



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

**Underground Storage Tank Regulations  
Chapter 173-360A WAC:  
Part 10 – Financial Responsibility**

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*Preliminary Draft for Stakeholder Review*

July 10, 2017

**For more information about the preliminary draft of the Underground Storage Tank rule:**

Visit Ecology's Underground Storage Tank Rulemaking Public Involvement webpage at

<http://www.ecy.wa.gov/programs/tcp/regs/wac173360/1602inv.html>.

**Contact information:**

Kristopher Grinnell

Department of Ecology

P.O. Box 47600, Olympia, WA 98504-7600

360-407-7382

[UStRule@ecy.wa.gov](mailto:UStRule@ecy.wa.gov)

**Comment period ends August 18, 2017:**

Submit your comments on this preliminary draft rule by **August 18, 2017**, using Ecology's

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\*LG = local government

**WAC 173-360A-1000 Applicability**

- (1) ~~WAC 173-360-400 through 173-360-499~~This Part applies to owners and operators of all ~~petroleum underground storage tank (UST) systems~~UST systems except as otherwise provided in this section.<sup>1</sup>
- ~~(2)~~(4) ~~The requirements of WAC 173-360-400 through 173-360-499 do not apply to owners and operators of any UST system described in WAC 173-360-110(2) or (3).~~This Part does not apply to owners and operators of any exempt UST system described in WAC 173-360A-110(1) or any partially exempt UST system described in WAC 173-360A-110(2)(a)(i) through (iii). This Part does apply to aboveground storage tanks associated with airport hydrant fuel distribution systems and UST systems with field-constructed tanks, as described in WAC 173-360A-110(2)(a)(iv).<sup>2</sup>
- ~~(2)~~ Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the date for compliance established in ~~WAC 173-360-403~~.<sup>3</sup>
- (3) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of ~~WAC 173-360-400 through 173-360-499~~this Part.
- ~~(4)~~(5) If the owner and operator of ~~a petroleum underground storage tank~~an UST system are separate persons, only one 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 at a particular facility is determined by the characteristics of the owner as set forth in WAC 173-360-403.~~

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<sup>1</sup> Changed applicability of financial responsibility requirements to include hazardous substance UST systems, consistent with legislative direction in authorizing state statute in RCW 90.76.020(1)(g). All such systems already have qualifying financial assurances.

<sup>2</sup> Consistent with §280.90(d) of the federal rule, changed applicability of financial responsibility requirements to include aboveground storage tanks associated with airport hydrant fuel distribution systems and UST systems with field-constructed tanks.

<sup>3</sup> Eliminated compliance dates for existing UST systems, consistent with changes in §§280.90(b) and 280.91 of the federal rule. Compliance dates for previously deferred UST systems are specified in WAC 173-360A-110(3).

~~WAC 173-360-403—Compliance dates.~~<sup>4</sup>

~~Owners of petroleum underground storage tanks are required to comply with the requirements of WAC 173-360-400 through 173-360-499 by the following dates:~~

- ~~(1) — All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of twenty million dollars or more to the United States Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration; January 24, 1989, except that compliance with WAC 173-360-410(2) is required by July 24, 1989.~~
- ~~(2) — All petroleum marketing firms owning 100-999 USTs; October 26, 1989.~~
- ~~(3) — All petroleum marketing firms owning a combined total of 13-99 USTs which are located at more than one facility; April 26, 1991.~~
- ~~(4) — All petroleum UST owners not described in subsections (1), (2), or (3) of this section, including all local government entities; the same as the requirements and deadlines adopted under 40 C.F.R. 280.91.~~

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<sup>4</sup> Eliminated compliance dates for existing UST systems, consistent with changes in §§280.90(b) and 280.91 of the federal rule. Compliance dates for previously deferred UST systems are specified in WAC 173-360A-110(3).



WAC 173-360A-1005 Definition of terms<sup>5</sup>

For the purposes of this part, the following definitions shall apply unless the context clearly indicates otherwise.

- (1) "Accidental release" means any sudden or non-sudden release of ~~petroleum~~regulated substances arising from operating an underground storage tank that results in a need for ~~corrective~~remedial action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.<sup>6</sup>
- (2) "Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.
- (3) "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.<sup>7</sup>
- (4) "Controlling interest" means direct ownership of at least fifty percent of the voting stock of another entity.
- (5) "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) ~~Aa~~ 10-K report submitted to the SEC; (b) an annual report of tangible net worth submitted to Dun and Bradstreet; or (c) annual reports submitted to the Energy Information Administration or the ~~Rural Electrification Administration~~Rural Utilities Service. "Financial reporting year" may thus comprise a fiscal or a calendar year period.
- (6) "Legal defense cost" ~~is~~means any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought: (a) By the United States Environmental Protection Agency (EPA) or a state to require ~~corrective~~remedial action or to recover the costs of ~~corrective~~remedial action; (b) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (c) by any person to enforce the terms of a financial assurance mechanism.
- (7) "Local government" shall have the meaning given this term by applicable state law and includes Indian tribes. The term is generally intended to include: (1) 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 (2) Special districts and independent

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<sup>5</sup> Consistent with §280.92 of the federal rule, moved definitions of terms used only in Part 10 (financial responsibility) from the general definition section in WAC 173-360A-150.

<sup>6</sup> Consistent with §280.92 of the federal rule, changed definition of "accidental release" to clarify that owners and operators are required to have financial responsibility for releases arising from the operating USTs (including releases due to filling USTs and releases occurring at dispensers).

<sup>7</sup> Consistent with §280.92 of the federal rule, added definition of term "chief financial officer" to implement the local government financial assurance options also added from the federal rule.

school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.<sup>8</sup>

- (8) **"Occurrence"** means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank. ~~Note:~~ This definition is intended to assist in the understanding of ~~WAC 173-360-400 through 173-360-499~~ this Part and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."
- (9) **"Owner or operator,"** means, for the purposes of ~~WAC 173-360-400 through 173-360-499~~ this Part, when the owner or operator are separate parties, the party that is responsible for obtaining or has obtained financial assurances.
- (10) **"Petroleum marketing facilities"** ~~include~~ means all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.
- ~~(1) **"Petroleum marketing firms"** are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.<sup>9</sup>~~
- (11) **"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~~ remedial action associated with releases from underground storage tanks which are covered by the policy.
- (12) **"Provider of financial assurance"** means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in WAC 173-360A-~~413~~ 1060 through 173-360A-~~436~~ 1073, including a guarantor, insurer, risk retention group, surety, or issuer of a letter of credit, ~~issuer of a state required mechanism, or a state.~~
- (13) **"Substantial business relationship"** means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.
- (14) **"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 underground

<sup>8</sup> Consistent with §280.92 of the federal rule, added definition of term "local government" to implement the local government options also added from the federal rule.

<sup>9</sup> Consistent with §280.92 of the federal rule, eliminated definition of term "petroleum marketing firms." The term, which was used to set compliance dates for existing UST systems, is no longer used in the rule.

storage tank release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.<sup>10</sup>

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

**(16) "Termination"** under WAC 173-360A-~~476~~1082 and 173-360A-~~480~~1083 means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

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<sup>10</sup> Consistent with §280.92 of the federal rule, added definition of term "substantial government relationship" to implement the local government options also added from the federal rule.

**WAC 173-360A-1010 Period of financial responsibility<sup>11</sup>**

~~An owner or operator is no longer required to maintain financial responsibility under WAC 173-360-400 through 173-360-499 for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by WAC 173-360-380 through 173-360-398.~~

**(1) General requirement.** Except as provided in subsection (2) of this section, an owner or operator shall continuously demonstrate financial responsibility for an UST system from the date of its installation until the date of its permanent closure or change-in-service.

**(2) Suspension during temporary closure.** An owner or operator is not required to demonstrate financial responsibility for an UST system while it is temporarily closed if:

(a) The UST system is emptied in accordance with WAC 173-360A-800(2); and

(b) After the UST system is emptied, a site assessment around the UST system is completed and reported in accordance with WAC 173-360A-730.

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<sup>11</sup> Consistent with §280.113 of the federal rule, specified that financial responsibility must be maintained until the UST system is permanently closed or undergoes a change-in-service. However, unlike the federal rule:

- Specified that financial responsibility does not need to be maintained during temporary closure if the UST system is emptied and a site assessment is completed after the system is emptied.
- Specified that financial responsibility does not need to be maintained after permanent closure or change-in-service until any releases from the UST system are cleaned up.

WAC 173-360A-1015 Scope and amount of financial responsibility

(1) Scope. Owners or operators shall demonstrate financial responsibility for taking remedial action<sup>12</sup> and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks.

(2) Amount.

(a)(1) Per occurrence amounts. Owners or operators of ~~petroleum~~ underground storage tanks shall demonstrate financial responsibility ~~for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks~~ for the costs specified in subsection (1) of this section in at least the following per-occurrence amounts:

(i)(a) For owners or operators of ~~petroleum~~ underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than ten thousand gallons of ~~petroleum~~ regulated substances per month based on annual throughput for the previous calendar year; ~~one million dollars; and~~

(ii)(b) For all other owners or operators of ~~petroleum~~ underground storage tanks; ~~five hundred thousand dollars.~~

(b)(2) Annual aggregate amounts. Owners or operators of ~~petroleum~~ underground storage tanks shall demonstrate financial responsibility ~~for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks~~ for the costs specified in subsection (1) of this section in at least the following annual aggregate amounts:

(i)(a) For owners or operators of 1 to 100 ~~petroleum~~ underground storage tanks, one million dollars; and

(ii)(b) For owners or operators of 101 or more ~~petroleum~~ underground storage tanks, two million dollars.

(c) Use of separate mechanisms for different costs. Except as provided in (d) of this subsection, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for the following, then the amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in (a) and (b) of this subsection:

(i) Taking remedial action;

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<sup>12</sup> Replaced federal term “corrective action” with state term “remedial action” to make usage consistent with the state cleanup rules in Chapter 173-340 WAC, which governs the cleanup of releases from UST systems. Made change throughout the rule.

(ii) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

(iii) Compensating third parties for bodily injury and property damage caused by non-sudden accidental releases.<sup>13</sup>

**(d)** Use of separate mechanisms for different tanks. If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different underground storage tanks, the annual aggregate amount required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.<sup>14</sup>

**(e)(4)** Review of aggregate amounts. Owners or operators shall review the amount of aggregate assurance provided whenever additional ~~petroleum~~ underground storage tanks are acquired or installed. If the number of ~~petroleum~~ underground storage tanks for which assurance must be provided exceeds one hundred, the owner or operator shall demonstrate financial responsibility in the amount of at least two million dollars of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least two million dollars of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

**(f)(5)** Amounts exclude legal costs. The amounts of assurance required under this section exclude legal defense costs.

**(g)(3)** For the purposes of ~~subsections (2) and (4) of this section~~ (b) and (e) of this subsection only, "a ~~petroleum~~ an underground storage tank" means a single containment unit and does not mean combinations of single containment units.

**(3)(6)** Liability of owner or operator. The scope and amount of required financial responsibility specified in subsections (1) and (2) of this section does not ~~The required per-occurrence and annual aggregate coverage amounts do not~~ in any way limit the liability of the owner or operator.

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<sup>13</sup> Subsection (2)(c) was moved from former Section 410 (now Section 1020) to ensure compliance with those requirements when Section 1015 is referenced elsewhere in this Part.

<sup>14</sup> Subsection (2)(d) was moved from former Section 410 (now Section 1020) to ensure compliance with those requirements when Section 1015 is referenced elsewhere in this Part.

**WAC 173-360A-1020 Allowable mechanisms and combinations of mechanisms**

- (1) **For all owners or operators.** Subject to the limitations of subsections ~~(2) and~~ (3) of this section, an owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in WAC 173-360A-~~413~~1060 through 173-360A-~~436~~1066 to demonstrate financial responsibility under ~~WAC 173-360-400 through 173-360-499~~this Part for one or more underground storage tanks.
- (2) **For only local governments owners or operators.** Subject to the limitation of subsection (3) of this section, a local government owner or operator may also use any one or combination of the mechanisms listed in WAC 173-360A-1070 through 173-360A-1073 to demonstrate financial responsibility under this Part for one or more underground storage tanks.<sup>15</sup>
- ~~(2) — An owner or operator may use a guarantee or surety bond to establish financial responsibility under WAC 173-360-400 through 173-360-499.~~<sup>16</sup>
- (3) **Limitation on combining self-insurance and guarantee.** 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.
- ~~(4) — Except as provided in subsection (5) of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:~~
- ~~(a) — Taking corrective action;~~
  - ~~(b) — Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or~~
  - ~~(c) — Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in WAC 173-360-406 (1) and (2).~~
- ~~(5) — If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.~~<sup>17</sup>

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<sup>15</sup> Consistent with the federal rule, include §280.94(a)(3), added local government options as allowable financial assurance mechanisms for local governments. Incorporated applicable requirements and boilerplates from the federal rule throughout this Part of the rule.

<sup>16</sup> Former subsection (2) of this section was eliminated as duplicative of subsection (1) of this section. The federal rule placed limitations on when states could use these mechanisms. The state met those obligations. See §280.94(b) of the federal rule.

<sup>17</sup> Subsections (4) and (5) of this section were moved to Section 1015. They were moved to ensure compliance with the requirements when Section 1015 is referenced elsewhere in this Part.

**WAC 173-360A-1025 Substitution of mechanisms by owners or operators**

- (1) **Authority.** An owner or operator may substitute any alternate financial assurance mechanisms as specified in ~~WAC 173-360-400 through 173-360-499~~ this Part, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of WAC 173-360A-~~406~~1015.
- (2) **Cancellation.** After obtaining alternate financial assurance as specified in ~~WAC 173-360-400 through 173-360-499~~ this Part, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance in accordance with requirements for cancellation set forth for the specific mechanism in WAC 173-360A-~~470~~1060 through 173-360A-~~490~~1073.



WAC 173-360A-1030 Termination of mechanisms by providers

(1) **Authority.** Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(2) **Date of termination.**

(a) **Guarantee, surety bond, or letter of credit.** Termination of a local government guarantee,<sup>18</sup> a guarantee, a surety bond, or a letter of credit may not occur until one hundred twenty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) **Insurance or risk retention group coverage.** Termination of insurance or risk retention group coverage, except for nonpayment or misrepresentation by the insured, ~~or state-funded assurance~~ may not occur until sixty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of ten days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

~~(3)~~ **Obtaining alternate coverage.**

(a) **If provider incapacitated.** If a provider of financial assurance cancels or fails to renew for reasons of incapacity of the provider, then the owner or operator shall obtain alternate coverage as specified in WAC 173-360A-1035.<sup>19</sup>

(b) **If provider not incapacitated.** If a provider of financial ~~responsibility~~ assurance cancels or fails to renew for reasons other than incapacity of the provider ~~as specified in WAC 173-360-446~~, then the owner or operator shall obtain alternate coverage as specified in this section within sixty days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within sixty days after receipt of the notice of termination, then by that date the owner or operator shall notify the ~~director~~ department<sup>20</sup> of ~~such~~ the failure and submit:

~~(i)~~ **(a)** The name and address of the provider of financial assurance;

~~(ii)~~ **(b)** The effective date of termination; and

~~(iii)~~ **(c)** The evidence of the financial assurance mechanism subject to the termination maintained in accordance with WAC 173-360A-~~450(2)~~ 1040(2).

<sup>18</sup> Consistent with §280.109(a)(1) of the federal rule, added local government guarantee to the types of mechanisms that cannot be terminated until 120 days after receipt of notice of termination.

<sup>19</sup> Added cross-reference to requirements governing finding alternative coverage when financial assurance provider cancels or fails to renew for reasons of incapacity.

<sup>20</sup> Replaced the term "director" with the term "department" throughout this Part of the rule.

**WAC 173-360A-1035 Responsibilities upon bankruptcy or other incapacity of owner or operator or provider of financial assurance**

- (1) **Notifying department upon bankruptcy of owners or operators.** Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the ~~director~~ department by certified mail of such commencement and submit the ~~appropriate forms listed in WAC 173-360-450(2) documenting current financial responsibility~~ evidence of financial responsibility specified in WAC 173-360A-1040(2).
- (2) **Notifying owners or operators upon bankruptcy of guarantor.** Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in WAC 173-360A-~~416~~1061.
- (3) **Notifying department upon bankruptcy of local government owner or operator.** Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the department by certified mail of such commencement and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).<sup>21</sup>
- (4) **Notifying owners or operators upon bankruptcy of guarantor providing local government assurance.** Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in WAC 173-360A-1072.<sup>22</sup>
- ~~(3)~~(5) **Obtaining alternate financial assurance upon bankruptcy or incapacity of provider.** An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit. The owner or operator shall obtain alternate financial assurance as specified in ~~WAC 173-360-400 through 173-360-499~~ this Part within thirty days after receiving notice of such an event. If the owner or operator ~~does not~~ fails to obtain alternate coverage within thirty days after such notification, ~~he~~ then by that

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<sup>21</sup> Consistent with §280.114(c) of the federal rule, added requirements governing responsibility of local government owner or operator upon bankruptcy.

<sup>22</sup> Consistent with §280.114(d) of the federal rule, added requirements governing responsibilities of guarantor providing local government assurance upon bankruptcy.

date the owner or operator shall notify the ~~director~~ department of the failure and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).<sup>23</sup>

~~(4) Within thirty days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator shall obtain alternate financial assurance.~~<sup>24</sup>

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<sup>23</sup> Clarified that owner or operator must both notify the department and submit evidence of financial responsibility if fail to obtain alternative coverage within thirty days of being notified of bankruptcy or incapacity of provider, consistent with reporting requirements in WAC 173-360A-1045.

<sup>24</sup> Eliminated requirement to obtain alternative financial assurance following notice of insolvency of state fund since there is no such option.

**WAC 173-360A-1040 Recordkeeping by owners and operators**

- (1) **Requirement to maintain evidence.** Owners or operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under ~~WAC 173-360-400 through 173-360-499~~this Part for an underground storage tank until released from the requirements of ~~WAC 173-360-400 through 173-360-499~~this Part under 173-360A-~~456~~1010. ~~An owner or operator shall maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained offsite.~~ Owners or operators shall make records~~be made~~ available upon request ~~of~~by the department ~~or delegated agency~~.<sup>25</sup>
- (2) **Types of evidence required.** An owner or operator shall maintain the following types of evidence of financial responsibility:<sup>26</sup>
- (a)~~(f)~~ **Certification of financial responsibility.** An owner or operator using an assurance mechanism specified in WAC 173-360A-~~413~~1060 through 173-360A-~~433~~1073 shall maintain an updated copy of a certification of financial responsibility worded as set forth in WAC 173-360A-~~496~~1096, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. The owner or operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).
- (b)~~(a)~~ **Assurance mechanism instrument.** An owner or operator using an assurance mechanism specified in WAC 173-360A-~~413~~1060 through 173-360A-~~433~~1065 or WAC 173-360A-1070 through 173-360A-1073 shall maintain a copy of the instrument worded as specified.
- (c)~~(b)~~ An owner or operator using a financial test or guarantee shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence shall be on file no later than one hundred twenty days after the close of the financial reporting year.
- (d) An owner or operator using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.
- (e)~~(e)~~ An owner or operator using a guarantee, surety bond, or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

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<sup>25</sup> Eliminated requirement that specifies where financial responsibility records must be maintained. Records must still be made available upon request by the department.

<sup>26</sup> Consistent with §280.111(b) of the federal rule, specified recordkeeping requirements for local government options.

- (f) A local government owner or operator using the local government bond rating test under WAC 173-360A-1070 shall maintain a copy of its bond rating published within the last twelve months by Moody's or Standard and Poor's.
- (g) A local government owner or operator using the local government financial test under WAC 173-360A-1071 or the local government guarantee under WAC 173-360A-1072 supported by the local government financial test shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence shall be on file no later than one hundred twenty days after the close of the financial reporting year.
- (h) A local government owner or operator using the local government guarantee under WAC 173-360A-1072 supported by the local government bond rating test under WAC 173-360A-1070 shall maintain a copy of the guarantor's bond rating published within the last twelve months by Moody's or Standard and Poor's.
- (i) A local government owner or operator using the local government guarantee under WAC 173-360A-1072(4)(a) shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
- (j) An owner or operator using a local government fund under WAC 173-360A-1073 shall maintain the following documents:

  - (i) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund; and
  - (ii) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under WAC 173-360A-1073(3)(c) using incremental funding backed by bonding authority, then the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.
- (k) An owner or operator using a local government fund established under WAC 173-360A-1073(3)(c) using incremental funding backed by bonding authority shall also maintain documentation of the required bonding authority, including either:

  - (i) The results of a voter referendum under WAC 173-360A-1073(3)(c)(i); or
  - (ii) Attestation by the State Attorney General as specified under WAC 173-360A-1073(3)(c)(ii).
- ~~(e) An owner or operator covered by a financial assurance program shall maintain on file a copy of any evidence of coverage supplied by or required by the state.<sup>27</sup>~~

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<sup>27</sup> Eliminated recordkeeping requirements for state fund option since there is no such option.

**WAC 173-360A-1045 Reporting by owners and operators**

- ~~(1) An owner or operator shall submit the appropriate forms listed in WAC 173-360-450(2) documenting current evidence of financial responsibility to the director:~~
- ~~(a) Within thirty days after the owner or operator identifies a release from an underground storage tank required to be reported under WAC 173-360-372, 173-360-375 or 173-360-399;~~
  - ~~(b) If the owner or operator fails to obtain alternate coverage as required by WAC 173-360-400 through 173-360-499, within thirty days after the owner or operator receives notice of: (i) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor, (ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism, (iii) Failure of a guarantor to meet the requirements of the financial test, (iv) Other incapacity of a provider of financial assurance; or~~
  - ~~(c) As required by WAC 173-360-413(7) and 173-360-443(2).~~
- ~~(2) An owner or operator shall certify compliance with the financial responsibility requirements of WAC 173-360-400 through 173-360-499 as specified in the new tank notification form when notifying the appropriate state or local agency of the installation of a new underground storage tank under WAC 173-360-200.~~

**(1) Demonstration of financial responsibility.<sup>28</sup>**

- (a) Upon application for a license.** When applying for a license for an underground storage tank, the owner or operator must submit to the department of revenue a copy of the following to demonstrate financial responsibility for the underground storage tank:
  - (i) Certification of financial responsibility (WAC 173-360A-1096); and
  - (ii) If the financial assurance mechanisms used include insurance or risk retention group coverage, then the endorsement (WAC 173-360A-1082) or certificate of insurance (WAC 173-360A-1083).
- (b) Upon renewal or substitution of financial assurances.** Upon any change in the financial assurance mechanism(s) used to demonstrate financial responsibility, the owner or operator shall immediately submit to the department of revenue an updated copy of the following:
  - (i) Certification of financial responsibility (WAC 173-360A-1096); and

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<sup>28</sup> Updated financial responsibility certification requirements to make consistent with changes in licensing procedures based on changes in RCW 90.76.020(4) of the authorizing state statute. The owner or operator must provide proof of financial responsibility to the Department of Revenue (DOR) upon application for a license. DOR must also be notified of any substitution of financial assurances and any cancellation or termination of financial assurances. DOR will not renew licenses without current proof of financial responsibility.



- (A) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor;
  - (B) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;
  - (C) Failure of a guarantor to meet the requirements of WAC 173-360A-1061;
  - (D) Failure of a local government guarantor to meet the requirements of WAC 173-360A-1072;<sup>31</sup> or
  - (E) Other incapacity of a provider of financial assurance.
- (iv) Upon other termination by provider. If a provider cancels or fails to renew a financial assurance mechanism for reasons other than incapacity and the owner or operator fails to obtain alternate coverage within sixty days after receiving notice of termination by the provider, then by that date the owner or operator shall notify the department of the failure and submit the information required in WAC 173-360A-1030(3)(b).
- (3) Requests by department.** The ~~director~~ department may require an owner or operator to submit the evidence of financial ~~assurance as described~~ responsibility specified in WAC 173-360A-~~450(2)~~1040(2) or other information relevant to compliance with ~~WAC 173-360-400 through 173-360-499~~this Part at any time.

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<sup>31</sup> Added requirement that evidence of financial responsibility must be reported upon failure of local government guarantor to meet the requirements of the local government guarantee, consistent with the addition of the local government options.



WAC 173-360A-1050 Use of standby trusts<sup>32</sup>

(1) **Funding of trust.** Except as specified in WAC 173-360A-1055, ~~The director~~the department shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the ~~director~~department, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(a) The following conditions are satisfied:

- (i) The owner or operator fails to establish alternate financial assurance within sixty days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and
- (ii) The ~~director~~department determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the ~~director~~department pursuant to ~~WAC 173-360-360 through 173-360-375 or 173-360-399~~Part 7 of this chapter of a release from an underground storage tank covered by the mechanism; or

(b) The conditions of subsection (2)(a), (b)(i) or (ii) of this section are satisfied.

(2) **Drawing on trust.** The ~~director~~department may draw on a standby trust fund when:

(a) The ~~director~~department makes a final determination that a release has occurred and immediate or long-term ~~corrective~~remedial action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted ~~corrective~~remedial action as required under WAC 173-360A-~~399~~750; or

(b) The ~~director~~department has received either:

- (i) Certification from the owner or operator and the third- party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification shall be worded as set forth in WAC 173-360A-~~499~~1097, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; or
- (ii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under ~~WAC 173-360-400 through 173-360-499~~this Part and the ~~director~~department determines that the owner or operator has not satisfied the judgment.

(3) **Priority of payments.** If the ~~director~~department determines that the amount of ~~corrective~~remedial action costs and third-party liability claims eligible for payment under subsection (2) of this section may exceed the balance of the standby trust fund and the

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<sup>32</sup> This section combines former WAC 173-360-453, 173-360-463, and 173-360-436(3).

obligation of the provider of financial assurance, the first priority for payment shall be ~~corrective~~remedial action costs necessary to protect human health and the environment. The ~~director~~department shall pay third-party liability claims in the order in which the ~~director~~department receives certifications under subsection (2)(b)(i) of this section and valid court orders under subsection (2)(b)(ii) of this section.

**(4) Replenishment of mechanisms.**<sup>33</sup>

**(a)**~~(1)~~ **General.** If at any time after a standby trust is funded upon the instruction of the ~~director~~department with funds drawn from a guarantee, local government guarantee with standby trust,<sup>34</sup> letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, then the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

- ~~(i)~~~~(a)~~ Replenish the value of financial assurance to equal the full amount of coverage required under WAC 173-360A-1015(2), or
- ~~(ii)~~~~(b)~~ Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

~~(2)~~ ~~For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by WAC 173-360-406.~~<sup>35</sup>

**(b) Combination of mechanisms.** If a combination of mechanisms was used to provide the assurance funds which were drawn upon, ~~replenishment shall occur then the owner or operator shall take the actions required under (a)(i) or (ii) of this subsection~~ by the earliest anniversary date among the mechanisms.

**(5) Refunding of trust balance to providers.**<sup>36</sup> The ~~director~~department will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the ~~director~~department determines that no additional ~~corrective~~remedial action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

<sup>33</sup> Subsection (4) was moved from former WAC 173-360-463.

<sup>34</sup> Consistent with §280.115(a) of the federal rule, added local government guarantee with standby trust to provision governing replenishment.

<sup>35</sup> This provision was replaced by a change to subsection (4)(a)(i).

<sup>36</sup> Subsection (5) was moved from former WAC 173-360-436(3).

**WAC 173-360A-1055 Use of local government guarantees without standby trusts.**<sup>37</sup>

A governmental entity acting as guarantor without a standby trust under WAC 173-360A-1072(4)(c) or (d) shall make payments as directed by the department under the circumstances described in WAC 173-360A-1050(1) through (3).

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<sup>37</sup> Consistent with §280.112(d) of the federal rule, added requirement governing use of local government guarantees without standby trusts.

WAC 173-360A-1060 Mechanism – Financial test of self-insurance.

- (1) **Applicability of mechanism.** An owner or operator, and/or guarantor, may satisfy the requirements of WAC 173-360A-~~406~~1015 by passing a financial test as specified in this section.
- (2) **Financial test requirements.** To pass the financial test of self-insurance, the owner or operator, and/or guarantor shall meet the criteria of ~~subsection (2) or (3) of this section~~ (a) or (b) of this subsection based on year-end financial statements for the latest completed fiscal year.

~~(a)(2)~~ **First test.**

- ~~(i)(a)~~ The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:
- ~~(A)(i)~~ The total of the applicable aggregate amount required by WAC 173-360A-~~406~~1015, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department under this section;
- ~~(B)(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 agency under a state program authorized by EPA under Part 271; and
- ~~(C)(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 agency under a state program authorized by EPA under 40 CFR Part 145.

Note: Titles of the above-referenced CFR citations are as follows: Part 264.101 - Corrective Action for Solid Waste Management Units; Part 264.143 - Financial Assurance for Closure; Part 264.145 - Financial Assurance for Post-Closure Care; Part 265.143 - Financial Assurance for Closure; Part 265.145 - Financial Assurance for Post-Closure Care; Part 264.147 - Liability Requirements; Part 265.147 - Liability Requirements; Part 144.63 - Financial Assurance for Plugging and Abandonment; and Part 145 - State UIC Program Requirements.

- ~~(ii)(b)~~ The owner or operator, and/or guarantor, must have a tangible net worth of at least ten million dollars.
- ~~(iii)(c)~~ The owner or operator, and/or guarantor, shall have a letter signed by the chief financial officer as specified in subsection ~~(4)(3)~~ of this section and as set forth in WAC 173-360A-~~470~~1080.
- ~~(iv)(d)~~ The owner or operator, and/or guarantor, shall either:

- (A)(i) File financial statements annually with the United States Securities and Exchange Commission, the Energy Information Administration, or the ~~Rural Electrification Administration~~Rural Utilities Service; or
- (B)(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.

(v)(e) 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.

**(b)(3) Second test.**

- (i)(a) The owner or operator, and/or guarantor shall meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in WAC 173-360A-~~406(2)(a) and (b)~~1015(2)(b)(i) and (ii) for the "amount of liability coverage" each time specified in that section.
- (ii)(b) The fiscal year-end financial statements of the owner or operator, and/or guarantor, shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.
- (iii)(c) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- (iv)(d) The owner or operator, and/or guarantor, shall have a letter signed by the chief financial officer, worded as specified in subsection ~~(4)(3)~~ of this section and as set forth in WAC 173-360A-1080.
- (v)(e) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the United States Securities and Exchange Commission, the Energy Information Administration or the ~~Rural Electrification Administration~~Rural Utilities Service, the owner or operator, and/or guarantor, shall obtain a special report by an independent certified public accountant stating that:
  - (A)(i) He or she 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
  - (B)(ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

**(3)(4) Letter from chief financial officer.** To demonstrate that it meets the financial test under subsection ~~(2) or (3)~~(2)(a) or (b) of this section, the chief financial officer of the owner or operator, and/or guarantor, shall sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements

used to support the financial test are prepared, a letter worded exactly as set forth in WAC 173-360A-~~470~~1080, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

- (4)(5) Obtaining alternate coverage if fail test.** If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator shall obtain ~~alternative~~alternate coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.
- (5)(6) Requests by department and findings of failure.** The ~~director~~department may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the ~~director~~department 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 ~~WAC 173-360-413 (2) or (3) and (4)~~subsection (2)(a) or (b) and (3) of this section, the owner or operator shall obtain alternate coverage within thirty days after notification of such a finding.
- (6)(7) Notification of department if fail to obtain alternate coverage.** If the owner or operator fails to obtain alternate ~~assurance~~coverage within one hundred fifty 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 thirty days of notification by the ~~director~~department that he or she no longer meets the requirements of the financial test, then by that date the owner or operator shall notify the ~~director~~department of such failure and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2)~~within ten days~~.<sup>38</sup>

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<sup>38</sup> Clarified by when Ecology must be notified if the owner or operator fails to obtain alternate coverage after it is determined the owner or operator no longer meets requirements of financial test, consistent with requirements in WAC 173-360A-1045 (reporting of owners or operators).

**WAC 173-360A-1061 Mechanism – Guarantee.**

- (1) Applicability of mechanism.** An owner or operator may satisfy the requirements of WAC 173-360A-~~406~~1015 by obtaining a guarantee that conforms to the requirements of this section.
- (2) Eligibility of guarantor.** The guarantor shall be:

  - (a) A firm that:

    - (i) Possesses a controlling interest in the owner or operator;
    - (ii) Possesses a controlling interest in a firm described under (a)(i) of this subsection; or
    - (iii) Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or
  - (b) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.
- (3)~~(2)~~ Financial test of guarantor.** Within one hundred twenty days of the close of each financial reporting year the guarantor shall demonstrate that it meets the financial test criteria of WAC 173-360A-~~413~~1060 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in WAC 173-360-~~413(4)~~1060(3) and shall deliver the letter to the owner or operator.
- (4) Responsibilities upon failure of test.** If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within one hundred twenty days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the ~~director~~ department notifies the guarantor that ~~he~~the guarantor no longer meets the requirements of the financial test of WAC 173-360A-~~413(2) or (3) and (4)~~1060(2)(a) or (b) and (3), the guarantor shall notify the owner or operator within ten days of receiving such notification from the ~~director~~department. In both cases, the guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternate coverage as specified in WAC 173-360A-~~460(3)~~1035(5).
- (5)~~(3)~~ Content of guarantee.** The guarantee shall be worded as set forth is WAC 173-360A-~~473~~1081, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- (6)~~(4)~~ Standby trust.** An owner or operator who uses a guarantee to satisfy the requirements of WAC 173-360A-~~406~~1015 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the ~~director~~department under WAC 173-360A-~~453~~1050. This standby trust fund shall meet the requirements specified in WAC 173-360A-~~436~~1066.

**WAC 173-360A-1062 Mechanism – Insurance and risk retention group coverage.**

- (1) **Applicability of mechanism.** An owner or operator may satisfy the requirements of WAC 173-360A-~~406~~1015 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.
- (2)(3) **Eligibility of provider.** Each insurance policy 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.
- (3)(2) **Content of policy.** Each insurance policy shall be amended by an endorsement worded as specified in WAC 173-360A-~~476~~1082 or evidenced by a certificate of insurance worded as specified in WAC 173-360A-~~480~~1083, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.



**WAC 173-360A-1063 Mechanism – Surety bond.**

- (1) Applicability of mechanism.** An owner or operator may satisfy the requirements of WAC 173-360A-~~406~~1015 by obtaining a surety bond that conforms to the requirements of this section.
- (2) Eligibility of surety.** The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.
- (3)(2) Content of surety bond.** The surety bond shall be worded as set forth in WAC 173-360A-~~483~~1084, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.
- (4)(3) Liability of surety.** Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.
- (5)(4) Standby trust.** The owner or operator who uses a surety bond to satisfy the requirements of WAC 173-360A-~~406~~1015 shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the ~~director~~department under WAC 173-360A-~~453~~1050. This standby trust fund shall meet the requirements specified in WAC 173-360A-~~436~~1066.

**WAC 173-360A-1064 Mechanism – Letter of credit.**

- (1) **Applicability of mechanism.** An owner or operator may satisfy the requirements of WAC 173-360A-~~406~~1015 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section.
- (2) **Eligibility of issuing institution.** The issuing institution shall be an entity that has the authority to issue letters of credit in Washington state and whose letter-of-credit operations are regulated and examined by a federal or state agency.
- (3)~~(2)~~ **Content of letter of credit.** The letter of credit shall be worded as set forth in WAC 173-360A-~~486~~1085, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- (4) **Term of letter of credit.** The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit be automatically renewed for the same term as the original term, unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.
- (5)~~(3)~~ **Standby trust.** An owner or operator who uses a letter of credit to satisfy the requirements of WAC 173-360A-~~406~~1015 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 ~~director~~department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the ~~director~~department under WAC 173-360A-~~453~~1050. This standby trust fund shall meet the requirements specified in WAC 173-360A-~~436~~1066.

**WAC 173-360A-1065 Mechanism – Trust fund.**

- (1) Applicability of mechanism.** An owner or operator may satisfy the requirements of WAC 173-360A-~~406~~1015 by establishing a trust fund that conforms to the requirements of this section.
- (2) Eligibility of trustee.** The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.
- ~~(3)~~(2) Content of trust agreement.** The wording of the trust agreement shall be identical to the wording specified in WAC 173-360A-~~490~~1086, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- (4) Certification of acknowledgement.** The trust agreement~~and~~ shall be accompanied by a formal certification of acknowledgment worded as specified in WAC 173-360A-~~493~~1087, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- ~~(5)~~(3) Amount of required funding.** The trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.
- (6) Release of excess funds.**

  - (a) Requests.**

    - ~~(i)~~(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 to the ~~director~~department for release of the excess.
    - ~~(ii)~~(5) If other financial assurance as specified in ~~WAC 173-360-400 through 173-360-499~~this Part is substituted for all or part of the trust fund, the owner or operator may submit a written request to the ~~director~~department for release of the excess.
  - ~~(b)~~(6) Response by department.** Within sixty days after receiving a request from the owner or operator for release of funds as specified in ~~subsections (4) or (5) of this section~~(a)(i) or (ii) of this subsection, the ~~director~~department will instruct the trustee to release to the owner or operator such funds as the ~~director~~department specifies in writing.

**WAC 173-360A-1066 Mechanism – Standby trust fund.**

- (1) **Applicability of mechanism.** An owner or operator using any one of the mechanisms authorized by WAC 173-360A-~~416~~1061, 173-360A-~~423~~1063, or 173-360A-~~426~~1064 shall establish a standby trust fund when the mechanism is acquired.
- (2) **Eligibility of trustee.** The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.
- ~~(3)(2)(a)~~ **Content of trust agreement.** The standby trust agreement or trust agreement shall be worded as set forth in WAC 173-360A-~~490~~1086, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- ~~(4)(b)~~ **Certification of acknowledgement.** The standby trust agreement or trust agreement shall be accompanied by a formal certification of acknowledgment ~~similar to that set forth in WAC 173-360-493~~ worded as specified in WAC 173-360A-1087, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- ~~(3)~~ ~~The director will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the director determines that no additional corrective action costs or third party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.~~<sup>39</sup>
- ~~(5)(4)~~ **Use of trust as depository for multiple assurances.** An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

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<sup>39</sup> Former subsection (3) has been moved under WAC 173-360A-1050 (use of standby trusts).

**WAC 173-360A-1070 Mechanism – Local government bond rating test<sup>40</sup>**

- (1) Applicability of mechanism.** A local government owner or operator and/or local government serving as a guarantor may satisfy the requirements of WAC 173-360A-1015 by meeting the bond rating test requirements in subsection (2) of this section.
- (2) Bond rating test requirements.**
  - (a) General purpose local governments.** To pass the bond rating test, a general purpose local government owner or operator and/or local government must have a currently outstanding issue or issues of general obligation bonds of one million dollars or more, excluding refunded obligations, with a Moody’s rating of Aaa, Aa, A, or Baa, or a Standard & Poor’s rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government’s bonds are rated by both Moody’s and Standard and Poor’s, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.
  - (b) Non-general purpose local governments.** To pass the bond rating test, a local government owner or operator or local government that is not a general-purpose local government and does not have the legal authority to issue general obligation bonds must have a currently outstanding issue or issues of revenue bonds of one million dollars or more, excluding refunded issues, and by also having a Moody’s rating of Aaa, Aa, A, or Baa, or a Standard & Poor’s rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody’s and Standard & Poor’s, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.
- (3) Letter from chief financial officer.**
  - (a) General purpose local governments.** 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 sign a letter worded exactly as specified in WAC 173-360A-1088, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.
  - (b) Non-general purpose local governments.** To demonstrate that it meets the local government bond rating test, the chief financial officer of local government owner or operator and/or guarantor other than a general purpose government must sign a letter worded exactly as specified in WAC 173-360A-1089, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

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<sup>40</sup> Consistent with §280.104 of the federal rule, added local government bond rating test as a financial assurance mechanism.

- (4) Maintaining records of bond rating.** The local government owner or operator and/or guarantor must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.
- (5) Obtaining alternate coverage if fail test.** If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, then the local government owner or operator shall obtain alternate coverage within one hundred fifty days of the change in status.
- (6) Requests by department and findings of failure.** The department may require reports of financial condition at any time from the local government owner or operator, and/or local government guarantor. If the department finds, on the basis of such reports or other information, that the local government owner or operator, and/or guarantor, no longer meets the local government bond rating test requirements of this section, the local government owner or operator must obtain alternate coverage within thirty days after notification of such a finding.
- (7) Notification of department if fail to obtain alternate coverage.** If a local government owner or operator fails to obtain alternate coverage within one-hundred fifty days of finding that it no longer meets the requirements of the bond rating test or within thirty days of notification by the department that it no longer meets the requirements of the bond rating test, then by that date the owner or operator shall notify the department of such failure and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).<sup>41</sup>

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<sup>41</sup> Clarified by when Ecology must be notified if a local government owner or operator fails to obtain alternate coverage after it is determined the owner or operator no longer meets requirements of the bond rating test, consistent with requirements in WAC 173-360A-1045 (reporting of owners or operators).

**WAC 173-360A-1071 Mechanism – Local government financial test<sup>42</sup>**

- (1) Applicability of mechanism.** A local government owner or operator may satisfy the requirements of WAC 173-360A-1015 by passing the financial test specified in this section.
- (2) Eligibility requirements.** To be eligible to use the financial test, the local government owner or operator must have the ability and authority to assess and levy taxes or to freely establish fees and charges.
- (3) Financial test requirements.** To pass the local government financial test, the owner or operator must meet the following criteria based on year-end financial statements for the latest completed fiscal year:

  - (a)** The local government’s year-end financial statements, if independently audited, cannot include an adverse auditor’s opinion or a disclaimer of opinion;
  - (b)** The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade; and
  - (c)** The local government owner or operator must have a letter signed by the chief financial officer worded as specified in WAC 173-360A-1090.
- (4) Financial information requirements.** The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year:

  - (a) Total revenues,** consisting of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt;
  - (b) Total expenditures,** consisting of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds

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<sup>42</sup> Consistent with §280.105 of the federal rule, added local government financial test as a financial assurance mechanism.

under the direct control of the local government using the financial test (interfund transfers);

- (c)** Local revenues, consisting of total revenues (as defined in (a) of this subsection) minus the sum of all transfers from other governmental entities, including all monies received from Federal, state, or local government sources;
  - (d)** Debt service, consisting of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest bearing warrants. Excludes payments on non-interest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments;
  - (e)** Total funds, consisting of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Includes Federal securities, Federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets; and
  - (f)** Population, consisting of the number of people in the area served by the local government.
- (5)** Letter from chief financial officer. To demonstrate that it meets the financial test under subsection (3) of this section, the chief financial officer of the local government owner or operator, must sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as specified in WAC 173-360A-1090, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.
- (6)** Obtaining alternate coverage if fail test. If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternate coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.
- (7)** Requests by department and findings of failure. The department may require reports of financial condition at any time from the local government owner or operator. If the department finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of subsection (3) of this section, the owner or operator must obtain alternate coverage within thirty days after notification of such a finding.



**(8) Notification of department if fail to obtain alternate coverage.** If a local government owner or operator fails to obtain alternate coverage within one-hundred fifty days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within thirty days of notification by the department that it no longer meets the requirements of the financial test, then by that date the owner or operator shall notify the department of such failure and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).<sup>43</sup>

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<sup>43</sup> Clarified by when Ecology must be notified if a local government owner or operator fails to obtain alternate coverage after it is determined the owner or operator no longer meets requirements of the financial test, consistent with requirements in WAC 173-360A-1045 (reporting of owners or operators).

**WAC 173-360A-1072 Mechanism – Local government guarantee<sup>44</sup>**

- (1) Applicability of mechanism.** A local government owner or operator may satisfy the requirements of WAC 173-360A-1015 by obtaining a guarantee that conforms to the requirements of this section.
- (2) Eligibility of guarantor.** The guarantor must be either the state in which the local government owner or operator is located or a local government having a “substantial governmental relationship” with the owner and operator and issuing the guarantee as an act incident to that relationship.
- (3) Test of guarantor.** A local government acting as the guarantor shall:

  - (a)** Demonstrate that it meets the bond rating test requirements of WAC 173-360A-1070 and deliver a copy of the chief financial officer’s letter as required in WAC 173-360A-1070(3) to the local government owner or operator;
  - (b)** Demonstrate that it meets the financial test requirements of WAC 173-360A-1071 and deliver a copy of the chief financial officer’s letter as required in WAC 173-360A-1071(5) to the local government owner or operator; or
  - (c)** Demonstrate that it meets the local government fund requirements of WAC 173-360A-1073 and deliver a copy of the chief financial officer’s letter as required in WAC 173-360A-1073(4) to the local government owner or operator.
- (4) Content of guarantee.** The content of the guarantee depends on whether the guarantor is a state or a local government and whether the guarantor guarantees to fund a standby trust.

  - (a)** If the guarantor is a state and, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the department, then the guarantee must be worded as specified in WAC 173-360A-1091, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
  - (b)** If the guarantor is a local government and, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the department, then the guarantee must be worded as specified in WAC 173-360A-1092, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
  - (c)** If the guarantor is a state and, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the department for taking remedial action or compensating third parties for bodily injury and property damage, then the guarantee must be worded as specified in WAC 173-360A-1093, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

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<sup>44</sup> Consistent with §280.106 of the federal rule, added local government guarantee as a financial assurance mechanism.

- (d) If the guarantor is a local government and, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the department for taking remedial action or compensating third parties for bodily injury and property damage, then the guarantee must be worded as specified in WAC 173-360A-1094, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
- (5) Responsibilities upon failure of test.** If the local government guarantor is unable to demonstrate financial assurance under WAC 173-360A-1070, 173-360A-1071, or 173-360A-1073, at the end of the financial reporting year, then the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternate coverage as specified in WAC 173-360A-1035(5).

**WAC 173-360A-1073 Mechanism – Local government fund<sup>45</sup>**

- (1) Applicability of mechanism.** A local government owner or operator may satisfy the requirements of WAC 173-360A-1015 by establishing a dedicated fund account that conforms to the requirements of this section.
- (2) Restrictions on commingled funds.** Except as specified in subsection (3)(b) of this section, a dedicated fund may not be commingled with other funds or otherwise used in normal operations.
- (3) Local government fund requirements.** To be considered eligible, a dedicated fund must meet one of the following requirements:
  - (a)** The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking remedial action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks and is funded for the full amount of coverage required under WAC 173-360A-1015, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage;
  - (b)** The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking remedial action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks, and is funded for five times the full amount of coverage required under WAC 173-360A-1015, 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 WAC 173-360A-1015, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund; or
  - (c)** The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking remedial action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks. A payment must be made to the fund once every year for seven years until the fund is fully-funded. This seven year period is hereafter referred to as the “pay-in-period.” Equation 1073-1 must be used to determine the amount of each payment; and

<b><u>[Equation 1073-1]</u></b>
Payment amount = $\frac{TY - CF}{Y}$
<u>Where:</u>

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<sup>45</sup> Consistent with §280.107 of the federal rule, added local government fund as a financial assurance mechanism.

<p><u>TY = The total required financial assurance for the owner or operator</u></p> <p><u>CF = The current amount in the fund</u></p> <p><u>Y = Number of years remaining in the pay period</u></p>
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- (i) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking remedial action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks; or
- (ii) The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.

**(4) Letter from chief financial officer.** To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator and/or guarantor must sign a letter worded exactly as specified in WAC 173-360A-1095, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

**WAC 173-360A-1080 Appendix A – Letter from chief financial officer**

**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 remedial action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" ~~and/or~~ "non-sudden accidental releases" or "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 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, 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 WAC 173-360A-200.]

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:

<b>EPA Regulations</b>	<b>Amount</b>
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) .....	\$ _____
<b>Authorized State Programs</b>	<b>Amount</b>
Closure .....	\$ _____
Post-Closure Care.....	\$ _____
Liability Coverage .....	\$ _____
Plugging and Abandonment.....	\$ _____
<b>Total</b> .....	<b>\$ _____</b>

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.

[Fill in the information for Alternative I if the criteria of WAC 173-360A-~~413(2)~~1060(2)(a) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of WAC 173-360A-~~413(3)~~1060(2)(b) are being used to demonstrate compliance with the financial test requirements.]

**Alternative I**

**UST Regulations**  
**Preliminary Draft for Stakeholder Review**

**Part 10**

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.	Is line 6 at least \$10 million?	Yes ___	No ___
8.	Is line 6 at least 10 times line 3?	Yes ___	No ___
9.	Have financial statements for the latest fiscal year been filed with the 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 <del>Rural Electrification Administration</del> <u>Rural Utilities Service</u> ?	Yes ___	No ___
12.	Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met]	Yes ___	No ___

**Alternative II**

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	\$ _____	

**UST Regulations  
Preliminary Draft for Stakeholder Review**

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 ___
9.	Is line 6 at least 6 times line 3?	Yes ___ No ___
10.	Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11]	Yes ___ No ___
11.	Is line 7 at least 6 times line 3?	Yes ___ No ___
[Fill in either lines 12-15 or lines 16-18:]		
12.	Current assets	\$ _____
13.	Current liabilities	\$ _____
14.	Net working capital [subtract line 13 from line 12]	\$ _____
15.	Is line 14 at least 6 times line 3?	Yes ___ No ___
16.	Current bond rating of most recent bond issue	_____
17.	Name of rating service	_____
18.	Date of maturity of bond	_____
19.	Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the <del>Rural Electrification Administration</del> Rural Utilities Service? [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.]	Yes ___ No ___

[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 WAC 173-360A-~~470~~1080 as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]



WAC 173-360A-1081 Appendix B – Guarantee

**GUARANTEE**

Guarantee made this [date] by name of guaranteeing entity, a business entity organized under the laws of (name of state), herein referred to as gGuarantor, to the Washington ~~s~~State ~~d~~Department of eEcology and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

*Recitals*

1. Guarantor meets or exceeds the financial test criteria of WAC 173-360A-~~413(2) or (3) and (4)~~1060(2)(a) or (b) and (3) and agrees to comply with the requirements for guarantors as specified in WAC 173-360A-~~416(2)~~1061(3).
2. [Owner or operator] owns or operates the following underground storage tank(s) covered by this gGuarantee: [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 WAC 173-360A-200, and the name and address of the facility.] This gGuarantee satisfies ~~WAC 173-360-400 through 173-360-499 requirements~~the requirements of Part 10 of chapter 173-360A WAC for assuring funding for [insert: "Taking corrective remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.
3. [Insert appropriate phrase: "On behalf of our subsidiary" (if gGuarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if gGuarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if gGuarantor is providing the gGuarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], gGuarantor guarantees to the Washington ~~s~~State ~~d~~Department of eEcology and to any and all third parties that:
  - a. \_\_\_\_\_ In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this gGuarantee and ~~the director of the~~ Washington ~~s~~State ~~d~~Department of eEcology has determined or suspects that a release has occurred at an underground storage tank covered by this gGuarantee, the gGuarantor, upon instructions from the ~~director~~Department, shall fund a standby trust fund in accordance with the provisions of WAC 173-360A-~~453~~1050, in an amount not to exceed the coverage limits specified above.
  - b. \_\_\_\_\_ In the event that the ~~director~~Department determines that [owner or operator] has failed to perform corrective remedial action for releases arising out of the operation of the above-identified tank(s) in accordance with WAC 173-360A-~~399~~750, the gGuarantor, upon written instructions from the ~~director~~Department, shall fund a standby trust in

accordance with the provisions of WAC 173-360A-~~453~~1050, in an amount not to exceed the coverage limits specified above.

- c. \_\_\_\_\_ 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 "non-sudden"] 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 gGuarantor, upon written instructions from the ~~director~~Department, shall fund a standby trust in accordance with the provisions of WAC 173-360A-~~453~~1050 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 gGuarantor fails to meet the financial test criteria of WAC 173-360A-~~413 (2) or (3) and (4)~~1060(2)(a) or (b) and (3), gGuarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The gGuarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.
  5. Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming gGuarantor as debtor, within 10 days after commencement of the proceeding.
  6. Guarantor agrees to remain bound under this gGuarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 173-360A WAC.
  7. Guarantor agrees to remain bound under this gGuarantee for so long as [owner or operator] shall comply with the applicable financial responsibility requirements of ~~WAC 173-360-400 through 173-360-499~~Part 10 of chapter 173-360A WAC for the above-identified tank(s), except that gGuarantor may cancel this gGuarantee 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 gGuarantor's obligation does not apply to any of the following:
    - a. Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
    - b. Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
    - c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
    - d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from ~~a petroleum~~an underground storage tank;
    - e. Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other

than a contract or agreement entered into to meet the requirements of WAC 173-360A-  
~~406~~1015.

9. Guarantor expressly waives notice of acceptance of this gGuarantee by the Washington sState  
dDepartment of eEcology, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this gGuarantee is identical to the wording specified in WAC 173-  
360A-~~473~~1081 as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of gGuarantor]

[Authorized signature for gGuarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

WAC 173-360A-1082 Appendix C – Endorsement

**ENDORSEMENT**

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Period of Coverage: [current policy period]

Policy Retroactive Date:<sup>46</sup>

Name of [insurer or risk retention group]:

Address of [insurer or risk retention group]:

Name of insured:

Address of insured:

*Endorsement:*

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

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-200, and the name and address of the facility.]

for [insert: "taking corrective remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental release"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the insurer's or group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

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<sup>46</sup> Added "policy retroactive date" to information that must be included on endorsements to insurance policies.

- a. Bankruptcy or insolvency of the insured shall not relieve the ["iInsurer" or "gGroup"] of its obligations under the policy to which this endorsement is attached.
- b. The ["iInsurer" or "gGroup"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of ~~corrective~~ remedial action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["iInsurer" or "gGroup"]. 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 WAC 173-360A-~~413~~1060 through 173-360A-~~433~~1065 and 173-360A-1070 through 173-360A-1073.<sup>47</sup>
- c. Whenever requested by the ~~director of the~~ Washington sState dDepartment of eEcology, the ["iInsurer" or "gGroup"] agrees to furnish to the ~~director~~Department a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other termination of the insurance by the ["iInsurer" or "gGroup"], except for nonpayment 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 nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

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

I hereby certify that the wording of this instrument is identical to the wording in WAC 173-360A-~~476~~1082 and that the ["iInsurer" or "gGroup"] 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 aAuthorized fRepresentative of iInsurer or fRisk fRetention gGroup]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of iInsurer or fRisk fRetention gGroup]

[Address of fRepresentative]

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<sup>47</sup> Consistent with §280.97 of the federal rule, in boilerplate endorsement, added local government options as other available financial assurance options.

WAC 173-360A-1083 Appendix D – Certificate of insurance

**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]

Policy Retroactive Date:<sup>48</sup>

Name of [iInsurer or fRisk fRetention gGroup]:

Address of [iInsurer or fRisk fRetention gGroup]:

Name of iInsured:

Address of iInsured:

*Certification:*

1. [Name of iInsurer or fRisk fRetention gGroup], [the "iInsurer" or "gGroup"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-200, and the name and address of the facility]

for [insert: "Taking corrective remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non\_sudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the iInsurer's or gGroup's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["iInsurer" or "gGroup"] further certifies the following with respect to the insurance described in Paragraph 1:

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<sup>48</sup> Added "policy retroactive date" to information that must be included on certificate of insurance.

- a. Bankruptcy or insolvency of the insured shall not relieve the ["iInsurer" or "gGroup"] of its obligations under the policy to which this certificate applies.
- b. The ["iInsurer" or "gGroup"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of ~~corrective~~remedial action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["iInsurer" or "gGroup"]. 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 WAC 173-360A-~~413~~1060 through 173-360A-~~433~~1065 and 173-360A-1070 through 173-360A-1073.<sup>49</sup>
- c. Whenever requested by ~~the director of~~the Washington sState dDepartment of eEcology, the ["iInsurer" or "gGroup"] agrees to furnish the ~~director~~Department a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other termination of the insurance by the ["iInsurer" or "gGroup"], except for nonpayment 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 nonpayment 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 notice is received by the insured.

[Insert for claims-made policies:

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

I hereby certify that the wording of this instrument is identical to the wording in WAC 173-360A-~~480~~1083 and that the ["iInsurer" or "gGroup"] 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 aAuthorized rRepresentative of iInsurer]

[Type name]

[Title], Authorized Representative of [name of iInsurer or rRisk rRetention gGroup]

[Address of rRepresentative]

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<sup>49</sup> Consistent with §280.97 of the federal rule, in boilerplate certificate of insurance, added local government options as other available financial assurance options.

WAC 173-360A-1084 Appendix E – Performance bond

**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 ~~C~~coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-200, and the name and address of the facility.

List the coverage guaranteed by the bond: "Taking ~~corrective~~remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non\_sudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:

Per occurrence \$

Annual aggregate \$

Surety's bond number:

Know All Persons by These Presents, that we, the ~~p~~Principal and ~~s~~Surety(ies), hereto are firmly bound to the Washington ~~s~~State ~~d~~Department of ~~e~~Ecology, 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 ~~s~~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 ~~s~~Surety binds itself, jointly and severally with the ~~p~~Principal, for the payment of such sums only as is set forth opposite the name of such ~~s~~Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said ~~p~~Principal is required under ~~Subtitle I of the Resource Conservation and Recovery Act (RCRA)~~the Solid Waste Disposal Act, as amended, and chapter 90.76 RCW<sup>50</sup> to provide financial assurance for [insert: "Taking ~~corrective~~remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non\_sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

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

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<sup>50</sup> In boilerplate performance bond, added reference to state law, which also requires financial assurance.



Now, therefore, the conditions of the obligation are such that if the ~~p~~Principal shall faithfully ["take ~~corrective~~remedial action, in accordance with WAC 173-360A-~~399~~750 and ~~the director of the~~ Washington ~~s~~State ~~d~~Department of ~~e~~Ecology's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "~~sudden and nonsudden~~accidental releases"] ~~accidental releases~~ arising from operating the tank(s) identified above, or if the ~~p~~Principal shall provide alternate financial assurance, as specified in ~~WAC 173-360-400 through 173-360-499~~ Part 10 of chapter 173-360A WAC, within 120 days after the date the notice of cancellation is received by the ~~p~~Principal from the ~~s~~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:

- (1) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (2) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (3) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (4) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from ~~a petroleum~~ an underground storage tank;
- (5) 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 WAC 173-360A-~~406~~1015.

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

Upon notification by ~~the director of the~~ Washington ~~s~~State ~~d~~Department of ~~e~~Ecology that the ~~p~~Principal has failed to ["take ~~corrective~~remedial action, in accordance with WAC 173-360A-~~399~~750 and the ~~director~~Department's instructions" and/or "compensate injured third parties"] as guaranteed by this bond, the ~~s~~Surety(ies) shall either perform ["~~corrective~~remedial action in accordance with WAC 173-360A-~~399~~750 and the ~~director~~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 ~~director~~Department under WAC 173-360A-~~453~~1050.

Upon notification by the ~~director~~Department that the ~~p~~Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the ~~p~~Principal from the ~~s~~Surety(ies) and that the ~~director~~Department has determined or suspects that a release has occurred, the ~~s~~Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the ~~director~~Department under WAC 173-360A-~~453~~1050.

The sSurety(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 sSurety(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 sSurety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The sSurety(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 pPrincipal may terminate this bond by sending written notice to the sSurety(ies).

In witness thereof, the pPrincipal and sSurety(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 pPrincipal and sSurety(ies) and that the wording of this surety bond is identical to the wording specified in WAC 173-360A-~~483~~1084 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)]  
[Name(s) and title(s)]  
[Corporate seal]  
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]  
Bond premium: \$

WAC 173-360A-1085 Appendix F – Irrevocable standby letter of credit

~~IRREVOCABLE STANDBY LETTER OF CREDIT~~

[Name and address of issuing institution]

[Name and address ~~of director~~ of the Washington ~~s~~State ~~d~~Department of ~~e~~Ecology]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. . . . . in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of:

(1) ~~y~~Your sight draft, bearing reference to this letter of credit, No. . . . ., and

(2) ~~y~~Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of ~~Subtitle I of the Resource Conservation and Recovery Act of 1976~~the Solid Waste Disposal Act, as amended, and chapter 90.76 RCW."<sup>51</sup>

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

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-200, and the name and address of the facility.]

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

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

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

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

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from ~~a~~ ~~petroleum~~an underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of WAC 173-360A-~~406~~1015.

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<sup>51</sup> In boilerplate letter of credit, added reference to state law, which also requires financial assurances.

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

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

We certify that the wording of this letter of credit is identical to the wording specified in WAC 173-360A-~~486~~1085 as such regulations were constituted on the date shown immediately below.

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

[Date]

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

WAC 173-360A-1086 Appendix G – Trust agreement

**TRUST AGREEMENT**

Trust agreement, the "aAgreement," entered into as of [date] by and between [name of the owner or operator], a Washington state [insert "corporation," "partnership," "association," or "proprietorship"], the "gGrantor," and [name of corporate trustee], [insert "Incorporated in the state of Washington" or "a national bank"], the "tTrustee."

Whereas, the dDepartment of eEcology, "eEcology", an agency of the state of Washington, has established certain regulations applicable to the grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for ~~corrective~~remedial action and third-party compensation for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and addresses of the facility(ies) where the tanks are located that are covered by the ~~standby~~[insert "standby" where trust agreement is standby trust agreement] trust agreement.<sup>52</sup>

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

Whereas, the gGrantor, acting through its duly authorized officers, has selected the tTrustee to be the trustee under this aAgreement, and the tTrustee is willing to act as trustee;

Now, therefore, the gGrantor and the tTrustee agree as follows:

*Section 1. Definitions.*

As used in this aAgreement:

(1) The term "gGrantor" means the owner or operator who enters into this agreement and any successors or assigns of the gGrantor.

(2) The term "tTrustee" means the tTrustee who enters into this agreement and any successor tTrustee.

*Section 2. Identification of the Financial Assurance Mechanism.*

This aAgreement 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 fFund.*

The gGrantor and the tTrustee hereby establish a trust fund, the "fund," for the benefit of the Washington sState dDepartment of eEcology. The gGrantor and the tTrustee intend that no third party

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<sup>52</sup> Made editorial correction, consistent with changes in §280.103 of the federal rule.

have access to the fund except as herein provided. [The fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to ~~the director of the~~ Washington State ~~Department of~~ eEcology'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 ~~a~~Agreement. The fund shall be held by the ~~Trustee~~, IN TRUST, as thereafter 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 gGrantor as provider of financial assurance, any payments necessary to discharge any liability of the gGrantor established by the Washington State ~~Department of~~ eEcology.

*Section 4. Payment for [~~"corrective Remedial a~~" and/or "~~T~~Third-p~~Party~~ ~~Liability e~~Claims"].*

The trustee shall make payments from the fund as ~~the director of the~~ Washington State ~~Department of~~ eEcology shall direct, in writing, to provide for the payment of the costs of [insert: "taking ~~corrective remedial~~ action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non\_sudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this ~~a~~Agreement.

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

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from ~~a petroleum~~ an underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of WAC 173-360A-~~406~~1015.

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

*Section 5. Payments ~~e~~Comprising the ~~f~~Fund.*

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

*Section 6. Trustee ~~m~~Management.*

The ~~t~~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 ~~g~~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 ~~t~~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 ~~g~~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(1), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The ~~t~~Trustee is authorized to invest the fund in time or demand deposits of the ~~t~~Trustee, to the extent insured by an agency of the federal or state government; and

(c) The ~~t~~Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

*Section 7. Commingling and ~~i~~Investment.*

The ~~t~~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 ~~t~~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 ~~t~~Trustee. The ~~t~~Trustee may vote such shares in its discretion.

*Section 8. Express ~~p~~Powers of ~~t~~Trustee.*

Without in any way limiting the powers and discretions conferred upon the ~~t~~Trustee by the other provisions of this ~~a~~Agreement or by law, the ~~t~~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 ~~t~~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 9.

*Section 13. Instructions to the ~~Trustee~~.*

All orders, requests, and instructions by the ~~Grantor~~ to the ~~Trustee~~ shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the ~~Grantor~~ may designate by amendment to Schedule B. The ~~Trustee~~ shall be fully protected in acting without inquiry in accordance with the ~~Grantor's~~ orders, requests, and instructions. All orders, requests, and instructions by ~~the director of the Washington State Department of Ecology~~ to the ~~Trustee~~ shall be in writing, signed by the ~~director Department~~, and the ~~Trustee~~ shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The ~~Trustee~~ shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the ~~Grantor~~ or the ~~director 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 ~~director 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 director of the Washington State Department of Ecology~~, if the ~~Grantor~~ ceases to exist.

*Section 15. Irrevocability and ~~Termination~~.*

Subject to the right of the parties to amend this ~~Agreement~~ as provided in Section 14, this trust shall be irrevocable and shall continue until terminated at the written direction of the ~~Grantor~~ and the ~~Trustee~~, or by the ~~Trustee~~ and ~~the director of the Washington State Department of Ecology~~, 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 director of the Washington State Department of Ecology~~, 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 Washington, or the Comptroller of the Currency in the case of National Association banks.

*Section 18. Interpretation.*

**UST Regulations**  
**Preliminary Draft for Stakeholder Review**

**Part 10**

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

In witness whereof the parties have caused this **a**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 **a**Agreement is identical to the wording specified in WAC 173-360A-4901086 as such regulations were constituted on the date written above.

[Signature of **g**Grantor]  
[Name of the **g**Grantor]  
[Title]

Attest:

[Signature of **t**Trustee]  
[Name of the **t**Trustee]  
[Title]  
[Seal]

Attest:

[Signature of **w**Witness]  
[Name of **w**Witness]  
[Title]  
[Seal]

**WAC 173-360A-1087 Appendix H – Certification of acknowledgement**

State of Washington

County of

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

[Signature of notary public]

[Name of notary public]

WAC 173-360A-1088 Appendix I – Local government bond rating test – Letter from chief financial officer of general purpose local governments

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 remedial action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” or “non-sudden accidental releases” or “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 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]

<u>Issue date</u>	<u>Maturity date</u>	<u>Outstanding amount</u>	<u>Bond Rating</u>	<u>Rating Agency</u>
				<u>[Moody’s or Standard and Poor’s]</u>

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 WAC 173-360A-1088 as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

WAC 173-360A-1089 Appendix J – Local government bond rating test – Letter from chief financial officer of non-general purpose local governments

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 remedial action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” or “non-sudden accidental releases” or “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). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

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

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

<u>Issue date</u>	<u>Maturity date</u>	<u>Outstanding amount</u>	<u>Bond Rating</u>	<u>Rating Agency</u>
				<u>[Moody’s or Standard and Poor’s]</u>

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 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 WAC 173-360A-1089 as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

WAC 173-360A-1090 Appendix K – 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 remedial action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” or “non-sudden accidental releases” or “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 [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to WAC 173-360A-200.]

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

WORKSHEET FOR MUNICIPAL FINANCIAL TEST

PART I – BASIC INFORMATION

1. Total Revenues

a. Revenues (dollars): \_\_\_\_\_

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

b. Subtract interfund transfers (dollars): \_\_\_\_\_

c. Total Revenues (dollars): \_\_\_\_\_

2. Total Expenditures

a. Expenditures (dollars): \_\_\_\_\_

Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.

b. Subtract interfund transfers (dollars): \_\_\_\_\_

c. Total Expenditures (dollars): \_\_\_\_\_

3. Local Revenues

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

4. Debt Service

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

5. Total Funds (Dollars):

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

6. Population (Persons):

PART II – APPLICATION OF TEST

7. Total Revenues to Population

- a. Total Revenues (from 1c):
- b. Population (from 6):
- c. Divide 7a by 7b:
- d. Subtract 417:
- e. Divide by 5,212:
- f. Multiply by 4.095:

8. Total Expenses to Population

- a. Total Expenses (from 2c):
- b. Population (from 6):
- c. Divide 8a by 8b:
- d. Subtract 524:
- e. Divide by 5,401:
- f. Multiply by 4.095:

9. Local Revenues to Total Revenues

- a. Local Revenues (from 3c):
- b. Total Revenues (from 1c):
- c. Divide 9a by 9b:
- d. Subtract 0.695:
- e. Divide by 0.205:
- f. Multiply by 2.840:

10. Debt Service to Population

- a. Debt Service (from 4c):

- 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 4c):
- b. Total Revenues (from 1c):
- c. Divide 11a by 11b:
- d. Subtract 0.068:
- e. Divide by 0.259:
- f. Multiply by -3.533:

12. Total Revenues to Total Expenses

- a. Total Revenues (from 1c):
- b. Total Expenses (from 2c):
- c. Divide 12a by 12b:
- d. Subtract 0.910:
- e. Divide by 0.899:
- f. Multiply by 3.458:

13. Funds Balance to Total Revenues

- a. Total Funds (from 5):
- b. Total Revenues (from 1c):
- c. Divide 13a by 13b:
- d. Subtract 0.891:
- e. Divide by 9.156:
- f. Multiply by 3.270:

14. Funds Balance to Total Expenses

- a. Total Funds (from 5):
- b. Total Expenses (from 2c):
- c. Divide 14a by 14b:
- d. Subtract 0.866:
- e. Divide by 6.409:
- f. Multiply by 3.270:

15. Total Funds to Population

- a. Total Funds (from 5):
- b. Population (from 6):
- c. Divide 15a by 15b:
- d. Subtract 270:



e. Divide by 4,548:

f. Multiply by 1.866:

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

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in WAC 173-360A-1090 as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

WAC 173-360A-1091 Appendix L – Local government guarantee with standby trust made by a state

Guarantee made this [date] by [name of state], herein referred to as Guarantor, to the Washington State Department of Ecology 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 underground storage tank(s) covered by this Guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-200, and the name and address of the facility.] This Guarantee satisfies requirements of Part 10 of chapter 173-360A WAC for assuring funding for [insert: “taking remedial action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.
3. Guarantor guarantees to the Washington State Department of Ecology and to any and all third parties that:
  - a. In the event that [local government owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this Guarantee and the Washington State Department of Ecology has determined or suspects that a release has occurred at an underground 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 WAC 173-360A-1050, in an amount not to exceed the coverage limits specified above.
  - b. In the event that the Department determines that [local government owner or operator] has failed to perform remedial action for releases arising out of the operation of the above-identified tanks(s) in accordance with WAC 173-360A-750, the Guarantor upon written instructions from Department shall fund a standby trust fund in accordance with the provisions of WAC 173-360A-1050, in an amount not to exceed the coverage limits specified above.
  - c. 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 “non-sudden”] 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 WAC 173-360A-1050 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 chapter 173-360A WAC.
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 10 of chapter 173-360A WAC 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, 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 underground storage tank;
  - e. Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of WAC 173-360A-1015.
8. Guarantor expressly waives notice of acceptance of this Guarantee by the Washington State Department of Ecology, 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 WAC 173-360A-1091 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:

WAC 173-360A-1092 Appendix M – 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 Washington State Department of Ecology 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 WAC 173-360A-1070, the local government financial test requirements of WAC 173-360A-1071, or the local government fund requirements of WAC 173-360A-1073].
2. [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this Guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-200, and the name and address of the facility.] This Guarantee satisfies the requirements of Part 10 of chapter 173-360A WAC for assuring funding for [insert: “taking remedial action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.
3. Incident to our substantial governmental relationship with [local government owner or operator], Guarantor guarantees to Washington State Department of Ecology and to any and all third parties that:
  - a. In the event that [local government owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this Guarantee and the Washington State Department of Ecology has determined or suspects that a release has occurred at an underground 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 WAC 173-360A-1050, in an amount not to exceed the coverage limits specified above.
  - b. In the event that the Department determines that [local government owner or operator] has failed to perform remedial action for releases arising out of the operation of the above-identified tank(s) in accordance with WAC 173-360A-750, the Guarantor upon written instructions from the Department shall fund a standby trust fund in accordance with the provisions of WAC 173-360A-1050, in an amount not to exceed the coverage limits specified above.
  - c. 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 “non-sudden”] 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 WAC 173-360A-1050 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

4. Guarantor agrees that, if at the end of any fiscal year before cancellation of this Guarantee, the Guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), Guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.
5. Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming Guarantor as debtor, within 10 days after commencement of the proceeding.
6. Guarantor agrees to remain bound under this Guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 173-360A WAC.
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 10 of chapter 173-360A WAC 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, 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 underground storage tank;
  - e. Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of WAC 173-360A-1015.
9. Guarantor expressly waives notice of acceptance of this Guarantee by the Washington State Department of Ecology, by any or all third parties, or by [local government owner or operator].

**UST Regulations**  
**Preliminary Draft for Stakeholder Review**

**Part 10**

I hereby certify that the wording of this Guarantee is identical to the wording specified in WAC 173-360A-1092 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:

WAC 173-360A-1093 Appendix N – 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 Washington State Department of Ecology 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 underground storage tank(s) covered by this Guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-200, and the name and address of the facility.] This Guarantee satisfies the requirements of Part 10 of chapter 173-360A WAC for assuring funding for [insert: “taking remedial action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.
3. Guarantor guarantees to the Washington State Department of Ecology and to any and all third parties and obliges that:
  - a. In the event that [local government owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this Guarantee and the Washington State Department of Ecology has determined or suspects that a release has occurred at an underground storage tank covered by this Guarantee, the Guarantor, upon written instructions from the Department shall make funds available to pay for remedial actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.
  - b. In the event that the Department determines that [local government owner or operator] has failed to perform remedial action for releases arising out of the operation of the above-identified tank(s) in accordance with WAC 173-360A-750, the Guarantor upon written instructions from the Department shall make funds available to pay for remedial actions in an amount not to exceed the coverage limits specified above.
  - c. 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 “non-sudden”] 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 chapter 173-360A WAC.
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 10 of chapter 173-360A WAC 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, 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 underground storage tank;
  - e. Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of WAC 173-360A-1015.
8. Guarantor expressly waives notice of acceptance of this Guarantee by the Washington State Department of Ecology, 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 WAC 173-360A-1093 as such regulations were constituted on the effective date shown immediately below.

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

[Name of Guarantor]

UST Regulations  
Preliminary Draft for Stakeholder Review

Part 10

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

WAC 173-360A-1094 Appendix O – 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 Washington State Department of Ecology 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 WAC 173-360A-1070, the local government financial test requirements of WAC 173-360A-1071, or the local government fund requirements of WAC 173-360A-1073].
2. [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this Guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-200, and the name and address of the facility.] This Guarantee satisfies the requirements of Part 10 of chapter 173-360A WAC for assuring funding for [insert: “taking remedial action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.
3. Incident to our substantial governmental relationship with [local government owner or operator], Guarantor guarantees to the Washington State Department of Ecology and to any and all third parties and obliges that:
  - a. In the event that [local government owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this Guarantee and the Washington State Department of Ecology has determined or suspects that a release has occurred at an underground storage tank covered by this Guarantee, the Guarantor, upon written instructions from the Department shall make funds available to pay for remedial actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.
  - b. In the event that the Department determines that [local government owner or operator] has failed to perform remedial action for releases arising out of the operation of the above-identified tank(s) in accordance with WAC 173-360A-750, the Guarantor upon written instructions from the Department shall make funds available to pay for remedial actions in an amount not to exceed the coverage limits specified above.
  - c. 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 “non-sudden”] 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 chapter 173-360A WAC.
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 10 of chapter 173-360A WAC for the above identified tank(s), except that Guarantor may cancel this Guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the Guarantor agrees to remain bound to the terms of this Guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the Guarantee with respect to future releases.
8. The Guarantor's obligation does not apply to any of the following:
  - a. Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;
  - b. Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];
  - c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
  - d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from an underground storage tank;
  - e. Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of WAC 173-360A-1015.

9. Guarantor expressly waives notice of acceptance of this Guarantee by the Washington State Department of Ecology, 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 WAC 173-360A-1094 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:

WAC 173-360A-1095 Appendix P – Local government fund – 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 remedial action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” or “non-sudden accidental releases” or “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 local government fund mechanism: [List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: “The local government fund is funded for the full amount of coverage required under WAC 173-360A-1015, 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 five times the full amount of coverage required under WAC 173-360A-1015, 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 at close of last fiscal year): \_\_\_\_\_

[If fund balance is incrementally funded as specified in WAC 173-360A-1073(3)(c), 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 WAC 173-360A-1095 as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

**WAC 173-360A-1096 Appendix Q – Certification of financial responsibility**

~~CERTIFICATION OF FINANCIAL RESPONSIBILITY~~

[Owner or operator] hereby certifies that it is in compliance with the requirements of ~~WAC 173-360-400 through 173-360-499~~ Part 10 of chapter 173-360A WAC.

The financial assurance mechanism[s] used to demonstrate financial responsibility under ~~WAC 173-360-400 through 173-360-499~~ Part 10 of chapter 173-360A WAC is [are] as follows:

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

[Signature of owner or operator]  
[Name of owner or operator]  
[Title]  
[Date]  
[Signature of witness or notary]  
[Name of witness or notary]  
[Date]

**WAC 173-360A-1097 Appendix R – Certification of valid claim**

~~CERTIFICATION OF VALID CLAIM~~

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

[Signatures]  
Owner or Operator  
Attorney for Owner or Operator  
(notary)  
Date

[Signature(s)]  
Claimant(s)  
Attorney(s) for Claimant(s)  
(notary)  
Date

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