

WATER QUALITY RULES AND REGULATIONS

Chapter 19

Certification Page for Regular Rules

AGENCY HEAD

I, Dennis Hemmer, do hereby certify:

I am the agency head of the Department of Environmental Quality.

The attached is a true and correct copy of the rules pertaining to underground storage tanks and financial responsibility for underground storage tanks.

My agency has authority to promulgate this rule pursuant to W.S. 35-11-1416.

RULE INFORMATION

These are new rules, Water Quality Division Chapters XVII and XIX.

FORMAT

A disk with an exact copy of the attached rules and regulations is attached. *JH*

NOTICES OF INTENT

On June 14, 1993, my agency sent a copy of the Notice of Intent to Adopt Rules and the proposed rules to the Attorney General.

On June 14, 1993, my agency sent a copy of the Notice of Intent to Adopt Rules and the proposed rules to the Legislative Service Office.

On February 4, 1994, my agency sent Notice of Intent to individuals who had requested advance notice of my agency's rulemaking proceedings;

Notice of Intent to the public:

Notice was published in the following newspapers on the following dates:

Casper Star-Tribune, Wyoming Eagle-Tribune, Northern Wyoming Daily News, Jackson Hole Guide and Rock Springs Daily Rocket Miner on December 6, 1993.

ADOPTED RULES DELIVERY

I, Dennis Hemmer, hereby certify that I sent a copy of this certification page and the adopted rules to the Legislative Service Office and the Attorney General's Office.

STATEMENT OF REASONS

The Statement of Reasons and other justifications for these rules are on file with this agency.

ADOPTION OF RULES

After consideration of public comment and appropriate response, my agency or board adopted the rules on October 5, 1994.


Authorized Signature

CONTACT INFORMATION

This program's Attorney General representative is Keith Burron.

The agency person who should receive the stamped, filed copy is:

Name: LeRoy Feusner, AUST/LAUST Program Supervisor
Address: WDEQ/WQD, Herschler Building - 4W, Cheyenne
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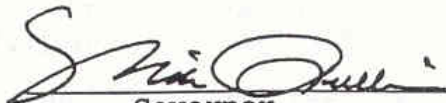
GOVERNOR'S CERTIFICATION

Pursuant to W.S. 16-3-104(d), I have reviewed these rules and determined that they:

- (1) are within the scope of the statutory authority delegated to the adopting agency;
- (2) appear to be within the scope of the legislative purpose of the statutory authority; and
- (3) have been adopted in compliance with the procedural requirements of the Wyoming Administrative Procedure Act.

Therefore, pursuant to said statute, I approve the same.

10/31/94
Date Approved


Governor

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STATE OF WYOMING
Secretary
94^{2nd} Nov. 8:40 A.M.
KEITH BURRAN
Attorney General

CHAPTER XIX

FINANCIAL RESPONSIBILITY FOR UNDERGROUND STORAGE TANKS

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CHAPTER XIX

Financial Assurance for Underground Storage Tanks

Section 1. Authority. These standards are promulgated pursuant to the Wyoming Environmental Quality Act Statutes 35-11- 101 through 35-11-1428, specifically Wyoming Statutes 35-11-1414 through 35-11-1428.

Section 2. Purpose. The purpose of these rules and regulations is to:

(a) Allow Wyoming to assume primacy of the U.S. Environmental Protection Agency underground storage tank program;

(b) Provide underground storage tank system owners and/or operators with the option of financial responsibility coverage to help meet the federal requirements.

Section 3. Applicability. The requirements of this chapter apply to all owners and/or operators of an underground storage tank as defined in W.S. 35-11-1415.

(a) This part applies to owners and/or operators of all petroleum underground storage tank systems as defined in Section 4 except as otherwise provided in this section.

(b) Owners and/or operators of petroleum underground storage tank systems are subject to these requirements if they are in operation on or after the date for compliance established in Section 4.

(c) 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 this chapter.

(d) If the owner and operator of a petroleum underground storage tank 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 Section 4.

Section 4. Compliance Dates. Compliance with Sections 4 and 6 includes the total number of owned and/or operated underground storage tanks, including not only those located in Wyoming, but also those located throughout the United States at all locations. Owners of petroleum underground storage

tanks are required to comply with the requirements of this chapter by the following dates:

(a) All petroleum marketing firms owning 1,000 or more underground storage tanks and all other underground storage tanks owners that report a tangible net worth of \$20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration; **January 24, 1989.**

(b) All petroleum marketing firms owning 100-999 underground storage tanks; **October 26, 1989.**

(c) All petroleum marketing firms owning 13-99 underground storage tanks at more than one facility; **April 26, 1991.**

(d) All petroleum underground storage tank owners not described in paragraphs (a), (b), or (c) of this section, excluding all local government entities; **December 31, 1993.**

(e) All petroleum underground storage tank owners who are local government entities; **February 18, 1994.**

Section 5. Financial Responsibility Term Definitions.
The financial responsibility terms used in this chapter are defined in 40 CFR 280.92.

Section 6. Amount and Scope of Required Financial Responsibility.

(a) Owners and/or operators of petroleum underground storage tanks or contaminated sites not eligible for the state corrective action program must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

(i) For owners and/or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; **\$1 million.**

(ii) For all other owners and/or operators of petroleum underground storage tanks; **\$500,000.**

(b) For the purposes of Section 6 (c) and 6 (f) only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

(c) Owners and/or operators of petroleum underground storage tanks not eligible for the state corrective action program must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

(i) For owners and/or operators of 1 to 100 petroleum underground storage tanks, **\$1 million**, and;

(ii) For owners and/or operators of 101 or more petroleum underground storage tanks, **\$2 million**.

(d) Except as provided in Section 6 (e), an owner and/or operator not eligible for the state corrective action program shall use separate mechanisms or separate combinations of mechanisms in the full amount specified in Sections 6 (a) and 6 (c) to demonstrate financial responsibility for:

(i) Taking corrective action; and

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

(e) If an owner and/or operator not eligible for the state corrective action program 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.

(f) Owners and/or operators not eligible for the state corrective action program shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the total number of petroleum underground storage tanks for which assurance must be provided exceeds 100, the owner and/or operator shall demonstrate financial responsibility in the amount of at least \$2 million 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 and/or operator shall demonstrate financial responsibility in the amount of at least \$2 million 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.

(g) The amounts of financial assurance required under this section exclude legal defense costs.

(h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner and/or operator.

Section 7. Allowable Mechanisms and Combinations of Mechanisms.

(a) Owners and/or operators of petroleum underground storage tanks or contaminated sites not eligible for the state corrective action program shall use any one or combination of the mechanisms to demonstrate financial responsibility under this chapter for one or more underground storage tanks. Demonstration shall be pursuant to the requirements of 40 CFR 280.95, 280.96, 280.97, 280.98, 280.99, 280.102, and/or 280.103 and for local governments, 280.104, 280.105, 280.106, and 280.107, and the demonstration must be executed on forms provided by the department. The allowable mechanisms include financial test of self-insurance, guarantee, insurance and risk retention group coverage, surety bond, letter of credit, and/or trust fund and additionally for local governments, a bond rating test, local government financial test, local government guarantee, and local government fund.

(b) An owner and/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 section, the financial statements of the owner and/or operator are not consolidated with the financial statements of the guarantor.

(c) The department's trust and agency account will serve as the standby trust fund as described in 40 CFR 280.103, which is required in conjunction with a guarantee, surety bonds, and letters of credit.

Section 8. General Provisions for Allowable Mechanisms in Wyoming.

(a) Financial test of self-insurance and local government financial test.

(i) The application and the letter from the chief financial officer will be executed on forms provided by the department.

(ii) Accompanying the financial test of self insurance will be the audited financial statements prepared and certified by an independent certified public accountant to document data submitted.

(iii) The administrator shall make a determination within 60 days of owner and/or operator submission of all materials necessary to base a decision on the financial test of self-insurance. The administrator shall approve or reject such application and declare in writing his reasons for such action to the owner and/or operator. The decision will be based on all the information submitted to the department.

(b) Guarantee and local government guarantee.

(i) The application and the letter from the chief financial officer will be executed on forms provided by the department.

(ii) The owner operator shall submit with the application, documentation verifying the guarantor's power and authority to enter into guarantee agreements on behalf of the owner and/or operator.

(iii) Accompanying the financial test of self insurance will be the audited financial statements of the guarantor prepared and certified by an independent certified public accountant to document data submitted.

(iv) The administrator shall make a determination within 60 days of owner and/or operator submission of all materials necessary to base a decision on the financial test of self-insurance. The administrator shall approve or reject such application and declare in writing his reasons for such action to the owner and/or operator. The decision will be based on all the information submitted to the department.

(c) Insurance and risk retention group coverage.

(i) The certificate of insurance will be submitted on a form acceptable to the department.

(ii) The insurance shall be issued by a company licensed to do business in Wyoming.

(iii) Surplus line carriers will be in compliance with the surplus lines laws under Chapter 11 of the Wyoming Insurance Code.

(iv) Risk retention groups shall be registered with the Wyoming Insurance Department.

(d) Surety bond.

(i) The surety bond will be executed on forms provided by the department.

(ii) The surety company shall be licensed to do business in Wyoming.

(iii) The bond shall be signed by an authorized Wyoming resident agent.

(e) Letter of credit. The letter of credit will be executed in the format provided by the department.

(f) Trust Fund. The trust agreement will be executed on forms provided by the department.

(g) Standby trust fund (required in conjunction with guarantee, surety bonds and letters of credit). The department's trust and agency account will serve as the standby trust fund.

(h) Bond rating test for local governments. The letter from the chief financial officer shall be executed on forms provided by the department.

(i) Local government fund. The letter from the chief financial officer shall be executed on forms provided by the department.

Section 9. Substitution of Financial Assurance Mechanisms by Owner and/or Operator.

(a) An owner and/or operator may substitute any alternate financial assurance mechanisms as specified in this chapter, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of Section 6.

(b) After obtaining alternate financial assurance as specified in this chapter, an owner and/or operator may cancel a financial assurance mechanism, after concurrence by the administrator, by providing notice to the provider of financial assurance.

Section 10. Cancellation or Nonrenewal by a Provider of Financial Assurance.

(a) 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 and/or operator and the department.

(i) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner and/or operator and the department receives the notice of termination, as evidenced by the return receipt, and upon

receipt of the administrator's written consent, which may be granted only when the conditions of the financial assurance have been met.

(ii) Termination of insurance, risk retention group coverage, or state funded assurance may not occur until 60 days after the date on which the owner and/or operator and the department receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in Section 11, the owner and/or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner and/or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner and/or operator must notify the administrator of such failure before the 60 day period ends and submit:

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

(ii) The effective date of termination; and

(iii) The evidence of the financial assistance mechanism subject to the termination maintained in accordance with Section 11 (b).

(c) The department shall provide notification by mail to any owner and/or operator utilizing the state corrective action and financial responsibility accounts whenever either account is incapable of paying for assured corrective actions or third party damages. The owner and/or operator shall have thirty (30) days from the date of notification to provide for alternate financial assurance.

(d) Any self insurance may be cancelled by the operator only after ninety (90) days notice to the administrator, and upon receipt of the administrator's written consent, which may be granted only when the requirements of the bond have been fulfilled.

Section 11. Reporting by Owner and/or Operator Who Is Not Eligible for the State Corrective Action Program.

(a) An owner and/or operator who receives notification of the following must notify the department within five (5) days 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;

(v) As required by 40 CFR 280.95 (g) and Section 10 (b).

(b) An owner and/or operator shall obtain and submit evidence of financial responsibility or appropriate forms as required in Section 12 (b) within 30 days after the owner and/or operator has received any notices listed under Section 11 (a).

(c) An owner and/or operator shall report to the administrator as required by 40 CFR 280.95 (g) concerning self insurance.

(d) Reporting is required under the conditions of Section 10 (b).

(e) An owner and/or operator must certify compliance with the financial responsibility requirements of this chapter as specified in the new tank notification form when notifying the department of the installation of a new underground storage tank under Chapter XVII, Water Quality Rules and Regulations, Section 7.

Section 12. Recordkeeping.

(a) Owners and/or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this chapter for an underground storage tank until released from the requirements under Section 14. An owner and/or operator must maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site must be made available upon request of the department.

(b) An owner and/or operator must maintain the following types of evidence of financial responsibility:

(i) An owner and/or operator using an assurance mechanism specified in 40 CFR 280.95 through 280.99 or 280.102 or 280.104 through 280.107, must maintain a copy of the instrument worded as specified.

(ii) An owner and/or operator using a financial test or guarantee must 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 must be on file no later than 120 days after the close of the financial reporting year.

(iii) A local government owner or operator using the local government bond rating test must maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

(iv) A local government owner or operator using the local government guarantee where the guarantor's demonstration of financial responsibility relies on the bond rating test must maintain a copy of the guarantor's bond rating published within the last 12 months by Moody's or Standard & Poor's.

(v) An owner and/or operator using an insurance policy or risk retention group coverage must 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.

(vi) An owner or operator using a local government fund must maintain the following documents:

(A) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund, and

(B) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established using incremental funding backed by bonding authority, the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.

(C) If the fund is established using incremental funding backed by bonding authority, the owner or operator must also maintain documentation of the required bonding authority, including either the results of a voter referendum or attestation by the State Attorney General.

(vii) A local government owner or operator using the local government guarantee supported by the local government fund must maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

(viii) An owner and/or operator using an assurance mechanism specified in 40 CFR 280.95 through 280.107, must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions are to be replaced with the relevant information;

Certification of Financial Responsibility

[Owner and/or operator] hereby certifies that it is in compliance with the requirements of Chapter XIX of the Water Quality Division Rules and Regulations.

The financial assurance mechanism(s) used to demonstrate financial responsibility under this chapter 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 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 and/or operator,] [name of owner and/or operator,] [title,] [date,] [signature of witness or notary,] [name of witness or notary,] [date].

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

Section 13. Drawing on Financial Assurance Mechanisms.

(a) The administrator shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the administrator up to the limit of funds provided by the financial assurance mechanism into the department's trust and agency account, which operates as a standby trust, if:

(i) The owner and/or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and the administrator determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner and/or operator or the owner and/or operator has notified the administrator pursuant to Chapter XVIII, Water Quality Rules and Regulations, Parts E or F, of a release from an underground storage tank covered by the mechanism, or;

(ii) The conditions of Sections 13 (b) (i) or (b) (ii) (A) or (B) are satisfied.

(b) The administrator may draw on a standby trust fund when:

(i) The administrator makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner and/or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under Chapter XVII, Water Quality Rules and Regulations, Part F, or;

(ii) The administrator has received certification from the owner and/or operator and the third-party liability claimant(s) and from attorneys representing the owner and/or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as specified in 40 CFR 280.108.

(iii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this chapter and the administrator determines that the owner or operator has not satisfied the judgment.

(c) If the administrator determines that the amount of corrective action costs and third-party liability claims eligible for payment under Section 13 (b) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The administrator shall pay third-party liability claims in the order in which the administrator receives certifications under Section 13 (b) (ii), and valid court orders under Section 13 (b) (iii).

Section 14. Release From the Requirements. An owner and/or operator is no longer required to maintain financial responsibility under this chapter 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 Chapter XVII, Water Quality Rules and Regulations, Part G.

Section 15. Bankruptcy or Other Incapacity of Owner and/or Operator or Guarantor of Financial Assurance. Within 10 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 must notify the owner and/or operator by certified mail of such

commencement as required under the terms of the guarantee specified in 40 CFR 280.96.

Section 16. Replenish Guarantee, Letter of Credit, or Surety Bonds.

(a) Any time after a financial assurance mechanism under this section is drawn on by the administrator below the full amount of required coverage, the owner and/or operator shall:

(i) By the anniversary date of the financial mechanism, replenish the value of financial assurance to equal the full amount of required coverage; or

(ii) By the anniversary date of the financial mechanism, acquire another financial assurance mechanism for the amount by which funds have been reduced; or

(iii) Within thirty (30) days of the withdrawal of the deductible amount required under the state fund mechanism, replenish the value of the required deductible coverage.

(b) If at any time after a standby trust fund is funded upon the instruction of the administrator with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner and/or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(i) Replenish the value of financial assurance to equal the full amount of coverage required, or;

(ii) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(c) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by Section 6. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date amount the mechanisms.

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