



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

AUG 19 1994

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

Dear State Fund Administrator:

During the State Fund Administrators' Conference in Whitefish, Montana in June, several Fund Administrators expressed concern that owners/operators in their States were having difficulty obtaining coverage for the deductible amounts not covered by their assurance funds. These Administrators were concerned that existing mechanisms, especially private pollution liability insurance, may not be available or affordable.

In addition to using any of the mechanisms already allowed in the federal financial responsibility rule, tank owners can use state-developed mechanisms to cover the deductible amounts. States are allowed to develop alternative compliance mechanisms under Section 280.100 of the rule.

We know of at least two states that have used this flexibility to create financial tests of self-insurance that owners/operators can use to cover the deductible amount not covered by their state funds. These tests allow tank owners to demonstrate full compliance without any additional financial burden. In responding to State inquiries, EPA has said that since deductible amounts are usually relatively small, a financial test of self-insurance for the deductible amount did not have to have the same level of financial coverage as required in the financial test for complying with the full \$1 million requirement. We have also said that as long as the state-developed test required a minimum one-for-one coverage (e.g., \$1 in net worth for every \$1 to be covered), that test will be approved by EPA.

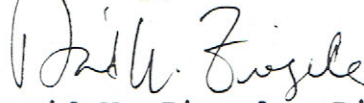
Both Alabama and Tennessee have created financial tests of self-insurance that allow tank owners to cover the deductible amount. The Alabama test requires a dollar-for-dollar coverage, while Tennessee's self-test varies the financial requirements based on the number of tanks owned. A copy of the Tennessee test is enclosed for your information.



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If you are interested in developing an alternative mechanism to meet the needs of your tank owners, we will be happy to discuss this with you. Please contact your Regional Program Manager or call Sammy Ng at (703) 308-8882.

Sincerely,



David W. Ziegele, Director  
Office of Underground Storage Tanks

Enclosure

cc: UST/LUST Regional Program Managers (w/enclosure)  
UST/LUST Regional Branch Chiefs  
State UST/LUST Program Managers (w/enclosure)

(Rule 1200—1—15—.08, continued)

- (b) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

(6) Financial Test of Self-Insurance

- (a) An owner or operator, and/or guarantor, may satisfy the requirements of rule 1200—1—15—.08(4) by passing a financial test as specified in this paragraph. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of subparagraph (b) or (c) of this paragraph based on year-end financial statements for the latest completed fiscal year or financial reporting year. If an owner or operator has in effect more than one financial test for self-insurance at any one time to assure financial responsibility, the owner or operator must have a tangible net worth and/or a net working capital of at least (X) times the sum of the total amounts for which this financial test is used, where (X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used. Table 2 shall be used in both subparagraphs (b) and (c) in determining the tangible net worth and/or net working capital which an owner or operator and/or guarantor must demonstrate in order to self-insure for corrective action and/or third party liability based on the number of tanks for which this financial test is used.

Table 2

Number of Tanks Owned	Corrective Action Per Occurrence Amount	Third Party Compensation Per Occurrence Amount	Total Per Occurrence Amount	Annual Aggregate Amount	Self Insurance Amount
1-12*	\$10,000	\$10,000	\$20,000	\$20,000	\$20,000*
1-12	\$10,000	\$10,000	\$20,000	\$20,000	\$30,000
13-999	\$20,000	\$37,500	\$57,500	\$77,500	\$117,500
1000+	\$50,000	\$225,000	\$275,000	\$375,000	\$525,000

\* This applies when either all tanks and associated piping are new, upgraded, a combination of new and upgraded, or are located at only one facility.

(Rule 1200—1—15—.08, continued)

- (b) If the owner or operator, and/or guarantor desires to self-insure and does not choose to meet the requirements of (6)(c), the owner or operator and/or guarantor must meet the requirements of this subparagraph.
1. The owner or operator, and/or guarantor, must have a tangible net worth of at least (X) times the sum of (i), (ii) and (iii). (X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used.
    - (i) The owner or operator may self-insure for all or part of the Annual Aggregate Amount specified in rule 1200—1—15—.08(4)(b) based on the number of underground storage tanks for which this financial test is used to demonstrate financial responsibility.
    - (ii) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Parts 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and
    - (iii) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Part 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.
  2. The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in subparagraph (d).
  3. The owner or operator, and/or guarantor, must either:
    - (i) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or
    - (ii) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.
  4. The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- (c) If the owner or operator, and/or guarantor desires to self-insure and does not choose to meet the requirements of 6(b), the owner or operator and/or guarantor must meet the requirements of this subparagraph.
1. The owner or operator, and/or guarantor must meet the financial test requirements of subpart (i) or (ii) of this part.
    - (i) The owner or operator must have:
      - (I) Net working capital and tangible net worth each at least (X) times the amount of liability coverage to be demonstrated by this test, where (X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used; and
      - (II) Tangible net worth at least (X) times the amount of liability coverage to be demonstrated by this test, where (X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used; and

(Rule 1200—1—15—.08, continued)

- A. At least 90 percent of his total assets; or
  - B. At least (X) times the amount of liability coverage to be demonstrated by this test, where (X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used; and
- (ii) The owner or operator must have:
- (I) A current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and
  - (II) Tangible net worth at least (X) times the amount of liability coverage to be demonstrated by this test, where (X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used; and
  - (III) Assets in the United States amounting to either:
    - A. At least 90 percent of his total assets; or
    - B. At least (X) times the amount of liability coverage to be demonstrated by this test, where (X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used;
2. The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.
  3. The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
  4. The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in subparagraph (d).
  5. If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:
    - (i) He has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and
    - (ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(Rule 1200—1—15—.08, continued)

- (d) To demonstrate that it meets the financial test under subparagraph (b) or (c), the chief financial officer of the owner or operator, and/or guarantor, must sign, within 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 exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

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

Underground storage tanks at the following facilities are assured by this financial test or a financial test under an authorized state program by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, the number of tanks at each facility, and the facility identification number(s). 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 rule 1200—1—15—.02(3).

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

Amount EPA Regulation:

Closure (264.143 and 265.143) .....	\$ _____
Post-Closure Care (264.145 and 265.145) .....	\$ _____
Liability Coverage (264.147 and 265.147) .....	\$ _____
Corrective Action (264.101(b)) .....	\$ _____
Plugging and Abandonment (144.63) .....	\$ _____

or

Amount Authorized State Programs:

Closure (Rule 1200—1—11—.06(8)(d) and rule 1200—1—11—.05(8)(d)) .....	\$ _____
Post-Closure Care (Rule 1200—1—11—.06(8)(f) and rule 1200—1—11—.05(8)(f)) .....	\$ _____
Liability Coverage (Rule 1200—1—11—.06(8)(n) and rule 1200—1—11—.05(8)(n)) .....	\$ _____
Corrective Action (Rule 1200—1—11—.06(1)2.) .....	\$ _____
Plugging and Abandonment (Rule 1200—4—6—.09(6)) .....	\$ _____

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

(Rule 1200-1-15-.08, continued)

[Fill in the information for Alternative I if the criteria of subparagraph (b) of rule 1200-1-15-.08(6) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of subparagraph (c) of rule 1200-1-15-.08(6) are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

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

(Rule 1200—1—15—.08, continued)

ALTERNATIVE II

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

(X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used.

- (9) Are at least 90 percent of assets located in the U.S.? [If "No," complete line 10.] \_\_\_\_\_

- (10) Is line 7 at least (X) times line 3? ..... \_\_\_\_\_

(X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used.

[Fill in either lines 11-14 or lines 15-17:]

- (11) Current assets .....\$ \_\_\_\_\_
- (12) Current liabilities .....\$ \_\_\_\_\_
- (13) Net working capital [subtract line 12 from line 11] .....\$ \_\_\_\_\_



UNDERGROUND STORAGE TANK PROGRAM

CHAPTER 1200—1—15

(Rule 1200—1—15—.08, continued)

Yes No

(14) Is line 13 at least (X) times line 3? .....

(X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used.

(15) Current bond rating of most recent bond issue.....

(16) Name of rating service.....

(17) Date of maturity of bond .....

(18) Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration? .....

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

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

I hereby certify that the wording of this letter is identical to the wording specified in rule 1200—1—15—.08(6)(d) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

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

(f) The Commissioner may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the Commissioner finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of rule 1200—1—15—.08(6)(b) or (c) and (d), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

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

(7) Guarantee

(a) An owner or operator may satisfy the requirements of rule 1200—1—15—.08(4) by obtaining a guarantee that conforms to the requirements of this paragraph. The guarantor must be: