~Verifiable Service~~ verifiable service, before cancellation or ~~non-renewal~~ non-renewal of the guarantee, notice to the Owner and Operator and to the Department. The guarantee will terminate no less than one hundred and twenty (120) days after the date the Owner and Operator receives the notification, as evidenced by ~~Verifiable Service~~ verifiable service. The Owner or Operator ~~must~~ shall obtain alternative coverage as specified in PART D, subsection §17.2 of this Part.

- 13.1.3 The guarantee agreement shall be worded as specified in Appendix PART D, Section 29.0 Form M, Appendix PART D, Section 30.0, Form N, Appendix PART D, Section 31.0 Form O or Appendix PART D, Section 32.0 Form P of this Part, depending on which of the following alternative guarantee arrangements is selected:
- 13.1.3.1 If, in the default or incapacity of the Owner or Operator, the Guarantor guarantees to fund a standby trust as directed by the Secretary, the guarantee shall be worded as specified in Appendix PART D, Section 29.0 Form M or Appendix PART D, Section 30.0, Form N of this Part.
- 13.1.3.2 If, in the default or incapacity of the Owner or Operator, the Guarantor guarantees to make payments as directed by the Secretary for taking corrective action or compensating third parties for ~~Bodily Injury~~ bodily injury and ~~Property Damage~~ property damage, the guarantee shall be worded as specified in Appendix PART D, Section 31.0 Form O or Appendix PART D, Section 32.0 Form P of this Part.
- 13.1.4 If the Guarantor is a State, the ~~Llocal Ggovernment~~ guarantee with standby trust must Guarantee With Standby Trust shall be worded as shown in Appendix PART D, Section 29.0 Form M of this Part, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
- 13.1.5 If the Guarantor is a ~~Llocal Ggovernment~~, the ~~Llocal Ggovernment~~ guarantee with standby trust must Guarantee With Standby Trust shall be worded as shown in Appendix PART D, Section 30.0 Form N of this Part, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
- 13.1.6 If the Guarantor is a State, the ~~Llocal Ggovernment~~ guarantee without standby trust must Guarantee Without Standby Trust shall be worded as shown in Appendix PART D, Section 31.0 Form O of this Part, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
- 13.1.7 If the Guarantor is a ~~Llocal Ggovernment~~, the ~~Llocal Ggovernment~~ guarantee without standby trust must Guarantee Without Standby Trust shall be worded as shown in Appendix PART D, Section 32.0 Form P of this Part, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
- 13.1.8 A ~~Llocal Ggovernment~~ Owner or Operator using the ~~Llocal Ggovernment~~ gGuarantee under PART D, Section §13.0 of this Part, where the Guarantor's demonstration of financial responsibility relies on the bond rating test under PART D, Section §11.0[,] of this Part ~~must~~ shall maintain a copy of the Guarantor's bond rating published within the last twelve months by Moody's or Standard & Poor's.
- 13.1.9 A ~~Llocal Ggovernment~~ Owner or Operator using the ~~Llocal Ggovernment~~ gGuarantee supported by ~~[the]~~ PART D, Section §14.0, Llocal Ggovernment fFund, ~~must~~ shall maintain a copy of the Guarantor's ~~year end~~ year-end financial statements for the most recent completed Financial Reporting Year showing the amount of the fund.

14.0 Local Government Fund

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

- 14.1.1. A ~~Llocal Ggovernment~~ Owner ~~and or~~ Operator may satisfy the requirements of PART D, Section §3.0 of this Part by establishing a dedicated fund account that conforms to the requirements of this Section. Except as specified in PART D, subsection §14.1.1.2 of this Part, a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:
- 14.1.1.1 The fund is dedicated by State constitutional provision, or ~~Llocal Ggovernment~~ statute, charter, ordinance, or order to pay for taking ~~eCorrective aAction~~ and for compensating third parties for ~~Bodily Injury~~ bodily injury and ~~Property Damage~~ property damage caused by ~~Accidental Releases~~ accidental releases arising from the operation of ~~petroleum~~ ASTs and is funded for the full amount of coverage required under PART D, Section §3.0 of this Part, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or
- 14.1.1.2 The fund is dedicated by State constitutional provision, or ~~Llocal Ggovernment~~ statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective

action and compensating third parties for ~~Bodily Injury~~ bodily injury and ~~Property Damage~~ property damage caused by ~~Accidental Releases~~ accidental releases arising from the operation of ASTs, and is funded for five times the full amount of coverage required under PART D, Section §3.0 ~~of this Part~~, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under PART D, Section §3.0 ~~of this Part~~, the amount of financial responsibility demonstrated by the fund ~~may~~ shall not exceed one fifth the amount in the fund; or

- 14.1.1.3 The fund is dedicated by State constitutional provision, or ~~L~~ocal ~~G~~overnment statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for ~~Bodily Injury~~ bodily injury and ~~Property Damage~~ property damage caused by ~~Accidental Releases~~ accidental releases arising from the operation of ASTs. A payment is made to the fund once every year for seven years until the fund is ~~fully-funded~~ fully-funded. This seven year period is hereafter referred to as the "pay in period." The amount of each payment ~~must~~ shall be determined by this formula:

$$(TF-CF)/Y$$

Where TF is the total required financial ~~assurance~~ responsibility for the Owner or Operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay in period, and

- 14.1.1.3.1 The ~~L~~ocal ~~G~~overnment 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~~ bodily injury and ~~Property Damage~~ property damage caused by ~~Accidental Releases~~ accidental releases arising from the operation of ASTs, or
- 14.1.1.3.2 The ~~L~~ocal ~~G~~overnment Owner or Operator has a letter signed by the appropriate State ~~a~~Attorney ~~g~~eneral stating that the use of the bonding authority will not increase the ~~L~~ocal ~~G~~overnment's debt beyond the legal debt ceilings established by the relevant State laws. The letter ~~must~~ shall also State that prior voter approval is not necessary before use of the bonding authority.
- 14.1.2 To demonstrate that it meets the requirements of the ~~L~~ocal ~~G~~overnment fund, the Chief Financial Officer of the ~~L~~ocal ~~G~~overnment Owner or Operator and/or Guarantor ~~must~~ shall sign a letter worded as specified in ~~Appendix~~ PART D, Section 31.0, Form Q ~~of this Part~~, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.
- 14.1.3 An Owner or Operator using a ~~L~~ocal ~~G~~overnment fund under PART D, Section §14.0 ~~of this Part~~ ~~must~~ shall maintain the following documents:
- 14.1.3.1 A copy of the State constitutional provision or ~~L~~ocal ~~G~~overnment statute, charter, ordinance, or order dedicating the fund, and
- 14.1.3.2 ~~Year-end~~ Year-end financial statements for the most recent completed Financial Reporting Year showing the amount in the fund. If the fund is established under PART D, subsection §14.1.1.3 ~~of this Part~~ using incremental funding backed by bonding authority, the financial statements ~~must~~ shall show the previous year's balance, the amount of funding during the year, and the closing balance in the fund, and
- 14.1.3.3 If the fund is established under PART D, subsection §14.1.1.3 ~~of this Part~~ using incremental funding backed by bonding authority, the Owner or Operator ~~must~~ shall also maintain documentation of the required bonding authority, including either the results of voter referendum under PART D, subsection §14.1.1.3.1 ~~of this Part~~, or attestation by the State Attorney General as specified under PART D, subsection §14.1.1.3.2 ~~of this Part~~.

15.0 Standby Trust Fund

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

- 15.1.1 An Owner or Operator using any one of the mechanisms authorized by PART D, Section §§6.0, PART D, Section 8.0, PART D, Section 9.0 and PART D, Section 10.0 ~~of this Part~~ shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund ~~must~~ shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by an agency of the State in which the fund is established.

- 15.1.2 The standby trust agreement shall be worded as shown in ~~Appendix~~ PART D, Section 28.0 Form H of this Part except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- 15.1.3 The Secretary will instruct the trustee to refund the balance of the standby trust fund to the Provider of Financial ~~Assurance~~ Responsibility if the Secretary determines that no additional corrective action costs or third party liability claims will occur as a result of a Release covered by the financial ~~assurance~~ responsibility mechanism for which the standby trust fund was established.
- 15.1.4 An Owner or Operator may establish one trust fund as the depository mechanism for all funds assured in compliance with ~~this Part~~ PART D.

16.0 Substitution of Financial ~~Assurance~~ Responsibility Mechanisms by Owner or Operator

16.1 Requirements for Substitution of Financial Responsibility Mechanisms

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

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

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

- 17.1.1 Except as otherwise provided, a Provider of Financial ~~Assurance~~ Responsibility may cancel or fail to renew an assurance mechanism by sending a notice of ~~Termination~~ termination by ~~Verifiable Service~~ verifiable service to the Owner and Operator, subject to the following:
- 17.1.1.1 Termination of a ~~Local Government~~ guarantee, a guarantee, a surety bond or a letter of credit may not occur until one hundred and twenty (120) days after the date on which the Owner and Operator receives the notice of Termination, as evidenced by ~~Verifiable Service~~ verifiable service.
- 17.1.1.2 Termination of insurance or risk retention group coverage, except for ~~non-payment~~ non-payment or misrepresentation by the insured, or ~~State-funded~~ State-funded assurance may not occur until sixty (60) days after the date on which the Owner and Operator receives the notice of ~~Termination~~ termination, as evidenced by ~~Verifiable Service~~ verifiable service.
- 17.1.1.3 Termination for ~~non-payment~~ 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 and Operator receives the notice of ~~Termination~~ termination, as evidenced by ~~Verifiable Service~~ verifiable service.
- 17.1.1.4 The Owner or Operator shall notify the Department within ten (10) days upon receiving notification of cancellation or non-renewal subject to the requirements of PART D, subsection §17.1.
- 17.1.2 If a provider of financial responsibility cancels or fails to renew for reasons other than the incapability of the provider as specified in PART D, subsection §17.2 of this Part, the Owner ~~or~~ and Operator shall obtain alternate coverage within sixty (60) days after receipt of the notice of ~~Termination~~ termination. ~~If the Owner and Operator fail to obtain alternate coverage within sixty (60) days after receipt of the notice of Termination, the Owner or Operator shall notify the Department of such failure within ten (10) days and submit the following to the Department: The Owner and Operator shall submit proof of the alternative financial responsibility mechanism to the Department in accordance with PART D.~~
- 17.1.3 If the Owner and Operator fail to obtain alternate coverage within sixty (60) days after receipt of the notice of termination, the Owner and Operator shall notify the Department of such failure within ten (10) days and shall submit the following to the Department:
- 17.1.23.1 The name and address of the Provider of Financial ~~Assurance~~ Responsibility; and
- 17.1.23.2 The effective date of ~~Termination~~ termination; and

17.1.23.3 The evidence of the financial ~~assurance responsibility~~ mechanism subject to the Termination maintained in accordance with ~~§2.3 of this Part~~ PART D, Section 2.0.

17.1.4 In the event of termination or nonrenewal of liability insurance coverage used to ~~[the]~~ meet the financial responsibility requirements, the insurer shall notify the Department of termination or nonrenewal not more than fifteen (15) days after the date of termination or nonrenewal. The notice shall state the name and address of the insured, the date of termination or nonrenewal, and the address(es) of the facility(ies) previously insured. Failure to notify or timely provide a copy to the Department will not invalidate a provider's action to terminate coverage or deny renewal of coverage.

17.2 Requirements for Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance Responsibility

17.2.1 Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an Owner or Operator as debtor, the Owner or Operator shall notify the Department by ~~Verifiable Service~~ verifiable service of such commencement and ~~must~~ shall submit the appropriate documentation as referenced in PART D, Sections §5.0 through 15.0 and Appendices Forms A through Q of this Part demonstrating current compliance with the financial responsibility requirements of ~~this Part~~ PART D.

17.2.2 Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a Guarantor providing financial ~~assurance responsibility~~ as debtor, such Guarantor shall notify the Owner and Operator and the Department by ~~Verifiable Service~~ verifiable service of such commencement.

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

17.2.4 Within ten (10) days after the failure of a Guarantor or indemnitor to meet the requirements of the financial test, such Guarantor or indemnitor shall notify the Owner and Operator and the Department by ~~Verifiable Service~~ verifiable service of such failure.

17.2.5 Within ten (10) days of receiving notification per PART D, subsection §§17.2.2, PART D, subsection 17.2.3 or PART D, subsection 17.2.4 of this Part, the Owner shall notify the Department by ~~Verifiable Service~~ verifiable service.

17.2.6 An Owner or Operator who obtains financial ~~assurance responsibility~~ by a mechanism other than the financial test of ~~self insurance~~ Self-Insurance will be deemed to be without the required financial ~~assurance responsibility~~ in the event of bankruptcy or incapacity of its Provider of Financial ~~Assurance Responsibility~~, or a suspension or revocation of the authority of the Provider of Financial ~~Assurance Responsibility~~ to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit.

17.2.7 Except in the case of financial test of ~~self insurance~~ Self-Insurance, the Owner and Operator shall obtain alternate financial ~~assurance responsibility~~ within thirty (30) days after receiving notice of a bankruptcy or incapacity of its ~~Provider of Financial Assurance~~ provider of financial responsibility per PART D, subsection §17.2 of this Part. If the Owner or Operator does not obtain alternate coverage within thirty (30) days after such notification, the Owner and Operator shall notify the Department within ten (10) days.

17.2.8 An Owner or Operator who has a potential or existing claim filed with a Guarantor, indemnitor or other provider of financial responsibility who has filed a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code shall in a timely manner file a Proof of Claim and any necessary supporting documentation with the Court of appropriate jurisdiction and provide a copy of the Proof of Claim to the Department.

18.0 Drawing on Financial Assurance Responsibility Mechanisms

18.1 Requirements for Drawing on Mechanisms

18.1.1 Except as specified in PART D, subsection §18.1.4 of this Part, the Department shall require the Guarantor, surety, or institution issuing a letter of credit, to place the amount of funds stipulated by the Department, up to the limit of funds provided by the financial ~~assurance responsibility~~ mechanism, into the standby trust if:

18.1.1.1 The Owner or Operator fails to establish alternate financial ~~assurance responsibility~~ within ~~sixty~~ (60) days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial ~~assurance responsibility~~ mechanisms; and

18.1.1.2 The Department determines or suspects that a ~~Release~~ release from an AST covered by the mechanism has occurred and so notifies the Owner or Operator or the Owner and Operator has

notified the Department pursuant to requirements established under Part E of these regulations of a ~~Release~~ release from an AST ~~system~~ covered by the mechanism; or

18.1.1.3 The conditions of PART D, subsection §18.1.2.1 or PART D, subsection §18.1.2.2 of ~~this Part~~ are satisfied.

18.1.2 The Department may draw on a standby trust fund when:

18.1.2.1 The Department makes a final determination that a ~~Release~~ release has occurred and immediate or long term corrective action for the ~~Release~~ release is needed, but the Owner or Operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under Part E of these Regulations; or

18.1.2.2 The Department has received either:

18.1.2.2.1 Certification from the Owner or Operator and the third party liability claimant(s) and from attorneys representing the Owner or Operator and the third party liability claimant(s) that a third party liability claim should be paid. The certification shall be worded as shown in Appendix PART D, Section 28.0, Form I of this Part except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; or

18.1.2.2.2 A valid final court order establishing a judgment against the Owner or Operator for ~~Bodily Injury~~ bodily injury or ~~Property Damage~~ property damage caused by an ~~Accidental Release~~ accidental release from an AST covered by financial ~~assurance~~ responsibility under ~~this Part~~ PART D and the Department determines that the Owner or Operator has not satisfied the judgment.

18.1.3 If the Department determines that the amount of corrective action costs and third party liability claims eligible for payment under PART D, subsection §18.1.2 of ~~this Part~~ may exceed the balance of the standby trust fund and the obligation of the ~~Provider of Financial Assurance~~ provider of financial responsibility, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The Department shall pay third party liability claims in the order in which the Department receives certifications under PART D, subsection §18.1.2 of ~~this Part~~.

18.1.4 A governmental entity acting as Guarantor under PART D, Section §13.0 of ~~this Part~~, the ~~Local~~ Government guarantee without standby trust, shall make payments as directed by the Secretary under the circumstances described in PART D, subsection §§18.1.1, PART D, subsection 18.1.2 and PART D, subsection 18.1.3 of ~~this Part~~.

19.0 Release ~~From~~ from the Requirements of Financial Responsibility

19.1 Requirements for Release from the Requirements of Financial Responsibility

19.1.1 An Owner and Operator is no longer required to maintain financial responsibility under ~~this Part~~ PART D for an AST ~~after the requirements of Part B, Section 14 of these Regulations have been met, and, if corrective action is required, after corrective action has been completed as required by Part E of these Regulations. when:~~

19.1.1.1 The requirements of PART B, Section 14.0 have been met; and

19.1.1.2 When the financial responsibility mechanism being used is Self-Insurance, guarantee, surety bond, letter of credit, trust fund, local government bond rating test, local government financial test, local government guarantee, or local government fund after corrective action has been completed as required by PART E of these Regulations; or

19.1.1.3 When the financial responsibility mechanism being utilized is Insurance, a claim has been submitted to the Insurance provider in accordance with all the requirements set forth by the Insurance provider and the applicable policy requirements.

20.0 Replenishments of Required Financial Responsibility

20.1 Requirements for Replenishments of Financial Responsibility Mechanisms

20.1.1 If at any time after a standby trust is funded upon the instruction of the Secretary with funds drawn from a ~~guarantee~~ Guarantee, Local Government ~~Guarantee~~ Guarantee with ~~standby~~ Standby ~~trust~~ trust, ~~letter~~ Letter of ~~credit~~ Credit, or ~~surety~~ Surety ~~bond~~ Bond, and the amount in the ~~Standby trust~~ Trust is reduced below the full amount of coverage required, the Owner or Operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

20.1.1.1 Replenish the value of financial ~~assurance~~ responsibility to equal the full amount of coverage required, or

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

20.1.2 For purposes of this Section, the full amount of coverage required is the amount of financial responsibility required by § PART D, Section 3.0 ~~of this Part~~. If a combination of mechanisms was used to provide the ~~assurance~~ financial responsibility funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

APPENDICES

APPENDIX A-	Financial Test of Self Insurance
APPENDIX B-	Guarantee
APPENDIX C-	Endorsement
APPENDIX D	Certificate of Insurance
APPENDIX E	Surety Bond-
APPENDIX F	Irrevocable Standby Letter of Credit
APPENDIX G	Trust Agreement
APPENDIX H	Standby Trust Agreement
APPENDIX I	Certificate of Valid Claim
APPENDIX J	Bond Rating Test—General Purpose Local Government
APPENDIX K	Bond Rating Test—Local Government/Other
APPENDIX L	Local Government Financial Test
APPENDIX M	Local Government Guarantee With Standby Trust Made By A State
APPENDIX N	Local Government Guarantee With Standby Trust Made By A Local Government
APPENDIX O	Local Government Guarantee Without Standby Trust Made By A State
APPENDIX P	Local Government Guarantee Without Standby Trust Made By A Local Government
APPENDIX Q	Local Government Fund Mechanism

APPENDIX A Financial Test of Self Insurance Letter from Chief Financial Officer

I am the chief financial officer of [name and address of the Owner or Operator or Guarantor].

This letter is in support of the use of [~~the financial test of self insurance~~] and/or [~~guarantee~~] to demonstrate financial responsibility for [~~“taking corrective action” and/or “compensating third parties for bodily injury and property damage”~~] caused by [~~“sudden accidental releases” and/or “non-sudden accidental releases”~~] in the amount of at least [~~dollar amount~~] per occurrence and [~~dollar amount~~] annual aggregate arising from operating (an) aboveground storage tank(s).

Aboveground storage tanks at the following facilities are assured by this financial test by this [~~“Owner or Operator” and/or “Guarantor”~~].

Attach tank schedule:

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 Part A of these regulations.

AST Facility I.D. Number: _____

Name/Address of AST Facility: _____

Facility Name: _____

Facility Street: _____

Facility City: _____ Facility Zip Code: _____

Tank ID# (from AST registration form) _____ Tank size Tank product

A [~~“financial test,” and/or “guarantee”~~] is also used by [~~“owner” or “operator” or “Guarantor”~~] to Demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or State programs including but not limited to Subtitle C Hazardous waste facilities, SDWA Class I hazardous waste injection wells and aggregate UST coverage.

Amount

Closure
Post-Closure Care
Liability Coverage
Corrective Action
Plugging and Abandonment
Other

TOTAL

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

I hereby certify that the wording of this letter is identical to the wording specified in Part D, 5.1 as such Regulations were constituted on the date shown immediately below.

(Signature)
(Name)
(Title)
(Date)

[Fill in the information for Alternative I if the criteria of Part D, Section 5.2 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of Part D, Section 5.3 are being used to demonstrate compliance with the financial test requirements.]

Alternative I

1. Amount of annual AST aggregate coverage being assured by a financial test, and/or guarantee: \$
2. Amount of other liability coverage covered by a financial test, and/or guarantee: (This includes but is not limited to Subtitle C Hazardous waste facilities, SDWA-Class I hazardous waste injection wells and aggregate UST coverage)\$
3. Sum of lines 1 and 2:\$
4. Total tangible assets:\$
5. Total liabilities
(if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6)\$
6. Tangible net worth (subtract line 5 from line 4):\$
YES NO
7. Is line 6 at least \$10 million?
(Tangible net worth at least \$10million)
8. Is line 6 at least 10 times line 3?
(Tangible net worth 10X's the sum of other environmental obligations)

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

Complete Lines 9-11 OR Line 12

9. Have financial statements for the latest fiscal year been filed with the 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 Utilities Service?
.....
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. Have year-end financial statements which do not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
(Answer "Yes" only if both criteria have been met).....

Alternative II

1. Amount of annual AST aggregate coverage being assured by a financial test, and/or guarantee: \$
2. Amount of other liability coverage covered by a financial test, and/or guarantee: (This includes but is not limited to Subtitle C Hazardous waste facilities, SDWA Class I hazardous waste injection wells and aggregate UST coverage) \$
3. Sum of lines 1 and 2: \$
4. Total tangible assets: \$
5. Total liabilities
(if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6): \$
6. Tangible net worth (subtract line 5 from line 4): \$
7. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.): \$

YES NO

8. Is line 6 at least \$10 million? *
- (Tangible net worth at least \$10 million)
9. Is line 6 at least 6 times line 3? * (Tangible net worth 6X's other environmental obligations)

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

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

11. (U.S. assets at least six times the required amount of AST coverage plus other environmental liabilities)
(Fill in either lines 12-15 or lines 16-18)

12. Current Assets: \$
13. Current Liabilities: \$
14. Net working capital (subtract line 13 from line 12): \$
15. Is line 14 at least 6 times line 3?

-OR-

16. Current bond rating of most recent bond issue:
17. Name of rating service:
18. Date of maturity of bond:
19. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission (SEC), the Energy Information Administration (EIA), or the Rural Utilities Service (RUS)?

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

20. The firm's year-end financial statements have been independently audited and do not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification?

APPENDIX B Guarantee

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

~~Recitals-~~

~~(1) Guarantor meets or exceeds the financial test criteria of Section 5.2 or 5.3 and agrees to comply with the requirements for Guarantors as specified in Section 61.-~~

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

~~Attach tank schedule:~~

~~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 Part A of these regulations.-~~

~~AST Facility I.D. Number: _____~~

~~Name/Address of AST Facility:~~

Tank ID# (from AST registration form)-	Tank size	Tank product
---	----------------------	-------------------------

~~This guarantee satisfies Part D, Section 3 for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage" caused by accidental releases; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location arising from operating the above-identified aboveground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.~~

~~(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if Guarantor is corporate parent of the Owner or Operator); "On behalf of our affiliate" (if Guarantor is a related firm of the Owner or Operator); or "Incident to our business relationship with" (if Guarantor is providing the guarantee as an incident to a substantial business relationship with Owner or Operator)] _____, Guarantor guarantees to the DNREC and to any and all third parties that:-~~

~~In the event that [Owner or Operator] fails to provide alternate coverage within sixty 60 days after receipt of a notice of cancellation of this guarantee and the Secretary has determined or suspects that a release has occurred at an aboveground storage tank covered by this guarantee, the Guarantor, upon instructions from the DNREC, shall fund a standby trust fund in accordance with the provisions of Part D, Section 15 in an amount not to exceed the coverage limits specified above~~

~~In the event that the DNREC determines that [Owner or Operator] has failed to perform corrective action for release arising out of the operation of the above-identified tank(s) in accordance with Part E, the Guarantor upon written instructions from the DNREC shall fund a standby trust fund in accordance with the provisions of Part D, Section 15 in an amount not to exceed the coverage limits specified above.-~~

~~If [Owner or Operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by accidental releases arising from the operation of the above-identified 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 DNREC, shall fund a standby trust fund in accordance with the provisions of Part D, Section 15 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.-~~

~~(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the Guarantor fails to meet the financial test criteria of Part D, Sections 5.1 and 5.2 or 5.3, Guarantor shall send within 120 days of such failure, by verifiable service, notice to [Owner or Operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [Owner or Operator] as evidenced by verifiable service.-~~

~~(5) Guarantor agrees to notify [Owner or Operator] by certified mail verifiable service of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming Guarantor as debtor, within 10 days after commencement of the proceeding.~~

~~(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [Owner or Operator] pursuant to these regulations.~~

~~(7) Guarantor agrees to remain bound under this guarantee for so long as [Owner or Operator] must comply with the applicable financial responsibility requirements of these regulations for the above-identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [Owner or Operator] such cancellation to become effective no earlier than 120 days after receipt of such notice by [Owner or Operator] as evidenced by the return receipt.~~

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

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

~~(b) Bodily injury to an employee of [Owner or Operator] arising from, and in the course of, employment by [Owner~~

or Operator];

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

(d) Property damage to any property owned, rented, loaned to, in the care of, custody, or control of, or occupied by [Owner or Operator] that is not the direct result of a release from an aboveground storage tank;

(e) Bodily injury or property damage for which [Owner or Operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of Section 3 of this Part.

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

I hereby certify that the wording of this guarantee is identical to the wording specified in Part D, Section 6 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:

7-DE-Reg-1765 (6/1/04)

APPENDIX C Endorsement

Name: _____ [name of each covered location]

Address: _____ [address of each covered location]

Policy Number: _____

Period of Coverage: _____ [current policy period]

Name of [Insurer or Risk Retention Group]: _____

Address of [Insurer or Risk Retention Group]: _____

Name of Insured: _____

Address of Insured: _____

Endorsement:

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

Attach tank schedule:

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 Part A of these regulations.

AST Facility I.D. Number: _____

Name/Address of AST Facility: _____

Tank ID # (From AST registration form) Tank size Tank product

For [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by"] accidental releases in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the aboveground 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 aboveground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each aboveground 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 Section 2 are hereby amended to conform with subsections (a) through (e):

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

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured from any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in Part D, Sections 5 through 15 of these regulations.

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

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

e. Insert for claims-made policies:

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

g. I hereby certify that the wording of this instrument is identical to the wording in Appendix C and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[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 D Certificate of Insurance

Name: _____
[name of each covered location]

Address: _____
[address of each covered location]

Policy Number: _____

Endorsement (if applicable): _____

Period of Coverage: _____ [current policy period] _____

Name of [Insurer or Risk Retention Group]: _____

Address of [Insurer or Risk Retention Group] _____

Name of Insured: _____

Address of Insured: _____

Certification:

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

Attach tank schedule:

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 Part A of these regulations.

AST Facility I.D. Number: _____

Name/Address of AST Facility: _____

Tank ID# (from AST registration form)

Tank size

Tank product

Facility Name: _____

Facility Street: _____

Facility City: _____ Facility Zip Code: _____

For ~~[insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage" caused by Accidental Releases~~ in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location arising from operating the aboveground 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 aboveground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each aboveground 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 "Insurer" or "Group" of its obligations under the policy to which this certificate applies.

b. The "Insurer" or "Group" is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the "insurer" or "Group." This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in Sections 5 through 15 of this Part.

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

d. Cancellation or any other termination of the insurance by the ~~["Insurer" or "Group"]~~, except for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

e. Insert for claims-made policies:

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

I hereby certify that the wording of this instrument is identical to the wording in Appendix D and that the ~~["Insurer" or "Group"]~~ is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states."

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

[Name of person signing]
[Title of person signing]
[Authorized Representative of Insurer or Risk Retention Group]
[Address of Representative]

APPENDIX E 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:

Attach tank schedule:

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 Part A of these regulations.

AST Facility I.D. Number: _____

Name/Address of AST Facility Name: _____

Tank ID# (from AST registration form)	Tank size	Tank product
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List the coverage guaranteed by the bond: "~~taking corrective action~~" and/or "~~compensating third parties for bodily injury and property damage~~" caused by accidental releases arising from operating the aboveground 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 Department, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.~~

~~Whereas said Principal is required under 7 Del.C. Ch. 74A, as amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for Bodily Injury and Property Damage"] caused by accidental releases; (if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location) arising from operating the aboveground storage tanks identified above, and~~

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

~~Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with Part E of these regulations and the Department's instructions for, compensate injured third parties for bodily injury and property damage caused by accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in Part D of these regulations, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.~~

~~Such obligation does not apply to any of the following:~~

- ~~(a) Any obligation of _____ [Owner or Operator] under a workers' compensation, [Owner or Operator] disability benefits, or unemployment compensation law or other similar law;~~
- ~~(b) Bodily injury to an employee of _____ [Owner or Operator] arising from, and in [Owner or Operator] the course of, employment by [insert Owner or Operator];~~
- ~~(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;~~

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by _____ [~~Owner or Operator~~] that is not the direct result of a release from [~~Owner or Operator~~] an aboveground 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 Part D, Section 3 of these regulations.—

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

Upon notification by the Department that the Principal has failed to [~~“take corrective action, in accordance with Part E of these regulations and the Department’s instructions,” and/or “compensate injured third parties”~~] as guaranteed by this bond, the Surety(ies) shall either perform [~~“corrective action in accordance with Part E of these regulations and the Department’s instructions,” and/or “third-party liability compensation”~~] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Department under Part D, Section 15 of these regulations.—

Upon notification by the Department that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Department has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Department under Part D, Section 15 of these regulations.—

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

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

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

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

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

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

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address] _____

State of Incorporation: _____

Liability limit: \$ _____

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

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

2. _____

[Corporate seal]

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

Bond Premium: \$ _____

APPENDIX F Irrevocable Standby Letter of Credit

[Name and address of issuing institution]

Delaware Department of Natural Resources and Environmental Control

Dear Sir or Madam:

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

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

(2) your signed statement reading as follows:-

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

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

[Attach tank schedule:

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 Part A of these regulations.]

AST Facility I.D. Number: _____

Name/Address of AST Facility: _____

Facility Street: _____

Facility City: _____ Facility Zip Code: _____

Tank ID# (from AST registration form) _____ Tank size _____ Tank product _____

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

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

(b) Bodily injury to an employee of _____ arising from, and [insert Owner or Operator] 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 _____ that is not the direct result of a release [insert Owner or Operator] from a aboveground storage tank;

(e) Bodily injury or property damage for which _____ is obligated to pay [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 Part D, Section 3 of these regulations.-

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

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

We certify that the wording of this letter of credit is identical to the wording specified in this Appendix as such regulations were constituted on the date shown immediately below.-

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

Name and Title:

Name and Title:

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 G Trust Agreement

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

Whereas, the Department of Natural Resources and Environmental Control (DNREC), an agency of the State of Delaware, has established certain regulations applicable to the Grantor, requiring that an Owner or Operator of an aboveground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by accidental releases arising from the operation of the aboveground 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 aboveground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);]

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

SECTION 1. Definitions

As used in this Agreement:-

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

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

SECTION 2. Identification of the Financial Assurance Mechanism

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

SECTION 3. Establishment of the Fund

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

SECTION 4. Payment for Corrective Action and/or Third-Party Liability Claims

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

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

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

unemployment compensation law or other similar law;

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

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

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert Owner or Operator] that is not the direct result of a release from a aboveground 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 Part D, Section 3 of these regulations. The Trustee shall reimburse the Grantor, or other persons as specified by the Department, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as [the Secretary] shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

SECTION 5. Payments Comprising the Fund

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

SECTION 6. Trustee Management

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

A. Securities or other obligations of the Grantor, or any other Owner or Operator of the tanks, or any of their affiliates as defined in the *Investment Company Act of 1940*, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

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

C. The Trustee is authorized to hold cash awaiting investment or distribution un-invested for a reasonable time and without liability for the payment of interest thereon.

SECTION 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

A. To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

B. To purchase shares in any investment company registered under the *Investment Company Act of 1940*, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

SECTION 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

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

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

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

D. To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the

~~Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and-~~

~~E. To compromise or otherwise adjust all claims in favor of or against the Fund.~~

SECTION 9. Taxes and Expenses

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

SECTION 10. Advice of Counsel

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

SECTION 11. Trustee Compensation

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

SECTION 12. Successor Trustee

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

SECTION 13. Instructions to the Trustee

~~All orders, requests, and instructions by the Grantor to the trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Secretary to the Trustee shall be in writing, signed by the Secretary, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.~~

SECTION 14. Amendment of Agreement

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

SECTION 15. Irrevocability and Termination

~~Subject to the right of the parties to amend this Agreement as provided in §14 of this Appendix above, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.~~

SECTION 16. Immunity and Indemnification

~~The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal~~

liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

SECTION 17. Choice of Law

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

SECTION 18. Interpretation

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

In witness thereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix G of Part D as such regulations were constituted on the date written above.

[Signature of Grantor] _____

[Name of the Grantor] _____

[Title] _____

Attest: _____

[Signature of Trustee] _____

[Name of Trustee] _____

[Title] _____

[Seal]

Attest: _____ [Signature of Witness] _____

[Name of Witness] _____

[Title] _____

[Seal]

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

State of _____

County of _____

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

[Signature of Notary Public] _____

[Name of Notary Public] _____

APPENDIX H Standby Trust Agreement

Standby Trust agreement, the "Agreement," entered into as of [date] by and between [Owner or Operator], a [Name of State] ["corporation," "partnership," "association," or "proprietorship"], the "Grantor," and

_____, [insert "Incorporated in the (Name of Corporate Trustee) State of _____" or "a national bank"], the "Trustee."

Whereas, the Department of Natural Resources and Environmental Control (DNREC), an agency of the State of Delaware, has established certain regulations applicable to the Grantor, requiring that an Owner or Operator of an aboveground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by accidental releases arising from the operation of the aboveground 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 aboveground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument;

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

SECTION 1. Definitions

As used in this Agreement:-

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

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

SECTION 2. Identification of the Financial Assurance Mechanism

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

SECTION 3. Establishment of the Fund

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

SECTION 4. Payment for Corrective Action and/or Third-Party Liability Claims

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

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

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

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

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

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert Owner or Operator] that is not the direct result of a release from an aboveground 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 Part D, Section 3 of these regulations. The Trustee shall reimburse the Grantor, or other persons as specified by the Department, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as [the Secretary] shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

SECTION 5. Payments Comprising the Fund

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

SECTION 6. Trustee Management

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

A. Securities or other obligations of the Grantor, or any other Owner or Operator of the tanks, or any of their affiliates as defined in the *Investment Company Act of 1940*, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

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

C. The Trustee is authorized to hold cash awaiting investment or distribution un-invested for a reasonable time and without liability for the payment of interest thereon.

SECTION 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

A. To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

B. To purchase shares in any investment company registered under the *Investment Company Act of 1940*, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

SECTION 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

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

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

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

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

E. To compromise or otherwise adjust all claims in favor of or against the Fund.

SECTION 9. Taxes and Expenses

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

SECTION 10. Advice of Counsel

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

SECTION 11. Trustee Compensation

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

SECTION 12. Successor Trustee

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

SECTION 13. Instructions to the Trustee

~~All orders, requests, and instructions by the Grantor to the trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Secretary to the Trustee shall be in writing, signed by the Secretary, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.~~

SECTION 14. Amendment of Agreement

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

SECTION 15. Irrevocability and Termination

~~Subject to the right of the parties to amend this Agreement as provided in Section 14 of this Appendix above, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.~~

SECTION 16. Immunity and Indemnification

~~The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.~~

SECTION 17. Choice of Law

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

SECTION 18. Interpretation

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

~~In witness thereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix H of Part D as such~~

~~regulations were constituted on the date written above.~~

~~[Signature of Grantor] _____~~
~~[Name of the Grantor] _____~~

Print legibly or type

~~[Title] _____~~

~~Attest: _____~~

~~[Signature of Trustee] _____~~

~~[Name of Trustee] _____~~

~~[Title] _____ [Seal] _____~~

~~Attest: _____~~

~~[Signature of Witness] _____~~

~~[Name of Witness] _____~~

~~[Title] _____~~

~~[Seal]~~

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

~~State of _____~~

~~County of _____~~

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

~~[Signature of Notary Public] _____~~

~~[Name of Notary Public] _____~~

Section 29. APPENDIX I Certification of Valid Claim

~~The undersigned, as principals and as legal representatives of [Owner or Operator] and [insert name and address of third-party claimant] hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [Owner or Operator] aboveground storage tank should be paid in the amount of \$[_____].~~

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

~~Owner or Operator Claimant(s)~~

~~Attorney for _____ Attorney(s) for _____~~

~~Owner or Operator Claimant(s)~~

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

Section 30. APPENDIX J Bond Rating Test General Purpose Local Government Letter from Chief Financial Officer

~~I am the chief financial officer of [insert: name and address of Local Government Owner or Operator, or Guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and~~

~~[insert: dollar amount] annual aggregate arising from operating (an) aboveground storage tank(s).
Aboveground storage tanks at the following facilities are assured by this bond rating test:
[List for each facility: the name and address of the facility where tanks are assured by the bond rating test].~~

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

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

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

~~[Signature]~~

~~[Name]~~

~~[Title]~~

~~[Date]~~

**Section 31. APPENDIX K Bond Rating Test/Local Government Other
Letter from Chief Financial Officer**

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

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

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

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

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

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

~~[Signature]~~

~~[Name]~~

[Title]

[Date]

Section 32. APPENDIX L Local Government Financial Test
Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the Owner or Operator]. This letter is in support of the use of the Local Government financial test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] aAnnual aAggregate arising from operating [an] aboveground storage tank[s].

Aboveground storage tanks at the following facilities are assured by this financial test

[List for each facility: the name and address of the Facility where ASTs assured by this 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 AST assured by this financial test by the tank identification number provided in the notification submitted pursuant to Part A of these Regulations].

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

WORKSHEET FOR MUNICIPAL FINANCIAL TEST

PART I: BASIC INFORMATION

1. Total Revenues

a. Revenues (dollars)

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

b. Subtract interfund transfers (dollars)

c. Total Revenues (dollars)

2. Total Expenditures

a. Expenditures (dollars)

Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.

b. Subtract interfund transfers (dollars)

c. Total Expenditures (dollars)

3. Local Revenues

a. Total Revenues (from 1c) (dollars)

b. Subtract total intergovernmental transfers (dollars)

c. Local Revenues (dollars)

4. Debt Service

a. Interest and fiscal charges (dollars)

b. Add debt retirement (dollars)

c. Total Debt Service (dollars)

5. Total Funds (dollars)

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

6. Population (persons)

PART II: APPLICATION OF TEST

7. Total Revenues to Population

a. Total Revenues (from 1c)

b. Population (from 6)

- c. Divide 7a by 7b-
- d. Subtract 417
- e. Divide by 5,212
- f. Multiply by 4.095
- 8. Total Expenses to Population
 - a. Total Expenses (from 2c)
 - b. Population (from 6)
 - c. Divide 8a by 8b
 - d. Subtract 524
 - e. Divide by 5,401
 - f. Multiply by 4.095
- 9. Local Revenues to Total Revenues
 - a. Local Revenues (from 3c)
 - b. Total Revenues (from 1c)
 - c. Divide 9a by 9b
 - d. Subtract .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 54
 - e. Divide by 1,038
 - f. Multiply by 1.866
- 11. Debt Service to Total Revenues
 - a. Debt Service (from 4d)
 - b. Total Revenues (from 1c)
 - c. Divide 11a by 11b-
 - d. Subtract .068
 - e. Divide by .259
 - f. Multiply by 3.533
- 12. Total Revenues to Total Expenses
 - a. Total Revenues (from 1c)
 - b. Total Expenses (from 2c)
 - c. Divide 12a by 12b
 - d. Subtract .910
 - e. Divide by .899
 - f. Multiply by 3.458
- 13. Funds Balance to Total Revenues
 - a. Total Funds (from 5)
 - b. Total Revenues (from 1c)
 - c. Divide 13a by 13b
 - d. Subtract .891
 - e. Divide by 9.156
 - f. Multiply by 3.270
- 14. Funds Balance to Total Expenses
 - a. Total Funds (from 5)
 - b. Total Expenses (from 2c)
 - c. Divide 14a by 14b
 - d. Subtract .866
 - e. Divide by 6.409
 - f. Multiply by 3.270
- 15. Total Funds to Population
 - a. Total Funds (from 5)
 - b. Population (from 6)
 - c. Divide 15a by 15b
 - d. Subtract 270
 - e. Divide by 4,548
 - f. Multiply by 1.866

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

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in Part D, Appendix L as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

APPENDIX M Local Government Guarantee With Standby Trust Made By A State

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

Recitals

(1) Guarantor is a state.

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

~~[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to Part A of Delaware's Regulations Governing Aboveground Storage Tank Systems, and the name and address of the facility.]~~

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

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

In the event that [*Local Government Owner or Operator*] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a release has occurred at an aboveground storage tank covered by this guarantee, the Guarantor, upon instructions from the Department shall fund a standby trust fund in accordance with the provisions of Part D, Section 20 in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [*Local Government Owner or Operator*] has failed to perform corrective action for releases arising out of the operation of the above identified tank(s) in accordance with Part B, Section 3 the Guarantor upon written instructions from the Department shall fund a standby trust fund in accordance with the provisions of Part D, Section 20 in an amount not to exceed the coverage limits specified above.

If [*Owner or Operator*] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [*"sudden" and/or "nonsudden"*] accidental releases arising from the operation of the above identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Department, shall fund a standby trust in accordance with the provisions of Part D of Section 20 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

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

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

(6) Guarantor agrees to remain bound under this guarantee for so long as [*Local Government Owner Or Operator*] must comply with the applicable financial responsibility requirements of Part D for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [*Owner or Operator*], such cancellation to become effective no earlier than 120 days after receipt of such notice by [*Owner or Operator*], as evidenced by the return receipt.

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

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

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

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

(d) Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by ~~[insert: Local Government Owner Or Operator]~~ that is not the direct result of a release from an aboveground storage tank;

(e) Bodily damage ~~1~~ or property damage for which ~~[insert Owner Or Operator]~~ is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of Part D, Section 3.

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

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

Effective date:

~~[Name of Guarantor]~~

~~[Authorized signature for Guarantor]~~

~~[Name of Person signing]~~

~~[Title of Person signing]~~

Signature of witness or notary: _____

APPENDIX N Local Government Guarantee With Standby Trust Made By a Local Government

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

Recitals

(1) Guarantor meets or exceeds ~~[select one: the Local Government bond rating test requirements of Part D, Section 12, the Local Government financial test requirements of Part D, Section 13 or the Local Government fund under Part D, Section 15].~~

(2) ~~[Local Government Owner or Operator]~~ owns or operates the following aboveground storage tank(s) covered by this guarantee: ~~[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to Part A of the Delaware Regulations Governing Aboveground Storage Tank Systems, and the name and address of the facility.]~~

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

(3) Incident to our substantial governmental relationship with ~~[Local Government Owner or Operator]~~, Guarantor guarantees to DNREC and to any and all third parties that:

In the event that ~~[Local Government Owner or Operator]~~ fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a release has occurred at an aboveground storage tank covered by this guarantee, the Guarantor, upon instructions from the Department shall fund a standby trust fund in accordance with the provisions of Part D, Section 20, in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that ~~[Local Government Owner or Operator]~~ has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with Part D, Section 15, the Guarantor upon written instructions from the Department shall fund a standby trust fund in accordance with the provisions of Part D, Section 15~~18~~, in an amount not to exceed the coverage limits specified above.

If ~~[Owner or Operator]~~ fails to satisfy a judgment or award based on a determination of liability for bodily injury or

property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Department, shall fund a standby trust in accordance with the provisions of Part D, Section 17 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

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

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

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

(7) Guarantor agrees to remain bound under this guarantee for so long as [Local Government Owner or Operator] must comply with the applicable financial responsibility requirements of Part D for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [Owner or Operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [Owner or Operator], as evidenced by the return receipt.

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

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

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

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

(d) property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [insert: Local Government Owner or Operator] that is not the direct result of a release from a aboveground 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 Part D, Section 3.

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

I hereby certify that the wording of this guarantee is identical to the wording specified in Part D, Appendix N as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of Person signing]

[Title of Person signing]

Signature of witness or notary:

APPENDIX O Local Government Guarantee Without Standby Trust Made by a State

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

Recitals

(1) Guarantor is a state.

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

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

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

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

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

In the event that the Department determines that [*Local Government Owner or Operator*] has failed to perform corrective action for releases arising out of the operation of the above identified tank(s) in accordance with Part B Section 3, the Guarantor upon written instructions from the Department shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [*Local Government Owner or Operator*] has failed to perform corrective action for releases arising out of the operation of the above identified tank(s) in accordance with Part B, §4 of Delaware's *Regulations Governing Aboveground Storage Tank Systems*, the Guarantor upon written instructions from the Department shall make funds available to pay for corrective actions in an amount not to exceed coverage limits specified above.

If [*Owner or Operator*] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [*"sudden" and/or "nonsudden"*] accidental releases arising from the operation of the above identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Department, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

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

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

(6) Guarantor agrees to remain bound under this guarantee for so long as [*Local Government Owner or Operator*] must comply with the applicable financial responsibility requirements of Part D for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [*Owner or Operator*], such cancellation to become effective no earlier than 120 days after receipt of such notice by [*Owner or Operator*], as evidenced by the return receipt. If notified of a probable release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

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

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

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

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

(d) Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by [*insert: Local Government Owner or Operator*] that is not the direct result of a release from an aboveground 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 Part D, Section 3.

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

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

Effective date

[*Name of Guarantor*]

[*Authorized signature for Guarantor*]

[*Name of Person signing*]

[*Title of Person signing*]

Signature of witness or notary:

7-DE-Reg-1765 (6/1/04)

APPENDIX P Local Government Guarantee Without Standby Trust Made by a Local Government

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

Recitals

(1) Guarantor meets or exceeds [select one: the Local Government bond rating test requirements of Part D, §11, the Local Government financial test requirements of Part D, §12, the Local Government fund under Part D, §14.]

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

~~[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to Part A of the Delaware Regulations Governing Aboveground Storage Tank Systems, and the name and address of the facility.]~~

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

(3) Incident to our substantial governmental relationship with [Local Government Owner Or Operator], Guarantor guarantees to DNREC and to any and all third parties and obliges that:

In the event that [Local Government Owner Or Operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a release has occurred at an aboveground storage tank covered by this guarantee, the Guarantor, upon written instructions from the Department shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [Local Government Owner or Operator] has failed to perform corrective action for releases arising out of the operation of the above identified tank(s) in accordance with Part B, Section 3, the Guarantor upon written instructions from the Department shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [Owner or Operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the [Department], shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

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

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

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

(7) Guarantor agrees to remain bound under this guarantee for so long as [Local Government Owner or Operator] must comply with the applicable financial responsibility requirements of Part D for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [Owner or Operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [Owner or Operator], as evidenced by the return receipt. If notified of a probable release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

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

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

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

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

(d) Property damage to any property owned, rented, loaded to, in the care, custody, or control of, or occupied by ~~[insert: Local Government Owner or Operator]~~ that is not the direct result of a release from an aboveground 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 Part.

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

I hereby certify that the wording of this guarantee is identical to the wording specified in Part D, Appendix P as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

~~[Name of Guarantor]~~

~~[Authorized signature for Guarantor]~~

~~[Name of Person signing]~~

~~[Title of Person signing]~~

Signature of witness or notary: _____

APPENDIX Q Local Government Fund Mechanism Letter from Chief Financial Officer

I am the chief financial officer of ~~[insert: name and address of Local Government Owner or Operator, or Guarantor]~~. This letter is in support of the use of the Local Government fund mechanism to demonstrate financial responsibility for ~~[insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"]~~ caused by ~~[insert: "sudden accidental releases" and/or "nonsudden accidental releases"]~~ in the amount of at least ~~[insert: dollar amount]~~ per occurrence and ~~[insert: dollar amount]~~ annual aggregate arising from operating (an) aboveground storage tank(s).

Aboveground storage tanks ~~[List for each facility: the name and address of the facility where tanks are assured by the Local Government fund]~~.

~~[Insert: "The Local Government fund is funded for the full amount of coverage required under Part D, Section 3, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The Local Government fund is funded for ten times the full amount of coverage required under Part D, Section 3, or funded for part of the required amount of coverage and used in combination with other mechanisms(s) that provide the remaining coverage," or "A payment is made to the fund once every year for seven years until the fund is fully funded and [name of Local Government Owner or Operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the Local Government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority"]~~.

The details of the Local Government fund are as follows:

Amount in Fund

(market value of fund of close of last fiscal year): _____

[If fund balance is incrementally funded as specified in §24, insert:

Amount added to fund in the most recently

completed fiscal year: _____

Number of years remaining in the pay in period: _____]

A copy of the state constitutional provision, or Local Government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in Part D, Appendix Q as such regulations were constituted on the date shown immediately below.

~~[Signature]~~

~~[Name]~~

~~[Title]~~

[Date]

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

Letter from Chief Financial Officer

I am the Chief Financial Officer of [name and address of the Owner or Operator or Guarantor]. This letter is in support of the use of ["the financial test of Self-Insurance" and/or "guarantee"] to demonstrate financial responsibility for ["taking Corrective Action" and/or "compensating third parties for Bodily Injury and Property Damage"] caused by ["sudden Accidental Releases and/or "non-sudden Accidental Releases"] in the amount of at least [dollar amount] per Occurrence and [dollar amount] Annual Aggregate arising from operating (an) aboveground storage tank(s)(AST).

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

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

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

Facility Name: _____

Facility Street: _____

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

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

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

Amount

Closure
Post-Closure Care
Liability Coverage
Corrective Action
Plugging and Abandonment
Other
TOTAL -

This ["Owner or Operator," or "Guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going

concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

I hereby certify that the wording of this letter is identical to the wording specified in PART D, subsection 5.1 as the Delaware Regulations Governing Aboveground Storage Tanks were constituted on the date shown immediately below.

(Signature) _____

(Name) _____

(Title) _____

(Date) _____

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

Alternative I

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

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

3. Sum of lines 1 and 2:.....\$ _____

4. Total tangible assets:.....\$ _____

5. Total liabilities\$ _____
(if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6)

6. Tangible Net Worth (subtract line 5 from line 4):.....\$ _____

7. Is line 6 at least \$10 million?..... ☐ Yes ☐ No*
(Tangible Net Worth at least \$10million)

8. Is line 6 at least 10 times line 3?..... ☐ Yes ☐ No*
(Tangible Net Worth 10X's the sum of other environmental obligations)

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

Complete Lines 9-11 OR Line 12

9. Have financial statements for the latest fiscal year been filed with the U.S. Securities and Exchange Commission?..... ☐ Yes ☐ No

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

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

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

13. If the firm's year end financial statements have been independently audited, they do not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification? If the answer to

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

Alternative II

1. Amount of AST Annual Aggregate coverage being assured by a financial test, and/or guarantee:.....\$
2. Amount of other liability coverage covered by a financial test, and/or guarantee:
(This includes but is not limited to Subtitle C Hazardous Waste Facilities, SDWA Class I Hazardous Waste Injection Wells and aggregate UST or AST coverage)\$
3. Sum of lines 1 and 2:.....\$
4. Total tangible assets:.....\$
5. Total liabilities
(if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6):.....\$
6. Tangible Net Worth (subtract line 5 from line 4):.....\$
7. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.):.....\$
8. Is line 6 at least \$10 million?..... ☐ Yes ☐ No*
(Tangible Net Worth at least \$10 million)
9. Is line 6 at least 6 times line 3?..... ☐ Yes ☐ No*
(Tangible Net Worth 6 times other environmental obligations)

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

10. Are at least 90 percent of assets located in the U.S.? ☐ Yes ☐ No
(If "No," complete line 11)
11. Is line 7 at least 6 times line 3?
(U.S. assets at least six times the required amount of AST coverage plus other environmental liabilities) ☐ Yes ☐ No

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

12. Current Assets:.....\$
13. Current Liabilities:.....\$
14. Net working capital (subtract line 13 from line 12):.....\$
15. Is line 14 at least 6 times line 3?..... ☐ Yes ☐ No

-OR-

16. Current bond rating of most recent bond issue:.....
17. Name of rating service:.....
18. Date of maturity of bond:.....
19. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission (SEC), the Energy Information Administration (EIA), or the Rural Utilities Service

(RUS)?..... ☐ Yes ☐ No**

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

20. The firm's year end financial statements have been independently audited and do not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification? If the answer to line 20 is "No" this test cannot be used to meet the FR requirements.

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

Section 22. Form B - AST Guarantee

GUARANTEE

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

Recitals

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

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

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

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

Facility Name: _____

Facility Street: _____

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

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

This guarantee satisfies PART D, Section 3.0 for assuring funding for [insert: "taking Corrective Action" and/or "compensating third parties for Bodily Injury and Property Damage"] caused by Accidental Releases; if coverage is different for different ASTs or locations, indicate the type of coverage applicable to each AST or location arising from operating the above-identified AST(s) in the amount of [insert dollar amount] per Occurrence and [insert dollar amount] Annual Aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if Guarantor is corporate parent of the Owner or Operator); "On behalf of our affiliate" (if Guarantor is a related firm of the Owner or Operator); or "Incident to our business relationship with" (if Guarantor is providing the guarantee as an incident to a Substantial Business Relationship with Owner or Operator)] _____, Guarantor guarantees to the Department and to any and all third parties that:

In the event that [Owner or Operator] fails to provide alternate coverage within sixty (60) Days after receipt of a notice of cancellation of this Guarantee and the Secretary has determined or suspects that a Release has occurred at an AST covered by this Guarantee, the Guarantor, upon instructions from the Department, shall fund a standby trust fund in accordance with the provisions of PART D, Section 18.0 in an amount not to exceed the coverage limits specified above.

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

If [Owner or Operator] fails to satisfy a judgment or award based on a determination of liability for Bodily Injury or Property Damage to third parties caused by Accidental Releases arising from the operation of the above-identified ASTs, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Department, shall fund a standby trust fund in accordance with the provisions of PART D, Section 18.0 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the Guarantor fails to meet the financial test criteria of PART D, subsection 5.1.1 and PART D, subsection 5.1.2, or PART D, subsection 5.1.3, Guarantor shall send within one hundred and twenty (120) Days of such failure, by Verifiable Service, notice to [Owner and Operator]. The Guarantee will terminate one hundred and twenty (120) Days from the date of receipt of the notice by [Owner and Operator] as evidenced by Verifiable Service.

(5) Guarantor agrees to notify [Owner or Operator] by Verifiable Service of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming Guarantor as debtor, within ten (10) Days after commencement of the proceeding.

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

(7) Guarantor agrees to remain bound under this Guarantee for so long as [Owner or Operator] shall comply with the applicable financial responsibility requirements of these Regulations for the above-identified ASTs, except that Guarantor may cancel this Guarantee by sending notice by certified mail to [Owner or Operator] such cancellation to become effective no earlier than one hundred and twenty (120) Days after receipt of such notice by [Owner or Operator] as evidenced by the return receipt.

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

- (a) Any obligation of [Owner or Operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily Injury to an employee of [Owner or Operator] arising from, and in the course of, employment by [Owner or Operator];
- (c) Bodily Injury or Property Damage arising from the Ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property Damage to any property owned, rented, loaned to, in the care of, custody, or control of, or occupied by [Owner or Operator] that is not the direct result of a Release from an AST;
- (e) Bodily Injury or Property Damage for which [Owner or Operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of PART D, Section 3.0.

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

[Owner or Operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in PART D, Section 6.0 of the Delaware Regulations Governing Aboveground Storage Tanks as such Regulations were constituted on the Effective Date shown immediately below.

Effective Date: _____

Name of Guarantor: _____

Authorized signature for Guarantor: _____

Name of Person signing: _____

Title of Person signing: _____

Signature of witness or notary: _____

Section 23. Form C - AST Endorsement

ENDORSEMENT

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

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

Policy Number: _____

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

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

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

Name of *[Insured]*: _____

Address of *[Insured]*: _____

Endorsement:

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

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

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

Facility Name: _____

Facility Street: _____

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

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

For [insert: *"taking Corrective Action" and/or "compensating third parties for Bodily Injury and Property Damage caused by"*] Accidental Releases in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different ASTs or locations, indicate the type of coverage applicable to each ASTs or location] arising from operating the AST(s) identified above.

The limits of liability are [insert the dollar amount of the *"each Occurrence"* and *"Annual Aggregate"* limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different ASTs or locations, indicate the amount of coverage for each type of coverage and/or for each AST or location]. exclusive of Legal Defense Costs which are subject to a separate limit under the policy. This coverage is provided under _____. The Effective Date of said policy is _____. [Policy Number] [Date]

2. The insurance afforded with respect to such Occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Section 2.0 are hereby amended to conform with subsections (a) through (e):

- a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.
- b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of Corrective Action or a damaged third-party, with a right of reimbursement by the insured from any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in PART D, Sections 5 through 15.
- c. Whenever requested by the Department, the ["Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other Termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, shall be ~~of-fective~~ **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.
- e. Cancellation for non-payment of premium or misrepresentation by the insured shall be effective only upon written notice and only after expiration of a minimum of ten (10) Days after a copy of such written notice is received by the insured.
- f. Insert for claims-made policies:
The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six (6) months of the Effective Date of the cancellation or non-renewal of the policy except where the new or

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

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

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

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

Name of Person signing: _____
Print legibly or type

Title of Person signing: _____
Print legibly or type

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

Address of Representative: _____
Print legibly or type

Section 24. Form D - AST Certificate of Insurance

Name: _____ [name of each covered location]

Address: _____ [address of each covered location]

Policy Number: _____

Endorsement (if applicable): _____

Period of Coverage: _____ [current policy period]

Name of [Insurer or Risk Retention Group]: _____

Address of [Insurer or Risk Retention Group]:

Name of [Insured]: _____

Address of [Insured]: _____

Certification:

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

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

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

Facility Name: _____

Facility Street: _____

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

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

For [insert: "taking Corrective Action" and/or "compensating third parties for Bodily Injury and Property Damage" caused by Accidental Releases] in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy (if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location arising from operating the AST(s) identified above).

The limits of liability are [insert the dollar amount of the "each Occurrence" and "Annual Aggregate" limits of the Insurer's or Group's liability (if the amount of coverage is different for different types of coverage or for different ASTs or locations, indicate the amount of coverage for each type of coverage and/or for each AST or location)], exclusive of Legal Defense Costs which are subject to separate limits under the policy. This coverage is provided under [policy number]. The Effective Date of said policy is [date].

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

- a. Bankruptcy or insolvency of the insured shall not relieve the "Insurer" or "Group" of its obligations under the policy to which this certificate applies.
- b. The "Insurer" or "Group" is liable for the payment of amounts within any deductible applicable to the policy to the provider of Corrective Action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the "Insurer" or "Group." This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in Sections 5.0 through 15.0 of this Part.
- c. Whenever requested by the Department, the ["Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

- d. Cancellation or any other Termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, shall be effective only upon written notice and only after the expiration of sixty (60) Days after a copy of such written notice is received by the insured.
- e. Cancellation for non-payment of premium or misrepresentation by the insured shall be effective only upon written notice and only after expiration of a minimum of ten (10) Days after a copy of such written notice is received by the insured.
- f. Insert for claims-made policies:
The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the Effective Date of the cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered Occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or Termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.
- g. In the event of termination or nonrenewal of the insurance by the ["Insurer" or "Group"], the insurer shall notify the Department of Natural Resources and Environmental Control, Tank Management Section, by Verifiable Service, of termination or nonrenewal not more than thirty (30) Days after the termination or nonrenewal. The notice shall state the name and address of the insured, the date of termination or nonrenewal, and the address of the ASTs previously insured.

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

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

Name of Person signing: _____
Print legibly or type

Title of Person signing: _____
Print legibly or type

Authorized Representative of [Insurer or Risk Retention Group]

Address of Representative: _____
Print legibly or type

Section 25. Form E - AST Surety Bond

SURETY BOND

Date bond executed: _____

Period of Coverage: _____

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

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

State of incorporation (if applicable): _____

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

Scope of Coverage:

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

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

Facility Name: _____

Facility Street: _____

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

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

List the coverage guaranteed by the bond: ["taking Corrective Action" and/or "compensating third parties for Bodily Injury and Property Damage"] caused by Accidental Releases arising from operating the AST.

Penal sums of bond: Per Occurrence \$ _____
Annual Aggregate \$ _____

Surety's bond number: _____

Know all Persons by these presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under 7 **Del.C.** Ch. 74A, as amended, to provide financial responsibility for [insert: "taking Corrective Action" and/or "compensating third parties for Bodily Injury and Property Damage"] caused by Accidental Releases; (if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location) arising from operating the ASTs identified above, and

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

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take Corrective Action, in accordance with PART E of these regulations and the Department's instructions for, compensate injured third parties for Bodily Injury and Property Damage caused by Accidental Releases arising from operating the tank(s) identified above,] or if the Principal shall provide alternate financial responsibility, as specified in PART D of these Regulations, within one hundred twenty (120) Days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of [Owner or Operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily Injury to an employee of [Owner or Operator] arising from, and in the course of, employment by [insert Owner or Operator];
- (c) Bodily Injury or Property Damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property Damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [Owner or Operator] that is not the direct result of a Release from an AST;
- (e) Bodily Injury or Property Damage for which [insert Owner or Operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the Requirements of PART D, Section 3.0, of these regulations.

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

Upon notification by the Department that the Principal has failed to ["take Corrective Action, in accordance with PART E of these Regulations and the Department's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["Corrective Action in accordance with PART E of these Regulations and the Department's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the Annual Aggregate penal sum into the standby trust fund as directed by the Department under PART D, Section 18.0 of these Regulations.

Upon notification by the Department that the Principal has failed to provide alternate financial assurance responsibility within sixty (60) Days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Department has determined or suspects that a Release has occurred, the Surety(ies) shall place funds in an amount not exceeding the Annual Aggregate penal sum into the standby trust fund as directed by the Department under PART D, Section 18.0 of these Regulations.

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

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

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

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

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

The Persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Part D, Section 25.0 Form E of the Delaware *Regulations Governing Aboveground Storage Tanks* as such Regulations were constituted on the date this bond was executed.

PRINCIPAL:

Signature(s): _____

Name(s): _____

Print legibly or type

Title(s): _____

Print legibly or type

[Corporate seal]

CORPORATE SURETY(IES)

Name and address: _____

Print legibly or type

State of Incorporation: _____

Print legibly or type

Liability limit: \$ _____

Print legibly or type

Signature(s):

1. _____

2. _____

Name(s) and title(s):

1. _____

2. _____

[Corporate seal]

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

Bond Premium: \$ _____

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

[Name and address of issuing institution]

Delaware Department of Natural Resources and Environmental Control

Dear Sir or Madam:

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

- (1) your sight draft, bearing reference to this letter of credit, No. _____, and
- (2) your signed statement reading as follows:

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

This letter of credit may be drawn on to cover [insert: "taking Corrective Action" and/or "compensating third parties for Bodily Injury and Property Damage" caused by Accidental Releases] arising from operating the aboveground storage tanks (ASTs) identified below in the amount of [in words] \$[insert dollar amount] per Occurrence and [in words] \$[insert dollar amount] Annual Aggregate:

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

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

Facility Name: _____

Facility Street: _____

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

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

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

- (a) Any obligation of [Owner or Operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily Injury to an employee of [insert Owner or Operator] arising from, and in the course of, employment by [insert Owner or Operator];
- (c) Bodily Injury or Property Damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

- (d) Property Damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert Owner or Operator] that is not the direct result of a Release from an AST;
- (e) Bodily Injury or Property Damage for which [Owner or Operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of PART D, Section 3.0, of these Regulations.

This 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 [on one] hundred twenty (120) Days before the current expiration date, we notify [Owner or Operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [Owner or Operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for [on one] hundred twenty (120) Days after the date of receipt by [Owner or Operator] as shown on the signed return receipt.

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

We certify that the wording of this letter of credit is identical to the wording specified in PART D, Section 25.0, Form F of the Delaware Regulations Governing Aboveground Storage Tanks as such Regulations were constituted on the date shown immediately below.

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

Name and Title: _____
Print legibly or type

Name and Title: _____
Print legibly or type

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

Section 27. Form G - AST Trust Agreement

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

Whereas, the Department of Natural Resources and Environmental Control (the Department), an agency of the State of Delaware, has established certain regulations applicable to the Grantor, requiring that an Owner or Operator of an aboveground storage tank (AST) shall provide assurance that funds will be available when needed for Corrective Action and third-party compensation for Bodily Injury and Property Damage caused by Accidental Releases arising from the operation of AST.

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

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

Facility Name: _____

Facility Street: _____

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

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

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

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

SECTION 1. DEFINITIONS

As used in this Agreement:

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

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

SECTION 2. ESTABLISHMENT OF THE FUND

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

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

The Trustee shall make payments from the Fund as the DNREC Secretary shall direct, in writing, to provide for the payment of the costs of [insert: "taking Corrective Action" and/or "compensating third parties for Bodily Injury and Property Damage" caused by Accidental Releases] arising from operating the ASTs covered by the financial responsibility mechanism identified in this Agreement.

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

- (a) Any obligation of [insert Owner or Operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily Injury to any employee of [insert Owner or Operator] arising from, and in the course of employment by [insert Owner or Operator];
- (c) Bodily Injury or Property Damage arising from the Ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property Damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by

[insert Owner or Operator] that is not the direct result of a Release from an AST;

- (e) Bodily Injury or Property Damage for which [insert Owner or Operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of PART D, Section 3.0, of these Regulations. The Trustee shall reimburse the Grantor, or other Persons as specified by the Department, from the Fund for Corrective Action expenditures and/or third-party liability claims in such amounts as the DNREC Secretary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

SECTION 4. PAYMENTS COMPRISING THE FUND

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

SECTION 5. TRUSTEE MANAGEMENT

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

- A. Securities or other obligations of the Grantor, or any other Owner or Operator of the ASTs, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a State government;
- B. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or State government; and
- C. The Trustee is authorized to hold cash awaiting investment or distribution un-invested for a reasonable time and without liability for the payment of interest thereon.

SECTION 6. COMMINGLING AND INVESTMENT

The Trustee is expressly authorized in its discretion:

- A. To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- B. To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

SECTION 7. EXPRESS POWERS OF TRUSTEE

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- A. To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No Person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- B. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- C. To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in

the name of the nominee of such depository with other securities deposited therein by another Person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

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

E. To compromise or otherwise adjust all claims in favor of or against the Fund.

SECTION 8. TAXES AND EXPENSES

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

SECTION 9. ADVICE OF COUNSEL

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

SECTION 10. TRUSTEE COMPENSATION

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

SECTION 11. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by Verified Service 10 Days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 8.0.

SECTION 12. INSTRUCTIONS TO THE TRUSTEE

All orders, requests, and instructions by the Grantor to the trustee shall be in writing, signed by such Persons as are designated in the attached Exhibit A as required in Section 18 or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Secretary to the Trustee shall be in writing, signed by the Secretary, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a Termination of the authority of any Person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

SECTION 13. AMENDMENT OF AGREEMENT

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

SECTION 14. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Agreement as provided in PART D, Section 13.0 of this Form above, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Department, if the Grantor ceases to exist. Upon Termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

SECTION 15. IMMUNITY AND INDEMNIFICATION

The Trustee shall not incur Personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any Personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

SECTION 16. CHOICE OF LAW

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

SECTION 17. INTERPRETATION

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

SECTION 18. DESIGNATED SIGNERS

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

In witness thereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Part D, Section 27.0 Form G of the Delaware Regulations Governing Aboveground Storage Tanks as such Regulations were constituted on the date below.

Signature of Grantor: _____

Name of the Grantor: _____
Print legibly or type

Title of the Grantor: _____
Print legibly or type

Attest:
Signature of Trustee: _____

Name of Trustee: _____
Print legibly or type

Title: _____
Print legibly or type
Seal

Attest
Signature of Witness: _____

Name of Witness: _____
Print legibly or type

Title of Witness: _____
Print legibly or type
Seal

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

State of _____

County of _____

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

Signature of Notary Public _____

Name of Notary Public: _____

SEAL

Section 28. Form H - AST Standby Trust Agreement

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

Whereas, the Department of Natural Resources and Environmental Control (the Department), an agency of the State of Delaware, has established certain regulations applicable to the Grantor, requiring that an Owner or Operator of an aboveground storage tank (AST) shall provide assurance that funds will be available when needed for Corrective Action and third-party compensation for Bodily Injury and Property Damage caused by Accidental Releases arising from the operation of the AST.

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

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

Facility Name: _____

Facility Street: _____

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

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

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

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

SECTION 1. DEFINITIONS

As used in this Agreement:

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

SECTION 2. IDENTIFICATION OF THE FINANCIAL RESPONSIBILITY MECHANISM

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

SECTION 3. ESTABLISHMENT OF THE FUND

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

SECTION 4. PAYMENT FOR CORRECTIVE ACTION AND/OR THIRD-PARTY LIABILITY CLAIMS

The Trustee shall make payments from the Fund as the DNREC Secretary shall direct, in writing, to provide for the payment of the costs of [insert: "taking Corrective Action" and/or "compensating third parties for bodily injury and Property Damage" caused by Accidental Releases] arising from operating the ASTs covered by the financial responsibility mechanism identified in this Agreement.

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

- (a) Any obligation of [insert Owner or Operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily Injury to any employee of [insert Owner or Operator] arising from, and in the course of employment by [insert Owner or Operator];
- (c) Bodily Injury or Property Damage arising from the Ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property Damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert Owner or Operator] that is not the direct result of a Release from an AST;
- (e) Bodily Injury or Property Damage for which [insert Owner or Operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of Part D, Section 3.0, of these Regulations. The Trustee shall reimburse the Grantor, or other Persons as specified by the Department, from the Fund for Corrective Action expenditures and/or third-party liability claims in such amounts as the Secretary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

SECTION 5. PAYMENTS COMPRISING THE FUND

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

SECTION 6. TRUSTEE MANAGEMENT

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to

the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which Persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- A. Securities or other obligations of the Grantor, or any other Owner or Operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a State government;
- B. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or State government; and
- C. The Trustee is authorized to hold cash awaiting investment or distribution un-invested for a reasonable time and without liability for the payment of interest thereon.

SECTION 7. COMMINGLING AND INVESTMENT

The Trustee is expressly authorized in its discretion:

- A. To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- B. To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

SECTION 8. EXPRESS POWERS OF TRUSTEE

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

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

SECTION 9. TAXES AND EXPENSES

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

SECTION 10. ADVICE OF COUNSEL

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

SECTION 11. TRUSTEE COMPENSATION

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

SECTION 12. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by Verified Service 10 Days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.0.

SECTION 13. INSTRUCTIONS TO THE TRUSTEE

All orders, requests, and instructions by the Grantor to the trustee shall be in writing, signed by such Persons as are designated in the attached Exhibit A as required in Section 19.0 or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Secretary to the Trustee shall be in writing, signed by the Secretary, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a Termination of the authority of any Person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

SECTION 14. AMENDMENT OF AGREEMENT

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

SECTION 15. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Agreement as provided in Section 14.0 of this Form above, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Department, if the Grantor ceases to exist. Upon Termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

SECTION 16. IMMUNITY AND INDEMNIFICATION

The Trustee shall not incur Personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any Personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

SECTION 17. CHOICE OF LAW

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

SECTION 18. INTERPRETATION

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

SECTION 19. DESIGNATED SIGNERS

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

In witness thereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in PART D, Section 28.0, Form H of the Delaware Regulations Governing Aboveground Storage Tanks as such Regulations were constituted on the date below.

Signature of Grantor: _____

Name of the Grantor: _____

Print legibly or type

Title of the Grantor: _____

Print legibly or type

Attest:

Signature of Trustee: _____

Name of Trustee: _____

Print legibly or type

Title: _____

Print legibly or type

Seal

Attest:

Signature of Witness: _____

Name of Witness: _____

Print legibly or type

Title: _____

Print legibly or type

Seal

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

State of _____, County of _____.

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

Signature of Notary Public: _____

Name of Notary Public: _____

Section 29. Form I - AST Certification of Valid Claim

The undersigned, as principals and as legal representatives of [Owner or Operator] and [insert name and address of third-party claimant] hereby certify that the claim of Bodily Injury [and/or] Property Damage caused by an Accidental Release arising from operating [Owner or Operator] aboveground storage tank should be paid in the amount of \$[_____].

Signature(s) of Owner or Operator: _____

Name of Owner or Operator: _____
Print legibly or type

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

Signature of Attorney for Owner or Operator: _____

Notary: _____ Date: _____

Signature of Claimant: _____

Name of Claimant: _____
Print legibly or type

Name of Attorney for Claimant: _____
Print legibly or type

Signature of Attorney for Claimant: _____

Notary _____ Date _____

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

Letter from Chief Financial Officer

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

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

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

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

Facility Name: _____

Facility Street: _____

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

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

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

<u>Issue Date</u>	<u>Maturity Date</u>	<u>Outstanding Amount</u>	<u>Bond Rating</u>	<u>Rating Agency*</u>

*Moody's or Standard & Poor's

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount required in PART D, Section 3.0. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve (12) months. Neither rating service has provided notification within the last twelve (12) months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in PART D, Section 30.0, Form J of the Delaware Regulations Governing Aboveground Storage Tanks as such Regulations were constituted on the date shown immediately below.

Signature: _____

Name: _____

Print legibly or type

Title: _____

Print legibly or type

Date: _____

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

Letter from Chief Financial Officer

I am the Chief Financial Officer of [insert: name and address of Local Government Owner or Operator, or Guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking Corrective Action" and/or "compensating third parties for Bodily Injury and Property Damage"] caused by [insert: "sudden Accidental Releases" and/or "nonsudden Accidental Releases"] in the amount of at least [insert: dollar amount] per Occurrence and

[insert: dollar amount] Annual Aggregate arising from operating (an) aboveground storage tank(s) (ASTs). This Local Government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

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

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

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

Facility Name: _____

Facility Street: _____

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

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

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

<u>Issue Date</u>	<u>Maturity Date</u>	<u>Outstanding Amount</u>	<u>Bond Rating</u>	<u>Rating Agency*</u>

*Moody's or Standard & Poor's

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount required in PART D, Section 3.0. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve (12) months. Neither rating service has provided notification within the last twelve (12) months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in PART D, Section 31.0, Form K of the Delaware Regulations Governing Aboveground Storage Tanks as such Regulations were constituted on the date shown immediately below.

Signature: _____

Name: _____

Print legibly or type

Title: _____

Print legibly or type

Date: _____

Section 32. Form L - AST Local Government Financial Test

Letter from Chief Financial Officer

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

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

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

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

Facility Name: _____

Facility Street: _____

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

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

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

WORKSHEET FOR MUNICIPAL FINANCIAL TEST

PART I: BASIC INFORMATION

1. Total Revenues

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

2. Total Expenditures

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

3. Local Revenues

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

4. Debt Service

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

5. Total Funds (dollars) _____

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

6. Population (Persons) _____

PART II: APPLICATION OF TEST

7. Total Revenues to Population _____

- a. Total Revenues (from 1c) _____
- b. Population (from 6) _____
- c. Divide 7a by 7b _____
- d. Subtract 417 _____
- e. Divide by 5,212 _____
- f. Multiply by 4.095 _____

8. Total Expenses to Population _____

- a. Total Expenses (from 2c) _____
- b. Population (from 6) _____
- c. Divide 8a by 8b _____
- d. Subtract 524 _____
- e. Divide by 5,401 _____
- f. Multiply by 4.095 _____

9. Local Revenues to Total Revenues _____

- a. Local Revenues (from 3c) _____
- b. Total Revenues (from 1c) _____
- c. Divide 9a by 9b _____
- d. Subtract .695 _____
- e. Divide by .205 _____
- f. Multiply by 2.840 _____

10. Debt Service to Population _____

- a. Debt Service (from 4d) _____
- b. Population (from 6) _____
- c. Divide 10a by 10b _____
- d. Subtract 51 _____
- e. Divide by 1,038 _____
- f. Multiply by -1.866 _____

11. Debt Service to Total Revenues

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

12. Total Revenues to Total Expenses

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

13. Funds Balance to Total Revenues

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

14. Funds Balance to Total Expenses

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

15. Total Funds to Population

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

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

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

Signature: _____

Name: _____

Print legibly or type

Title: _____

Print legibly or type

Date: _____

Print legibly or type

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

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

Recitals

(1) Guarantor is a State.

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

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

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

Facility Name: _____

Facility Street: _____

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

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

This guarantee satisfies PART D, requirements for assuring funding for *[insert: "taking Corrective Action" and/or "compensating third parties for Bodily Injury and Property Damage caused by" either "sudden Accidental Releases" or "nonsudden Accidental Releases" or "Accidental Releases"; if coverage is different for different ASTs or locations, indicate the type of coverage applicable to each AST or location]* arising from operating the above-identified AST(s) in the amount of *[insert dollar amount]* per Occurrence and *[insert dollar amount]* Annual Aggregate.

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

In the event that *[Local Government Owner or Operator]* fails to provide alternative coverage within sixty (60) Days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a Release has occurred at an AST covered by this guarantee, the Guarantor, upon instructions from the Department shall fund a standby trust fund in accordance with the provisions of Part D, Section §18.0 in an amount not to exceed the coverage limits specified above.

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

If [Owner or Operator] fails to satisfy a judgment or award based on a determination of liability for Bodily Injury or Property Damage to third parties caused by ["sudden" and/or "nonsudden"] Accidental Releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Department, shall fund a standby trust in accordance with the provisions of PART D, Section 18.0 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

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

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

(6) Guarantor agrees to remain bound under this guarantee for so long as [Local Government Owner or Operator] shall comply with the applicable financial responsibility requirements of PART D for the above identified ASTs, except that Guarantor may cancel this guarantee by sending notice by certified mail to [Owner or Operator], such cancellation to become effective no earlier than one hundred twenty (120) Days after receipt of such notice by [Owner or Operator], as evidenced by the return receipt.

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

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

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

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

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

(e) Bodily Injury or Property Damage for which [insert Owner or Operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of PART D, Section 3.0.

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

I hereby certify that the wording of this guarantee is identical to the wording specified in Part D, Section 33.0, Form M of the Delaware Regulations Governing Aboveground Storage Tanks as such Regulations were constituted on the Effective Date shown immediately below.

Effective Date: _____

Name of Guarantor: _____

Print legibly or type

Authorized signature for Guarantor: _____

Name of Person signing: _____

Print legibly or type

Title of Person signing: _____

Print legibly or type

Signature of witness or notary: _____

Date: _____

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

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

Recitals

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

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

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

Facility Name: _____

Facility Street: _____

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

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

This guarantee satisfies PART D requirements for assuring funding for [insert: "taking Corrective Action" and/or "compensating third parties for Bodily Injury and Property Damage caused by" either "sudden Accidental Releases" or "nonsudden Accidental Releases" or "Accidental Releases"; if coverage is different for different ASTs or locations, indicate the type of coverage applicable to each AST or location] arising from operating the above-identified AST(s) in the amount of [insert dollar amount] per Occurrence and [insert: dollar amount] Annual Aggregate.

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

In the event that [Local Government Owner or Operator] fails to provide alternative coverage within sixty (60) Days after

receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a Release has occurred at an AST covered by this guarantee, the Guarantor, upon instructions from the Department shall fund a standby trust fund in accordance with the provisions of PART D, Section 18.0, in an amount not to exceed the coverage limits specified above.

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

If [Owner or Operator] fails to satisfy a judgment or award based on a determination of liability for Bodily Injury or Property Damage to third parties caused by ["sudden" and/or "nonsudden"] Accidental Releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Department, shall fund a standby trust in accordance with the provisions of PART D, Section 18.0 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

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

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

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

(7) Guarantor agrees to remain bound under this guarantee for so long as [Local Government Owner or Operator] shall comply with the applicable financial responsibility requirements of PART D for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [Owner or Operator], such cancellation to become effective no earlier than one hundred twenty (120) Days after receipt of such notice by [Owner or Operator], as evidenced by the return receipt.

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

- (a) Any obligation of [Local Government Owner or Operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily Injury to an employee of [insert: Local Government Owner or Operator] arising from, and in the course of, employment by [insert: Local Government Owner or Operator];
- (c) Bodily Injury or Property Damage arising from the Ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property Damage to any property owned, rented, **[loaded loaned]** to, in the care, custody, or control of, or occupied by [insert: Local Government Owner or Operator] that is not the direct result of a Release from an AST;
- (e) Bodily Injury or Property Damage for which [insert: Owner or Operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of PART D, Section 3.0.

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

I hereby certify that the wording of this guarantee is identical to the wording specified in PART D, Section 30.0, Form N of the Delaware Regulations Governing Underground Storage Tanks as such Regulations were constituted on the Effective Date shown immediately below.

Effective Date: _____

Name of Guarantor: _____

Authorized signature for Guarantor: _____

Name of Person signing: _____

Title of Person signing: _____

Signature of witness or notary: _____

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

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

Recitals

(1) Guarantor is a State.

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

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

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

Facility Name: _____

Facility Street: _____

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

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

This guarantee satisfies PART D requirements for assuring funding for [insert: "taking Corrective Action" and/or "compensating third parties for Bodily Injury and Property Damage caused by" either "sudden Accidental Releases" or "nonsudden Accidental Releases" or "Accidental Releases"; if coverage is different for different ASTs or locations, indicate the type of coverage applicable to each AST or location] arising from operating the above-identified AST(s) in the amount of [insert: dollar amount] per Occurrence and [insert: dollar amount] Annual Aggregate.

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

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

In the event that the Department determines that [Local Government Owner or Operator] has failed to perform Corrective Action for Releases arising out of the operation of the above-identified AST(s) in accordance with PART E of Delaware's *Regulations Governing Aboveground Storage Tanks*, the Guarantor upon written instructions from the Department shall make funds available to pay for Corrective Actions in an amount not to exceed the coverage limits specified above.

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

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

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

(6) Guarantor agrees to remain bound under this guarantee for so long as [Local Government Owner or Operator] shall comply with the applicable financial responsibility requirements of PART D for the above identified ASTs, except that Guarantor may cancel this guarantee by sending notice by Verified Service to [Owner or Operator], such cancellation to become effective no earlier than one hundred twenty (120) Days after receipt of such notice by [Owner or Operator], as evidenced by the return receipt. If notified of a probable Release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the Release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future Releases.

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

- (a) Any obligation of [Local Government Owner or Operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily Injury to an employee of [insert Local Government Owner or Operator] arising from, and in the course of, employment by [insert: Local Government Owner or Operator];
- (c) Bodily Injury or Property Damage arising from the Ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property Damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: Local Government Owner or Operator] that is not the direct result of a Release from an AST;
- (e) Bodily Injury or Property Damage for which [insert: Owner or Operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the Requirements of PART D, Section 3.0.

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

I hereby certify that the wording of this guarantee is identical to the wording specified in, PART D, Section 35.0, Form O of the Delaware *Regulations Governing Aboveground Storage Tanks* as such Regulations were constituted on the Effective Date shown immediately below.

Effective Date: _____

Name of Guarantor: _____

Print legibly or type

Authorized signature for Guarantor: _____

Name of Person signing: _____

Print legibly or type

Title of Person signing: _____

Print legibly or type

Signature of witness or notary: _____

Section 36. Form P - AST Local Government Guarantee Without Standby Trust Made by a Local Government

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

Recitals

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

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

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

Facility Name: _____

Facility Street: _____

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

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

This guarantee satisfies PART D requirements for assuring funding for [insert: "taking Corrective Action" and/or "compensating third parties for Bodily Injury and Property Damage caused by" either "sudden Accidental Releases" or "nonsudden Accidental Releases" or "Accidental Releases"; if coverage is different for different ASTs or locations, indicate the type of coverage applicable to each ASTs or location] arising from operating the above-identified AST(s) in the amount

of [insert: dollar amount] per Occurrence and [insert: dollar amount] Annual Aggregate.

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

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

In the event that the Department determines that [Local Government Owner or Operator] has failed to perform Corrective Action for Releases arising out of the operation of the above-identified ASTs in accordance with PART E, the Guarantor upon written instructions from the Department shall make funds available to pay for Corrective Actions in an amount not to exceed the coverage limits specified above.

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

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

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

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

(7) Guarantor agrees to remain bound under this guarantee for so long as [Local Government Owner or Operator] shall comply with the applicable financial responsibility requirements of Part D for the above identified ASTs, except that Guarantor may cancel this guarantee by sending notice by Verifiable Service to [Owner or Operator], such cancellation to become effective no earlier than one hundred twenty (120) Days after receipt of such notice by [Owner or Operator], as evidenced by the return receipt. If notified of a probable Release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the Release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future Releases.

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

- (a) Any obligation of [Local Government Owner or Operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily Injury to an employee of [insert: Local Government Owner or Operator] arising from, and in the course of, employment by [insert: Local Government Owner or Operator];
- (c) Bodily Injury or Property Damage arising from the Ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property Damage to any property owned, rented, **[loaded loaned]** to, in the care, custody, or control of, or occupied by [insert: Local Government Owner or Operator] that is not the direct result of a Release from an AST;
- (e) Bodily Injury or Property Damage for which [insert: Owner or Operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of Part D.

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

[Local Government Owner or Operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in PART D, Section 36.0, Form P of the Delaware Regulations Governing Aboveground Storage Tanks as such Regulations were constituted on the Effective Date shown immediately below.

Effective Date: _____

Name of Guarantor: _____
Print legibly or type

Authorized signature for Guarantor: _____

Name of Person signing: _____
Print legibly or type

Title of Person signing: _____
Print legibly or type

Signature of witness or notary: _____

Section 37. Form Q - AST Local Government Fund Mechanism

Letter from Chief Financial Officer

I am the Chief Financial Officer of [insert: name and address of Local Government Owner or Operator, or Guarantor]. This letter is in support of the use of the Local Government fund mechanism to demonstrate Financial Responsibility for [insert: "taking Corrective Action" and/or "compensating third parties for Bodily Injury and Property Damage"] caused by [insert: "sudden Accidental Releases" and/or "nonsudden Accidental Releases"] in the amount of at least [insert: dollar amount] per Occurrence and [insert: dollar amount] Annual Aggregate arising from operating (an) aboveground storage tank(s) (ASTs).

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

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

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

Facility Name: _____

Facility Street: _____

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

<u>AST ID# (from AST registration form)</u>	<u>AST size (in gallons)</u>	<u>AST contents</u>	<u>Covered by this Local Government Fund Mechanism? Y/N</u>

[Insert: "The Local Government fund is funded for the full amount of coverage required under Part D, Section 3.0, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The Local Government fund is funded for ten times the full amount of coverage required under PART D, Section 3.0, funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage," or "A payment is made to the fund once every year for seven years until the fund is fully-funded and (name of Local Government) has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the Local Government's debt beyond the legal debt ceilings established by the relevant State laws and (2) that prior voter approval is not necessary before use of the bonding authority"].

The details of the Local Government fund are as follows:

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

[If fund balance is incrementally funded as specified in PART D, subsection 14.1.1.3 insert:

Amount added to fund in the most recently completed fiscal year: _____

Number of years remaining in the pay-in period: _____]

A copy of the State constitutional provision, or Local Government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in PART D, Section 37.0, Form Q of the Delaware Regulations Governing Aboveground Storage Tanks as such Regulations were constituted on the date shown immediately below.

Signature: _____

Name: _____

Print legibly or type

Title: _____

Print legibly or type

Date: _____

Print legibly or type

PART E LEAK REPORTING AND CORRECTIVE ACTION REQUIREMENTS FOR ABOVEGROUND STORAGE TANKS

4.0 Investigation

- 1.1 After a Release, other than those that can comply with §8.1.3 of Part A, is confirmed, the Owner and Operator shall conduct an investigation as the first step in the corrective action process unless directed to do otherwise by the Department.
- 1.2 The purposes of an investigation are to determine:
 - 1.2.1 The nature of the Release, including the chemical compounds present, their concentrations, quantity released and their physical and chemical characteristics related to potential human health and environmental impacts and cleanup procedures; and,
 - 1.2.2 The extent of the Release, both horizontal and vertical, including whether the contaminant is distributed homogeneously or heterogeneously; and,
 - 1.2.3 The physical characteristics of the site, including characteristics affecting the occurrence, distribution, and movement of the released contaminant and characteristics affecting access to the site, both horizontal and vertical, which may influence the feasibility of various investigatory and remediation procedures; and
 - 1.2.4 An evaluation of the potential risks posed by the Release including identification of environmentally sensitive receptors, and estimate of the impacts to human health and the environment that may occur as a result of the Release.
- 1.3 The Department must receive the results of the investigation no later than 120 days after the Release was reported and confirmed. Upon receiving the investigation report, the Department shall review the report and either accept the conclusions and recommendations of the report, require additional information to be submitted, or require that the Owner and Operator submit a corrective action work plan as required by §3 of this Part. Additional investigation information or corrective action work plans requested by the Department must be submitted within ninety (90) days or other Department approved schedule.
- 1.4 The Owner and Operator may submit investigation reports for a site separately or as part of a proposed long-term corrective action work plan.
- 1.5 At any point after reviewing the information contained in the investigation report, the Department may require Owner and Operator to submit additional information or to develop and submit a corrective action work plan for responding to contaminated soils, surface water and/or ground water.

2.0 Administrative Option for Corrective Action

- 2.1 The Department may waive the requirement of a investigation when the Owner and Operator has taken the appropriate initial response steps to eliminate imminent dangers and to prevent any further Release and chooses to submit a corrective action work plan for remediating contaminated soil, ground water and/or surface water.
- 2.2 If the Department determines that the implementation of corrective actions are not achieving adequate protection of human health and the environment, the Department may require additional responses to be taken.
- 2.3 The Owner and Operator may, in the interest of minimizing environmental contamination and promoting more effective corrective action, begin remediation of soil and ground water before the corrective action work plan is approved provided that they:
 - 2.3.1 Notify the Department of their intention to begin remediation; and,
 - 2.3.2 Comply with any conditions imposed by the Department, including halting remediation or mitigating adverse consequences from cleanup activities; and
 - 2.3.3 Incorporate these self-initiated remediation measures in the corrective action work plan that is submitted to the Department for approval pursuant to §3 of this Part.

3.0 Corrective Action

- 3.1 Corrective Action Work Plan General Requirements
 - 3.1.1 The corrective action work plan shall address the contamination of soils, ground water and surface water as identified in the investigation report. A corrective action work plan must provide for adequate protection of the human health, safety and the environment and shall be modified to comply with the requirements contained in these Regulations as necessary.
 - 3.1.2 The Department shall not approve any corrective action work plan that does not ensure adequate protection of human health, welfare, safety and the environment.

- 3.1.3 An Owner and Operator who submits a work plan that does not provide for adequate protection of human health, safety and/or the environment at the Department's discretion must modify their corrective action work plan and resubmit to the Department within a timeframe specified by the Department.
- 3.1.4 All corrective action work plans must be prepared using guidelines established by the Department.
- 3.2 Approval Requirements for Corrective Action Work Plans
 - 3.2.1 A corrective action work plan must propose a corrective action option for the site which shall:
 - 3.2.1.1 Address the removal of Free Product to the maximum extent practicable as determined by the Department; and
 - 3.2.1.2 Reduce the contaminant levels at the site based on site-specific information, including the investigation report, in order to protect human health, safety, and the environment, or
 - 3.2.1.3 Reduce the contaminant levels to achieve the clean-up goals negotiated between the Owner and Operator and the Department; or
 - 3.2.1.4 Reduce the contaminant levels to achieve the clean-up goals established by the Department, and
 - 3.2.1.5 Monitor the site over time to provide technically-based assurance that the site contamination is controlled under natural conditions and that those conditions will not now, or at some future time, adversely impact human health, safety or the environment.
 - 3.2.2 The Department will approve the corrective action work plan only when satisfied that implementation of the corrective action work plan provides for measures considered adequate to protect human health, safety, and the environment. In making this determination, the Department shall consider the following factors as appropriate:
 - 3.2.2.1 The physical and chemical characteristics of the Regulated Substance, including its toxicity, persistence, and potential for migration;
 - 3.2.2.2 The report of the investigation conducted under §1 of this Part;
 - 3.2.2.3 The proximity, quality, and current and future uses of nearby surface water and ground water and soil;
 - 3.2.2.4 An exposure assessment;
 - 3.2.2.5 Any information assembled in compliance with this Part of the Regulations; and
 - 3.2.2.6 The potential effects of residual contamination on nearby surface water and groundwater and soil.
 - 3.2.3 The corrective action work plan must be organized in report form and all or portions of the report may be required to be signed by a professional geologist or Professional Engineer registered in the State of Delaware as determined by the Department.
 - 3.2.4 The corrective action work plan may propose a phased approach to site remediation.
- 3.3 Quality Assurance/Quality Control
 - 3.3.1 A site-specific Quality Assurance/Quality Control (QA/QC) plan for the activities to be carried out during implementation of the corrective action work plan must be formulated and approved by the Department prior to the implementation of any site activities. This QA/QC Plan shall be included in the corrective action work plan and cover all actions proposed in the work plan.
- 3.4 Site Safety
 - 3.4.1 A site-specific health and safety plan must be included in the corrective action work plan and shall cover all corrective action tasks. The health and safety plan must address the site worker protection levels, protection of persons living near the site and site access control during remediation.
 - 3.4.2 The Department will approve a corrective action work plan only after ensuring that the health and safety plan will provide for adequate protection of human health, safety and the environment during and after the implementation of the corrective action work plan.
- 3.5 Corrective Action Work Plan Implementation and Monitoring Schedule
 - 3.5.1 Upon approval of the corrective action work plan by the Department, the Owner and Operator must implement the corrective action work plan, including any modifications to the corrective action work plan made by the Department, within thirty (30) days. As a minimum, the Owner and Operator shall monitor, evaluate and report the results of implementing the corrective action work plan quarterly (four times per calendar year), or within the time schedule approved by the Department in the corrective action work plan.
 - 3.5.2 The Owner and Operator shall evaluate the effectiveness of the implemented corrective action work plan after one (1) year and shall submit to the Department for approval either:
 - 3.5.2.1 A request for no further action in accordance with §3.6 of this Part; or
 - 3.5.2.2 A revised corrective action work plan prepared in accordance with the requirements of §3.1 of this Part; or

- 3.5.2.3 A request to continue implementation of the approved corrective action work plan and monitoring schedule in accordance with §3.5.1 of this Part.
- 3.5.3 Copies of all manifests and records documenting the off-site transport and disposal of any Free Product, contaminated water and soil, or other waste that is generated at the site as a result of the implementation of the corrective action work plan, must be submitted to the Department not less than once per quarter.
- 3.6 Requirements for No Further Action
 - 3.6.1 The Owner and Operator shall achieve the clean up goals established in the approved corrective action work plan.
 - 3.6.2 After all corrective action work plan goals have been achieved, the Owner and Operator shall submit a request for a letter of no further action. The request for no further action shall be submitted in a report form. No further action documentation shall include but may not be limited to the following:
 - 3.6.2.1 A demonstration that the corrective actions implemented assure adequate protection of human health, safety and the environment now and in the future.
 - 3.6.2.2 A demonstration that Free Product has been removed to the extent practicable according to the requirement in §3.2.1.1 of this Part. If Free Product persists at the site, the Owner and Operator shall provide the Department with an acceptable rationale for discontinuing corrective action and monitoring efforts.
 - 3.6.2.3 The Owner and Operator shall submit all documents, not previously submitted, verifying that all wastes have been properly transported and disposed.
 - 3.6.2.4 The Owner and Operator shall submit a summary of major events and accomplishments achieved during the investigation/remediation process.
 - 3.6.3 The final report must be signed by a professional geologist or Professional Engineer licensed in the State of Delaware, as determined by the Department.
 - 3.6.4 After approving the final report the Department shall issue a letter of no further action, documenting that site clean-up objectives have been met. The approval for no further action does not absolve the Owner and Operator from previously incurred or potential future liability.

1.0 General Requirements for Leaks Inside Secondary Containment

- 1.1 Leaks into Secondary Containment
 - 1.1.1 No person shall knowingly allow any leak of a regulated substance from an AST into secondary containment to continue.
 - 1.1.2 A leak of a regulated substance inside secondary containment in any quantity that cannot be cleaned up within (7) days shall be reported to the Tank Management Section as soon as possible, but in no instance shall reporting exceed (7) seven days from the time of discovery. Reporting may be made in person or by telephone or by electronic mail.
 - 1.1.3 Documentation of the leak and the calculations of how the leak amount was determined shall be maintained by the Owner and Operator at the Facility for the operational life of the AST.
 - 1.1.4 Actions to prevent a reoccurrence of the leak and actions to mitigate evidence of the leak shall be completed within (30) thirty days. These actions shall include but are not limited to:
 - 1.1.4.1 Repairing or replacing defective equipment, or;
 - 1.1.4.2 Modifying operating procedures, or;
 - 1.1.4.3 Retraining employees.
 - 1.1.5 Evidence of a leak on secondary containment surfaces other than soil, shall be mitigated by mechanical and/or chemical means that do not compromise the impermeability of the secondary containment and which permit potential future Leaks to be readily discernible from evidence of previous Leaks, in accordance with PART E, subsection 1.1.4.
 - 1.1.6 Evidence of a leak on secondary containment surfaces comprised of soil, that cannot be eliminated by surficial scraping, shall be eliminated by excavating all impacted soils or a means by which a new stain is easily detectable and which does not compromise the impermeability of the secondary containment, in accordance with PART E, subsection 1.1.4. Any area that is excavated shall be backfilled with a material of equal or superior impermeability.
 - 1.1.7 The Department must be notified in person or by telephone, within five (5) days of any excavation activities within secondary containment.
 - 1.1.8 Staining that extends through the impermeable secondary containment surface is considered a release and a hydrogeologic investigation must be completed in accordance with PART E, subsection 4.2.

2.0 Reporting Requirements

2.1 Indicated Releases from ASTs

2.1.1 Indicated releases are signs that an AST, or the secondary containment are failing or could potentially fail to contain a regulated substance. Indicated releases are releases that are not observable and are not directly attributable to another source. Observable releases must refer to PART E, subsection 4.2. Indicated releases include, but are not limited to, the following:

- 2.1.1.1** Stained soils or soils that emit characteristic odors of regulated substance compounds which are exposed during activities including but not limited to digging, boring or excavation activities, retrofit of ASTs, removal of an AST or collection of soil samples around an AST that is permanently closed in place, or results from an Phase I or Phase II environmental site assessment; or
- 2.1.1.2** Water from supply wells, public or private, that exhibit a decrease in water quality, which is shown by subsequent analysis to result from the presence of a regulated substance; or
- 2.1.1.3** The appearance of characteristic odors of a regulated substance in basements or other enclosed spaces; or
- 2.1.1.4** The appearance of a sheen on a surface water body; or
- 2.1.1.5** The appearance of a sheen or measurable NAPL in a supply well, monitoring well, or observation tube; or
- 2.1.1.6** Failure of a tank, piping or vapor recovery test; or
- 2.1.1.7** A laboratory report that indicates a sample collected from or near an AST excavation, soil boring, monitor well or observation tube contains a regulated substance; or
- 2.1.1.8** Notification from the State Emergency Prevention and Response Section or another State or Federal agency of the discovery of a release of uncontained regulated substances or compounds; or
- 2.1.1.9** Documentation on a tank inspection report that the AST integrity may have been compromised which includes but is not limited to:
 - 2.1.1.9.1** Holes in the AST; or
 - 2.1.1.9.2** Thinning of AST structural material below the minimum design standard; or
 - 2.1.1.9.3** Cracks in welds or steel plates.
- 2.1.1.10** Abnormal operating conditions include but are not limited to the following:
 - 2.1.1.10.1** The sudden loss of product from any portion of the AST;
 - 2.1.1.10.2** Inventory control discrepancies over a consecutive two month period;
 - 2.1.1.10.3** A signal from any release detection device or method that indicates a release may have occurred;
 - 2.1.1.10.4** The unexplained presence of water in the AST;
 - 2.1.1.10.5** Evidence of a release of a regulated substance noted during a routine inspection.

2.2 Reporting Requirements for Indicated Releases

2.2.1 Any indication of a release of a regulated substance from an AST that was not witnessed, is not immediately quantifiable, and has impacted soil, surface water, or groundwater, and is discovered by any person, including but not limited to environmental consultants, environmental contractors, utility companies, financial institutions, real estate transfer companies, or AST Owners or Operators shall be reported within 48 hours to:

- 2.2.1.1** The DNREC Tank Management Section by calling 302-395-2500 during normal business hours, which are 8am to 4pm, Monday through Friday, excluding state holidays or emergency state office closures. Reporting to the Tank Management Section does not release any person from complying with the requirements of 7 Del.C. Ch. 60 and the Regulations promulgated there under as amended and if an imminent threat to human health, safety or the environment exists.
- 2.2.1.2** If the phone numbers listed in these Regulations are not valid it is the responsibility of the Owner and Operator to take all reasonable steps to ascertain a valid phone number.

2.2.2 The Department may require that the AST be taken out of service and emptied until the cause of the indicated release is determined, if the Department deems such action necessary to protect human health, safety or the environment.

2.2.3 Abnormal operating conditions, mechanical abnormalities, or equipment issues that indicate that a release of a regulated substance has occurred, may be occurring, or has the potential to occur must be investigated in accordance with PART E, Section 3.0.

2.3 Reporting Requirements for Releases

- 2.3.1 Owners and Operators shall not knowingly allow any release of a regulated substance from an AST to continue. Owners and Operators shall take immediate action to contain any release so as to minimize the environmental impact of the release and to immediately identify and mitigate fire, explosion and vapor hazards.
- 2.3.2 Any release of a regulated substance from an AST in excess of the reportable quantities specified in the regulations promulgated pursuant to 7 Del.C. Ch. 60, §6028, the Delaware Regulations Governing the Reporting of a Discharge of a Pollutant or an Air Contaminant, as amended, that is discovered by any person, including but not limited to environmental consultants or contractors, utility companies, financial institutions or real estate transfer companies, shall be reported within 24 hours to:
 - 2.3.2.1 The Department's 24-hour Release Hot Line by calling 800-662-8802, and
 - 2.3.2.2 The DNREC Tank Management Section by calling 302-395-2500, during normal business hours, which are 8am to 4pm, Monday through Friday, excluding state holidays or emergency state office closures.
 - 2.3.2.3 If the phone numbers listed in these Regulations are not valid it is the responsibility of the Owner and Operator to take all reasonable steps to ascertain a valid phone number.
- 2.3.3 Owners and Operators shall immediately contain the release and shall complete the release response, investigation and remedial action requirements of PART E, as required.
- 2.3.4 Owners and Operators shall comply with the release notification requirements of any and all state, federal or municipal agencies.
- 2.3.5 Any release of a regulated substance in a quantity less than the reportable quantity specified in the regulations promulgated pursuant to Title 7 Del.C. Ch. 60, §6028, the Delaware Regulations Governing the Reporting of a Discharge of a Pollutant or an Air Contaminant, as amended, shall be documented at the time of discovery on the routine in-service inspection report. If the commencement of cleanup activities cannot begin within 24 hours or cannot be completed within seven (7) days the Tank Management Section shall be notified in person or via fax, electronic mail, or by telephone on the eighth day, and the requirements of PART E, subsection 4.2 shall apply.

3.0 Indicated Release Investigation Requirements

3.1 General Requirements for Indicated Release Investigation

- 3.1.1 If at any point in the indicated release investigation it is determined that a release of a regulated substance from an AST in excess of the reportable quantities specified in the regulations promulgated pursuant to 7 Del.C. Ch. 60, §6028, the Delaware Regulations Governing the Reporting of a Discharge of a Pollutant or an Air Contaminant, as amended, has occurred, the Department must be notified immediately and Release Response actions in accordance with PART E, subsection 4.2, must begin.
- 3.1.2 Unless remedial action is immediately initiated in accordance with the requirements of PART E, subsection 6.1.3, Owners and Operators shall investigate and confirm, within seven (7) days, any indication of a release of a regulated substance including but not limited to those listed in PART E, subsection 2.1.1.

3.2 Indicated Release Investigation Procedures

- 3.2.1 Upon discovery of an indication of a release Owners and Operators shall:
 - 3.2.1.1 Within twenty-four (24) hours initiate an investigation to determine the cause of any abnormal operating condition; and
 - 3.2.1.2 Within twenty-four (24) hours initiate an investigation, for completion within seven (7) days, to determine the presence or absence of a release by:
 - 3.2.1.2.1 Conducting inspection and testing of the AST and secondary containment as necessary to conclusively determine the presence or absence of a release; or
 - 3.2.1.2.2 Measuring for the presence of a release where contamination is most likely to be present at the AST site. In selecting sample types, sample locations and measurement methods, the type of initial indication of contamination, type of backfill and soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release shall be considered; or
 - 3.2.1.2.3 Other procedures as directed by the Department.
 - 3.2.1.3 When the abnormal operating condition is the result of an equipment failure or malfunction, Owners and Operators shall repair or replace all faulty equipment in accordance with these Regulations.

- 3.2.1.4 When the release investigation determines that a release has occurred, Owners and Operators shall comply with the hydrogeologic investigation and remedial action requirements of PART E, subsection 4.2.
- 3.2.2 If a release is confirmed or a repair is required, the Department must be notified within thirty (30) days of the completion of any repairs and indicated release investigation. Owners and Operators and AST contractors shall submit documentation to the Department including, but not limited to, the following:
 - 3.2.2.1 Repair completion documentation; and
 - 3.2.2.2 Sampling results; and
 - 3.2.2.3 Test results as required by the Department.
- 3.2.3 If following the indicated release investigation, it is confirmed that a release from an AST has not occurred, documentation of the indicated release investigation must be maintained for the life of the AST.
- 3.2.4 Results of the indicated release investigation must be submitted to the Department if requested by the Department.

4.0 Release Response Requirements

4.1 Department Authority to Assume Control of Releases

- 4.1.1 The Department shall give written notice to the Owner and Operator if the owner and operator are not meeting the requirements and timeframes found in Part E subsection 3.2 or Part E subsection 4.2. If the Owner and Operator fail to respond to the actions and timeframes described in the notice, the Department reserves the right to assume control of any release or indicated release situation. In such cases all liability, including payment to the Department of response costs, will remain with the Owner and Operator.
- 4.1.2 To protect human health, safety and the environment the Department reserves the right for the Department or its contractors to enter and take appropriate actions on affected properties to investigate, abate and remediate contamination.

4.2 Initial Release Response Requirements

- 4.2.1 In response to a release from an AST, the Owner and Operator shall promptly take the following steps:
 - 4.2.1.1 If a faulty AST component is determined to be the cause of a release, the component or, if necessary, the entire AST system, shall be taken out of service and shall not be returned to service until the AST is functioning in compliance with all applicable portions of these Regulations; and
 - 4.2.1.2 At the Department's direction a hydrogeologic investigation in accordance with PART E, Section 5.0, shall be conducted to determine an estimate of the amount and type of regulated substance released; and
 - 4.2.1.3 Owners and Operators shall implement the following to contain the release:
 - 4.2.1.3.1 If NAPL is present, NAPL Corrective Action shall be immediately initiated in accordance with PART E, subsection 4.3; and,
 - 4.2.1.3.2 Nearby receptors shall be protected from impacts of regulated substances by preventing free and mobile NAPL migration through recovery and containment, and the Department shall be notified of all such activities; and
 - 4.2.1.3.3 All flammable material shall be properly handled and vapors shall be mitigated to prevent fires, explosions and impacts to receptors.

4.3 NAPL Corrective Action Requirements

- 4.3.1 At sites where there is a release of NAPL, the Owners and Operators shall remove and remediate the NAPL to the maximum extent practicable following the requirements established in PART E, Section 4.0, while continuing, as necessary, the release confirmation steps and the investigation required in PART E, Section 5.0.
- 4.3.2 The Owners and Operators shall formulate a NAPL Conceptual Site Model (NCSM) to determine the most efficient and environmentally protective remedial approach for addressing the release.
- 4.3.3 The Owners and Operators shall verbally communicate a preliminary NCSM to the Department within forty-eight (48) hours of the discovery of a release of NAPL. The preliminary NCSM shall address as many of the criteria listed in PART E, subsection 4.3.4 as possible.
- 4.3.4 The NCSM shall at a minimum address the following factors with regard to the NAPL Release:
 - 4.3.4.1 The feasibility and necessity of an immediate response; and
 - 4.3.4.2 Direct and potential impacts to human health and the environment; and
 - 4.3.4.3 The type and estimated volume of the NAPL released; and

- 4.3.4.4 The evidence, or occurrence, of the NAPL release (mobile NAPL, free NAPL in a well, residual NAPL discovered during an investigation); and
- 4.3.4.5 The potential recoverability of all NAPL phases; and
- 4.3.4.6 The geometry of the NAPL body; and
- 4.3.4.7 The estimated age and duration of the NAPL release; and
- 4.3.4.8 The characteristics of the subsurface soils;
- 4.3.4.9 The chemical and physical properties of the NAPL; and
- 4.3.4.10 Groundwater classification for the area such as wellhead protection areas, excellent recharge areas, or source water protection areas.
- 4.3.5 Owners and Operators shall base all short and long term remedial action decisions upon the information in the NCSM, which shall be updated, in writing, at a minimum of once every three (3) calendar months, or on a schedule approved by the Department.
- 4.3.6 NAPL removal shall be conducted in a manner that minimizes the spread of contamination, including dissolved and vapor phases, into previously uncontaminated areas by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery by-products in accordance with all applicable local, state and federal requirements.
- 4.3.7 If NAPL recovery is not practicable, and does not support site remedial action objectives as determined by the Department, Owners and Operators may submit a written request for Department approval to discontinue NAPL recovery. The request shall at a minimum include the following:
 - 4.3.7.1 Technical feasibility of other proven groundwater and soil treatment techniques to further reduce NAPL at the site; and
 - 4.3.7.2 Costs, time frames, and resources involved to further reduce NAPL levels employing the current and alternative method(s) proposed; and
 - 4.3.7.3 A demonstration that the remaining NAPL body is not contributing to any unstable daughter plumes such as a dissolved plume and vapor migration; and
 - 4.3.7.4 A demonstration that remaining NAPL does not pose any risk to human health, safety, and the environment; and
 - 4.3.7.5 An assessment of the persistence and fate of the NAPL in the subsurface; and
 - 4.3.7.6 A description of the individual site characteristics, including natural rehabilitative processes; and
 - 4.3.7.7 Statements regarding current versus future land use of the site.
- 4.3.8 The Department may require Owners and Operators to follow any applicable guidance or industry referenced standards in order to create a sound NCSM, from which optimal remedial action decisions can be made.

5.0 Hydrogeologic Investigation Requirements

5.1 General Requirements for Hydrogeologic Investigation

- 5.1.1 After a release is confirmed, the Owner and Operator shall conduct a hydrogeologic investigation as the first step in the corrective action process unless directed to do otherwise by the Department.
- 5.1.2 The investigation shall at a minimum include the following:
 - 5.1.2.1 Determine the nature of the release, including the chemical compounds present, their concentrations, quantity released and their physical and chemical characteristics related to potential human health and environmental impacts and cleanup procedures; and
 - 5.1.2.2 Determine the extent of the release, both horizontal and vertical, including whether the contaminant is distributed homogeneously or heterogeneously; and
 - 5.1.2.3 Determine the physical characteristics of the site, including characteristics affecting the occurrence, distribution, and movement of the released contaminant and characteristics affecting access to the site, both horizontal and vertical, which may influence the feasibility of various investigatory and remediation procedures; and
 - 5.1.2.4 Evaluate, in accordance with the Delaware Risk-Based Corrective Action Program (DERBCAP) or other Department approved procedure, the potential risks posed by the release including identification of environmentally sensitive receptors, and estimate the impacts to human health and the environment that may occur as a result of the release.
- 5.1.3 The results of the hydrogeologic investigation shall be organized in report form and be signed by a professional geologist or professional engineer registered in the State of Delaware as required in 24 Del.C. Ch. 36 and the Delaware Board of Registration of Geologists Regulations and 24 Del.C. Ch. 28.

- 5.1.4 The Department shall receive the results of the hydrogeologic investigation no later than one hundred and twenty (120) days after the release was reported and confirmed. Upon receiving the hydrogeologic investigation report, the Department shall review the report and either accept the conclusions and recommendations of the report, require additional information to be submitted, or require that the Owner and Operator submit a remedial action work plan as required by PART E, Section 7.0.
- 5.1.5 At any point after reviewing the information contained in the hydrogeologic investigation report, the Department may require the Owner and Operator to submit additional information or to develop and submit a remedial action work plan to address contaminated soils, surface water or groundwater.
- 5.1.6 Additional investigation information or remedial action work plans requested by the Department shall be submitted within ninety (90) days or other Department approved schedule.
- 5.1.7 Owners and Operators may submit investigation reports for a site separately or as part of a proposed long term remedial action work plan in accordance with the requirements of PART E, Section 7.0.

5.2 Quality Assurance and Quality Control Requirements

- 5.2.1 Owners and Operators shall develop and implement a site specific Quality Assurance/Quality Control (QA/QC) plan for the activities to be carried out during the hydrogeologic investigation. The QA/QC plan shall be submitted to the Department upon the request of the Department.

5.3 Site Safety Requirements

- 5.3.1 Owners and Operators shall develop and implement a site specific health and safety plan that covers all hydrogeologic investigation tasks. The health and safety plan shall address the site worker protection levels, protection of persons living near the site and site access control during the investigation. The health and safety plan shall be submitted to the Department upon the request of the Department.

6.0 Administrative Option for Remedial Action

6.1 Requirements for Administrative Option for Remedial Action

- 6.1.1 The Department may waive the requirement of a hydrogeologic investigation when the Owner and Operator has taken the appropriate initial response steps to eliminate imminent dangers and to prevent any further release and the Owner and Operator chooses to submit a remedial action work plan (RAWP) to remediate contaminated soil, ground water and/or surface water.
- 6.1.2 If the Department determines that the implementation of remedial actions are not achieving adequate protection of human health and the environment, the Department may require additional responses to be taken.
- 6.1.3 The Owner and Operator may, in the interest of minimizing environmental contamination and promoting more effective corrective action, begin remediation of soil and ground water before the remedial action work plan (RAWP) is approved provided that they:
 - 6.1.3.1 Notify the Department of their intention to begin remediation; and,
 - 6.1.3.2 Comply with any conditions imposed by the Department, including halting remediation or mitigating adverse consequences from cleanup activities; and,
 - 6.1.3.3 Incorporate these self-initiated remediation measures in the remedial action work plan that is submitted to the Department for approval pursuant to PART E, Section 7.0; and,
 - 6.1.3.4 Recognize that any actions taken by the Owner and Operator without prior Department approval is at the risk of the Owner and Operator and does not absolve the Owner and Operator of the obligation to comply with the remedial action requirements of PART E, Section 7.0.

7.0 Remedial Action Work Plan Requirements

7.1 General Remedial Action Requirements

- 7.1.1 At any point after reviewing the information contained in the hydrogeologic investigation report, the Department may require the Owner and Operator to submit additional information or to develop and submit a RAWP for responding to contaminated soils, surface water and groundwater.
- 7.1.2 The RAWP shall address the contamination of soils, groundwater and surface water, including all occurrences of NAPL resulting from a release, and shall be submitted to the Department in a timeframe specified by the Department. The RAWP shall provide for adequate protection of human health, safety and the environment, and shall establish cleanup goals for the site.
- 7.1.3 The Owner and Operator shall modify any RAWP that does not provide for adequate protection of human health, welfare, safety and the environment, as necessary to meet the requirements of PART E, Section 8.0.

- 7.1.4 The RAWP shall include sufficient design information that demonstrates that the remedial technology shall meet the cleanup goals approved by the Department and shall include an estimated time to cleanup completion for the remediation method proposed in the RAWP.
- 7.1.5 A RAWP shall propose a remedial action method for the site that shall:
- 7.1.5.1 Reduce the contaminant levels at the site to meet the cleanup goals proposed in the remedial action work plan and approved by the Department; or
 - 7.1.5.2 Reduce the contaminant levels to achieve the cleanup goals established by the Department; or
 - 7.1.5.3 Monitor the site over time to provide technically based assurance that the site contamination is controlled under natural conditions and that those conditions will not now, or at some future time, adversely impact human health, safety or the environment.
- 7.1.6 The Department shall approve the RAWP when satisfied that implementation of the RAWP provides for measures considered adequate to protect human health, safety, and the environment.
- 7.1.7 The RAWP shall be organized in report form and signed by a professional geologist or professional engineer registered in the State of Delaware as required in 24 Del.C. Ch. 36 and the Delaware Board of Registration of Geologists Regulations and 24 Del.C. Ch. 28.
- 7.1.8 The RAWP shall be of site specific design and shall be based on the results of the hydrogeologic investigation, or contain appropriate investigatory steps if submitted without a prior hydrogeologic investigation having been completed.
- 7.1.9 The RAWP may propose a phased approach to site remediation. If data can justify site closure, Owner and Operator may request site closure in accordance with the requirements of PART E, Section 8.0. Remedial action will be considered complete only upon the Department's evaluation and approval of a satisfactory closure request.
- 7.1.10 The RAWP shall include a summary of past efforts and a description of any new or continued efforts to effectively remove NAPL as described in PART E, Section 4.0.

7.2 Quality Assurance and Quality Control Requirements

- 7.2.1 Owners and Operators shall develop and implement a site specific Quality Assurance/Quality Control (QA/QC) plan for the activities to be carried out during implementation of the RAWP and the QA/QC plan shall be included in the RAWP submitted to the Department.

7.3 Site Safety Requirements

- 7.3.1 Owners and Operators shall develop a site-specific health and safety plan which shall be included in the RAWP and shall cover all remedial action tasks. The health and safety plan shall, at a minimum, address site worker protection levels, protection of persons living near the site, and site access control during the remediation.

7.4 Implementation and Reporting Schedule

- 7.4.1 Upon approval of the RAWP by the Department, the Owners and Operators shall implement the RAWP, including any modifications to the RAWP made by the Department, within the timeframe approved by the Department.
- 7.4.2 Owners and Operators shall monitor, evaluate and report to the Department the results of implementing the remedial action at a minimum of once every three (3) calendar months, or within the time schedule approved in the RAWP. Copies of all records documenting the transport and disposal of any free product, contaminated water and soil, or other waste that is generated at the site while investigation and remedial action work is being performed shall be included in each report.
- 7.4.3 Owners and Operators shall submit a remedial action progress report to the Department once every twelve (12) calendar months that includes an evaluation of the effectiveness of the remedial action to determine whether additional measures must be implemented to meet the cleanup goals established in the RAWP. The evaluation shall include an estimate of time to remedial action completion.
- 7.4.4 Owners and Operators shall submit recommendations for optimization and improvement as needed to achieve the cleanup goals established in the RAWP, as part of each remedial action progress report.

7.5 Post Remedial Monitoring

- 7.5.1 Upon completion of remedial action activities the Owners and Operators shall perform four (4) consecutive quarters of groundwater sampling or other sampling schedule as approved by the Department to ensure the contaminant plume is stable and shrinking and that rebounding does not occur.

8.0 No Further Action

- 8.1 Request for No Further Action Determination

8.1.1 After all RAWP goals have been achieved, the Owner and Operator shall submit a written request to the Department for site closure. Closure documentation shall include but is not limited to the following:

8.1.1.1 A demonstration that the site does not threaten human health, safety and the environment based on current land use of the site and surrounding area; and

8.1.1.2 NAPL does not exist or has been addressed in accordance with PART E, subsection 4.3; and

8.1.1.3 Contaminant levels have been reduced to levels at or below the cleanup goals approved by the Department.

8.1.2 Owners and Operators shall submit all documents, permits, certificates, approvals, etc. relating to the transportation of impacted environmental media and materials from the site including ASTs, soils, regulated substances, and water that has not been previously submitted to the Department. Documentation shall include tipping fees, waste receipts, bills of lading or any other documentation verifying that all waste has been properly disposed.

8.2 Department Response to a Request for No Further Action

8.2.1 The Department shall issue a letter requiring no further action (NFA) and documenting that site cleanup objectives have been met. The closure approval does not absolve the Owner and Operator from previously incurred or potential future liability.

8.2.2 The NFA letter applies to site conditions at the time that the closure request was made. If the risk posed by the site changes in the future, due to land use changes at the site or surrounding area or due to other reasons, the Owner and Operator shall perform additional remedial action as necessary to eliminate the risk to human health, safety and the environment.

8.2.3 Any person disturbing any residual contamination at the site by digging, boring, excavating, dewatering, or other means, shall submit a contaminated material management plan to the Department for approval prior to work commencing.

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

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