

SUBCHAPTER 020 - FINANCIAL RESPONSIBILITY REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS

SECTION .0100 - GENERAL CONSIDERATIONS

15A NCAC 020 .0101 GENERAL

- (a) Owners and operators of underground storage tank systems that are subject to regulation pursuant to 40 CFR 280.10 and located in North Carolina shall comply with the financial responsibility requirements in this Subchapter.
- (b) The Department of Environmental Quality (Department), Division of Waste Management (Division) shall administer the underground storage tank financial responsibility compliance program for the State of North Carolina.
- (c) Department staff may conduct inspections to ensure compliance with this Subchapter.

*History Note: Authority G.S. 143-215.3(a)(15); 143-215.94H; 143B-282(a)(2)(h);
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;
Amended Eff. January 1, 2021.*

15A NCAC 020 .0102 FINANCIAL RESPONSIBILITY

The governing Federal Regulations set forth below are hereby incorporated by reference, excluding any subsequent amendments and editions. Copies may be obtained at www.ecfr.gov/cgi-bin/ECFR?page=browse at no cost.

- (1) 40 CFR 280.90, "Applicability";
- (2) 40 CFR 280.91, "Compliance Dates";
- (3) 40 CFR 280.94, "Allowable Mechanisms and Combinations of Mechanisms";
- (4) 40 CFR 280.96, "Guarantee";
- (5) 40 CFR 280.98, "Surety Bond";
- (6) 40 CFR 280.99, "Letter of Credit";
- (7) 40 CFR 280.102, "Trust Fund";
- (8) 40 CFR 280.103, "Standby Trust Fund";
- (9) 40 CFR 289.104, "Local Government Bond Rating Test";
- (10) 40 CFR 280.105, "Local Government Financial Test";
- (11) 40 CFR 280.106, "Local Government Guarantee";
- (12) 40 CFR 280.107, "Local Government Fund";
- (13) 40 CFR 280.108, "Substitution of Financial Assurance Mechanisms by Owner or Operator";
- (14) 40 CFR 280.109, "Cancellation or Nonrenewal by a Provider of Financial Assurance";
- (15) 40 CFR 280.110, "Reporting by Owner or Operator";
- (16) 40 CFR 280.112, "Drawing on Financial Assurance Mechanisms"; and
- (17) 40 CFR 290.113. "Release from the Requirements".

*History Note: Authority G.S. 143-215.3(a)(15); 143B 282(a)(2)(h);
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;
Amended Eff. January 1, 2021.*

SECTION .0200 - PROGRAM SCOPE

15A NCAC 020 .0203 DEFINITIONS

(a) The definitions in 40 CFR 280.92 are hereby incorporated by reference, except as modified below. The federal regulation may be accessed at www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge.

- (1) "Director of the Implementing Agency" shall mean the Director of the Division of Waste Management.

- (2) "Financial reporting year" shall be modified to allow a compilation report to be used to support a financial test. The compilation report shall be prepared by a Certified Public Accountant (CPA) or Certified Public Accounting Firm (CPA Firm) as defined in 21 NCAC 08A .0301.
- (b) The following definitions shall apply throughout this Subchapter:
 - (1) "Independent" Certified Public Accountant or Certified Public Accounting Firm shall mean a CPA or CPA firm that examines the financial records and business transactions of an owner, operator or guarantor for whom the CPA or CPA firm is not affiliated.
 - (2) "Financial assurance" shall mean per occurrence and annual aggregate amounts of financial responsibility, collectively.

*History Note: Authority G.S. 143-215.94A; 143-215.94H;
Eff. July 1, 1992;
Readopted Eff. January 1, 2021.*

15A NCAC 020 .0204 AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY

- (a) Pursuant to G.S. 143-215.94H(a)(2), owners or operators shall maintain evidence of 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. The minimum financial responsibility that shall be maintained per occurrence is determined by calculating the sum of the following:
 - (1) twenty thousand dollars (\$20,000) for taking corrective action to cleanup environmental damage pursuant to G.S. 143-215.94B(b)(3);
 - (2) one hundred thousand dollars (\$100,000) for compensating third parties for bodily injury and property damage pursuant to G.S. 143-215.94B(b)(5); and
 - (3) the multiple of six hundred dollars (\$600.00) and the number of petroleum underground storage tanks that an owner or operator owns or operates in the state of North Carolina.
- (b) The minimum financial responsibility that shall be maintained as an annual aggregate is equal to the per occurrence amount.
- (c) Owners or operators shall annually review the amount of financial assurance provided. The amount of required financial assurance shall be adjusted at the time of the review.
- (d) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the amount of financial assurance required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.
- (e) The amount of financial assurance required under this Rule exclude legal defense costs.
- (f) The required amount of financial assurance does not in any way limit the liability of the owner or operator.
- (g) Evidence of financial responsibility for petroleum underground storage tanks located in North Carolina shall be provided separately from that provided for petroleum underground storage tanks not located in North Carolina.

*History Note: Authority G.S. 143-215.94H; 143-215.94T;
Eff. July 1, 1992;
Readopted Eff. January 1, 2021.*

SECTION .0300 - ASSURANCE MECHANISMS

15A NCAC 020 .0302 SELF INSURANCE

- (a) An owner, operator, or guarantor may meet the financial responsibility requirements by passing the financial test specified in Paragraph (b) of this Rule.
- (b) An owner, operator or guarantor, individually or collectively, shall meet the following criteria based on year-end financial statements for the latest completed fiscal year.
 - (1) The owner, operator, or guarantor, individually or collectively shall have a total tangible net worth of at least the sum of the amounts specified in (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this Rule, not to exceed three million dollars (\$3,000,000) and not to be less than one hundred fifty thousand dollars (\$150,000):
 - (2) A cleanup cost factor determined by multiplying the following:

- (A) the number of petroleum underground storage tanks that an owner or operator owns or operates in the state of North Carolina and that are covered by self-insurance. USTs that are manifolded together are considered separate USTs. A multi-compartment UST is considered one UST;
 - (B) twenty thousand dollars (\$20,000) for taking corrective action to cleanup environmental damage pursuant to G.S. 143-215.94(B)(b)(3);
 - (C) the proportion of financial assurance required pursuant to Rule .0204 of this Subchapter being covered by self-insurance; and
 - (D) a constant equal to 0.05.
- (3) A third party liability cost factor determined by multiplying the following:
- (A) the number of petroleum underground storage tanks that an owner or operator owns or operates in the state of North Carolina and that are covered by self-insurance;
 - (B) one hundred thousand dollars (\$100,000) for compensating third parties for bodily injury and property damage pursuant to G.S. 143-215.94(B)(b)(5); and
 - (C) the proportion of financial assurance required pursuant to Rule .0204 of this Subchapter being covered by self-insurance; and
 - (D) a constant equal to 0.02.
- (4) The amount of tangible net worth used to assure financial responsibility for petroleum underground storage tanks not located in North Carolina;
- (5) Ten times the sum of the corrective action cost estimates (40 CFR 264.101(b)), the closure (40 CFR 264.143 and 265.143) and post-closure care (40 CFR 264.145 and 265.145) cost estimates, and amount of liability coverage (40 CFR 264.147 and 265.147) for Hazardous Waste Management Facilities and Hazardous Waste Storage Facilities for which a financial test is used to demonstrate financial responsibility to EPA or to a State implementing agency under a State program authorized by EPA under 40 CFR 271; and
- (6) Ten times the sum of current plugging and abandonment cost estimates for injection wells (40 CFR 144.63) for which a financial test is used to demonstrate financial responsibility to the EPA under 40 CFR 144.63 or to a State implementing agency under a State program authorized by EPA under 40 CFR Part 145.
- (7) In addition to any other requirements of this Section, a guarantor shall have a net worth of at least two hundred thousand dollars (\$200,000) greater than any tangible net worth used by the guarantor in Subparagraph (1) of this Paragraph.
- (c) The owner or operator or guarantor, individually or collectively, shall each have a letter signed by the chief financial officer, worded as specified in Paragraph (g) of this Rule, and shall do one of the following:
- (1) Obtain annually a compilation report issued by an independent certified public accountant or certified public accounting firm;
 - (2) Pursuant to 40 CFR 280.95(b)(4)(i), file financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or
 - (3) Pursuant to 40 CFR 280.95(b)(4)(ii), report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet shall have assigned the firm a financial strength rating of 4A or 5A.
- (d) The firm's year-end financial statements cannot include an adverse accountant's report or a "going concern" qualification.
- (e) 40 CFR 280.95(d), (e), (f) and (g) are incorporated by reference, excluding any subsequent amendments and editions except that "financial test" means the financial test specified in Paragraph (b) of this Rule. A copy of the federal code may be obtained at www.ecfr.gov/cgi-bin/ECFR?page=browse at no cost.
- (f) To demonstrate that it meets the financial test under Paragraph (b) of this Rule, the chief financial officer of each owner, operator, or guarantor shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as in Paragraph (g) of this Rule, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.
- (g) LETTER FROM CHIEF FINANCIAL OFFICER
I, [insert: name of chief financial officer], the chief financial officer of [insert: name and address of the owner, operator or guarantor] have prepared this letter in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" or "compensating

third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," or "guarantor"]:

[List or attach the following information for each facility: the name and address of the facility where tanks assured by this financial test are located and facility number(s) assigned by the Department. 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.]

[When appropriate, include the following for Hazardous Waste Management Facilities, Hazardous Waste Storage Facilities, and Injection Wells:

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

EPA Regulations	Amount
Closure (including 40 CFR 264.143 and 265-143)	\$ _____
Post-Closure Care (including 40 CFR 264.145 and 265.145)	\$ _____
Liability Coverage (including 40 CFR 264.147 and 265.147)	\$ _____
Corrective Action (including 40 CFR 264.101(b))	\$ _____
Plugging and Abandonment (including 40 CFR 144.63)	\$ _____
Total	\$ _____

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

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|-----|----|--|----------|-------|
| 1. | a. | Number of USTs in North Carolina being covered | _____ | |
| | b. | Proportion covered | _____ | |
| | c. | Cleanup cost factor (multiply 0.05 x \$20,000 x #1a and #1b) | \$ _____ | |
| | d. | Third party liability cost factor (multiply 0.02 x \$100,000 x #1a and #1b) | \$ _____ | |
| 2. | | Cleanup and third-party liability cost factor total (sum of #1c and #1d) | \$ _____ | |
| 3. | | Guarantor factor (enter \$200,000, if guarantor) | \$ _____ | |
| 4. | | Net worth used to assure environmental liabilities for Hazardous Waste Management Facilities, Hazardous Waste Storage Facilities, and Injection Wells multiplied by 10 | \$ _____ | |
| 5. | | Net worth used to assure environmental liabilities for USTs outside of North Carolina | \$ _____ | |
| 6. | | Total net worth required to self-insure or to be a guarantor (sum of #2, #3, #4 and #5) | \$ _____ | |
| 7. | | Total tangible assets | \$ _____ | |
| 8. | | Total liabilities (if any of the amount reported for #6 is included in total liabilities, you may deduct that amount from this line and add that amount to #9) | \$ _____ | |
| 9. | | Tangible net worth (subtract #8 from #7) | \$ _____ | |
| | | | Yes | No |
| 10. | | Is line 9 at least [for an owner or operator: \$150,000; for a guarantor: \$350,000]? | _____ | _____ |
| 11. | | Is line 9 equal to or greater than line 6? | _____ | _____ |
| 12. | | Has a compilation report been issued by an independent certified public accountant or Certified public accounting firm? | _____ | _____ |
| 13. | | Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? | _____ | _____ |
| 14. | | Have financial statements for the latest fiscal year been filed with the Energy Information Administration? | _____ | _____ |
| 15. | | Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? | _____ | _____ |
| 16. | | 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] | _____ | _____ |

I hereby certify that the wording of this letter is identical to the wording specified in 15A NCAC 2O .0302, as such regulations were constituted on the date shown immediately below, and that the information contained herein is complete and accurate.

[Signature of chief financial officer]
[Name]
[Title]
[Date]

*History Note: Authority G.S. 143-215.94H;
Eff. August 3, 1992;
Readopted Eff. January 1, 2021.*

15A NCAC 020 .0304 INSURANCE AND RISK RETENTION GROUP COVERAGE

40 CFR 280.97 entitled "Insurance and Risk Retention Group Coverage" is incorporated by reference, excluding any subsequent amendments and editions, except that "licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states" in 40 CFR 280.97(b)(1), (b)(2), and (c) is replaced by "licensed, registered, or otherwise authorized to provide insurance in North Carolina". This document may be accessed at www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge. The requirements in 40 CFR 280.97 shall be met to demonstrate financial responsibility by insurance pursuant to G.S. 143-215.94H.

*History Note: Authority G.S. 143-215.94H;
Eff. July 1, 1992;
Readopted Eff. January 1, 2021.*

15A NCAC 020 .0308 INSURANCE POOLS

(a) Insurance pools established by owners and operators may be used alone or in combination to demonstrate financial assurance in accordance with Rule .0204 of this Subchapter.

(b) To be an eligible mechanism for demonstrating financial assurance, insurance pools shall comply with the requirements of G.S. 143-215.94I.

(c) Each owner and operator providing financial assurance through an insurance pool shall maintain a certificate of insurance issued by the insurance pool that lists the following information:

- (1) the name and address of the member;
- (2) the location of the facilities owned by that member where underground storage tanks are being insured by the pool;
- (3) the number of insured underground storage tanks at each facility;
- (4) the capacity of each insured underground storage tank;
- (5) the amount of insurance provided for each underground storage tank; and
- (6) the name, address, and signature of the Administrator of the insurance pool.

*History Note: Authority G.S. 143-215.94H; 143-215.94I;
Eff. July 1, 1992;
Readopted Eff. January 1, 2021.*

SECTION .0400 - RESPONSIBILITIES OF OWNERS AND OPERATORS

15A NCAC 020 .0402 RECORD KEEPING

(a) 40 CFR 280.111 entitled "Record Keeping" is incorporated by reference, excluding subsequent amendments and editions. This document may be accessed at www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge.

(b) In addition to the requirements incorporated in Paragraph (a) of this Rule, an owner or operator using an Insurance Pool as a financial assurance mechanism in accordance with Rule .0308 of this Subchapter, shall maintain a copy of the signed insurance certificate as specified in Rule .0308(c) of this Subchapter.

*History Note: Authority G.S. 143-215.94H;
Eff. July 1, 1992;
Readopted Eff. January 1, 2021.*

SECTION .0500 - CHANGES IN STATUS.

15A NCAC 020 .0503 INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF ASSURANCE

- (a) 40 CFR 280.114 entitled "Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance" is incorporated by reference, excluding subsequent amendments and editions. This document may be accessed at www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge.
- (b) Within 30 days after receipt of notification that the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator shall obtain financial assurance for the full amounts specified in 40 CFR 280.93.

History Note: Authority G.S. 143-215.94H; 143-215.94T;
Eff. July 1, 1992;
Readopted Eff. January 1, 2021.

15A NCAC 020 .0504 REPLENISHMENT

- (a) 40 CFR 280.115 entitled "Replenishment of Guarantees, Letters of Credit, or Surety Bonds" is incorporated by reference, excluding subsequent amendments and editions. This document may be accessed at www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge.
- (b) If a standby trust (40 CFR 280.103) is funded upon the instruction of the Department with funds drawn from a guarantee (40 CFR 280.96), letter of credit (40 CFR 280.99), or surety bond (40 CFR 280.98), and the amount in the standby trust is reduced to less than the amount for which the owner or operator is responsible per occurrence for third party claims, the owner or operator shall within 60 days from which the funds were drawn:
- (1) replenish the value of financial assurance to equal the full amount of coverage required pursuant to Rule .0204 of this Subchapter; or
 - (2) acquire another financial assurance mechanism for the amount by which funds in the standby trust fund have been reduced.

History Note: Authority G.S. 143-215.94H; 143-215.94T;
Eff. July 1, 1992;
Readopted Eff. January 1, 2021.