



*Information for Evaluating UST Financial
Responsibility Options*

ASTSWMO
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Purpose:

This document was prepared as a reference tool to assist State tank program managers in understanding the issues that arise in insurance coverage of leaking underground storage tanks. No reader should infer that the document advocates or discourages the use of commercial insurance in the program. Some States have developed fund-based approaches to cleanup assistance, and others are using alternative approaches to provide coverage in accordance with Federal financial assurance requirements. We believe that each State is best equipped to make such choices, and ASTSWMO's task is to provide the information necessary to make the decisions. This reference tool is intended to provide all State program managers with a consolidated source of information.

Overview:

This document provides a background on the financial responsibility (FR) requirements, the options that are available to UST owners and operators, and the fundamental principals of commercial pollution liability insurance.

Since each state assurance fund (or financial assurance program) is unique, this document does not address how state funds operate or any restrictions or limitations they have. Rather, since the primary user of this document will most likely be an individual working within or associated with a tanks program, it is assumed that the particulars on how a state fund is operated are already known or readily available.

This document is divided into four basic sections. The initial section provides an abbreviated overview of the federal financial assurance requirements. The second section summarizes the basic principals of pollution liability insurance. The third section of this document provides a list of objective questions on issues relevant to this subject. Each question is followed by an explanation as to why the information obtained from a response to that particular question is important. The fourth section includes an example check sheet that can be used in the comparison of pollution liability insurance with other FR mechanisms. A glossary of terms and a list of references follows.

Throughout this document, user-specific values must be kept in mind. In general, values are associated with issues such as time, cost, and surety and may be considered subjective. However, they are still very crucial to any decisions that are made with regard to FR. What may be acceptable in one state may not be acceptable in another. Likewise, what may be acceptable to one stakeholder group may not be acceptable to another. For example, speed and efficiency of corrective action at a petroleum release site may be a higher priority for some stakeholders than the actual cost of the cleanup. Likewise, surety of coverage with minimal chance for a claim denial may be more important than the cost of the premium. Information in this document should be used to help evaluate pollution liability insurance in comparison to other financial assurance mechanisms.

This document is not intended to provide guidance on determining the acceptability of any type of financial assurance mechanism from a regulatory standpoint. Rather, it is only intended to assist the user in understanding and comparing the practical aspects of pollution liability insurance and other acceptable methods of financial assurance.

Section 1. Background on Financial Responsibility

Federal Financial Responsibility Requirements

On October 26, 1988, the United States Environmental Protection Agency (EPA) finalized rules requiring owners and operators of petroleum UST systems to have some form of specified financial mechanism or mechanisms that will provide monies that are adequate, reliable and immediately available to pay cleanup costs and third party damages resulting from accidental releases from their petroleum UST systems. The requirements were phased in over time; however, by February 18, 1994, the requirements applied to all owners and operators of petroleum USTs except for those USTs excluded or deferred from UST regulation and those owned by Indian tribes on Indian lands. Tribal tanks on Indian lands were required to comply by December 31, 1998. Federal financial assurance requirements do not apply to federal or state governments. The federal rules on financial responsibility are located in 40 CFR Subpart H in Sections 280.90 through 280.116. It is imperative to understand that compliance with financial responsibility requirements does not limit the liability of any UST owner or operator.

Coverage Requirements

A. Types of Liability:

- Taking corrective action,
- Compensating third parties for bodily injury and property damage.

B. Types of Loss:

- Sudden accidental releases,
- Non-sudden accidental releases.

C. Losses Caused by:

- Releases from the operation of petroleum underground storage tanks.

D. Amount of Responsibility Required

Coverage must include at least the following per-occurrence ¹ amounts:

- \$1,000,000 --- petroleum marketing facilities, or tanks handling an average of more than 10,000 gallons per month, based on annual throughput, or
- \$500,000 --- other motor fuel tanks

Coverage must include at least the following annual aggregate ² amounts:

- \$1,000,000 --- owners and operators of 1 through 100 UST's.
- \$2,000,000 --- owners and operators of 101 or more UST's.

¹ Per-occurrence means for each loss (release).

² Annual aggregate means the maximum amount of coverage on an annual basis, no matter how many releases (losses), or occurrences take place. The annual term is determined by the consecutive 12-month period starting with the effective date of the financial responsibility mechanism.

E. Other Provisions:

- If the owner and operator of a petroleum UST are separate persons, only one party is required to demonstrate financial responsibility (provide the mechanism); however, both parties are liable in the event of noncompliance.
- The liability limits of the financial responsibility mechanism for both per-occurrence amounts and annual aggregate amounts must be exclusive of legal defense costs.
- A financial responsibility mechanism or combination of mechanisms must provide first dollar coverage; that is, the mechanism, or combination of mechanisms, must cover for the entire covered loss. If a mechanism such as an insurance policy has a deductible, the mechanism must respond from the first dollar of loss and the provider of financial responsibility must then collect the deductible from the insured. An alternative is to have the deductible amount covered by another mechanism.
- If different mechanisms are used to cover different kinds of liabilities (corrective action vs. property damage and bodily injury) or kinds of accidental releases (sudden vs. non-sudden), then each mechanism or combination of mechanisms must cover the full per-occurrence and annual aggregate amount required.
- If different UST systems are covered under different mechanisms or combination of mechanisms, then the mechanism or combination of mechanisms for each UST or group of USTs must cover the full per-occurrence and annual aggregate amount.

Allowable Financial Responsibility Mechanisms

The federal rule on UST financial responsibility provides for eight different mechanisms which an owner or operator of a petroleum UST may use singly or in combination to meet the coverage requirements. In addition, there are four mechanisms that are specifically designed for use by local governments. Local governments are not restricted to these four mechanisms, but may select from a total of twelve mechanisms potentially available to them. Some states have developed additional EPA approved mechanisms that may also be used by petroleum UST owners or operators. Review of these mechanisms is beyond the scope of this document.

A. General Mechanisms

Any owner or operator of a petroleum UST may use one or more of the following eight financial responsibility mechanisms to meet the coverage requirements. The relative costs of the mechanisms are for comparative purposes only. The cost of a specific mechanism may vary considerably, depending on the relationship between the petroleum UST owner or operator and the provider of financial assurance.

1. **Self-insurance:** (provisions and text of mechanism in 40 CFR Section 280.95)

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A petroleum UST owner or operator using self-insurance as a financial responsibility mechanism assumes the risk of financial loss for conducting corrective action and paying for third-party liabilities of bodily injury or property damage. The owner or operator using this mechanism is relying on its financial strength to meet its obligations. Self-insurance coverage is evidenced in a letter from the owner's or operator's chief financial officer (CFO).

There is no “up-front” cost to the person using self-insurance; however, in the event of a release, the person is obligated to pay for resulting losses to the extent of the commitment made in the CFO letter. Because of the reliance on the financial strength of the owner or operator using this mechanism, the EPA established rigorous requirements that must be met. The major qualifying factor is that the owner or operator has at least \$10 million of tangible net worth. Tangible net worth is the amount of assets remaining after deducting intangible assets, such as goodwill or rights to patents or royalties, and all liabilities. If this test is met, there are several other financial requirements that must be met before the person is eligible to use the mechanism.

2. **Guarantee:** (provisions and text of mechanism in 40 CFR Section 280.96)
A petroleum UST owner or operator using a guarantee as a financial responsibility mechanism assumes no direct risk of financial loss for conducting corrective action and paying third-party liabilities of bodily injury or property damage. A Guarantee is a promise by a third-party to fund a standby trust fund if the owner or operator using the mechanism fails to conduct corrective action or pay third-party liability claims. The owner or operator using this mechanism is relying on the financial strength of another entity that has a close business relationship with, or controlling interest in, the owner or operator. A letter from the guarantor's CFO evidences the guarantee coverage.

The “up-front” cost to the owner or operator or the guarantor (as agreed between them) is the standby trust agreement. Typically, there is a fee of approximately \$2,500 to set up the trust, and if the trust is accepted, an annual fee of approximately 0.1% to 1% is charged. In the event of a release, the guarantor is obligated to fund the standby trust to the extent of the commitment made in the CFO letter. In most jurisdictions, the guarantor is prohibited from charging the owner or operator a fee, as this would constitute a contract of insurance. Because of the reliance on the financial strength of the guarantor, the guarantor must meet all of the requirements established for an entity using self-insurance.

3. **Insurance & Risk Retention Group Coverage:** (provisions and text of mechanism in 40 CFR Section 280.97)
A petroleum UST owner or operator using commercial liability insurance or risk retention group coverage as a financial responsibility mechanism assumes no risk of financial loss for conducting corrective action and paying for third-party liabilities of bodily injury or property damage other than the applicable deductible amount stipulated in the policy and any costs in excess of the policy amounts. Commercial insurance or risk retention group coverage is a contract between the owner or operator and the company or group that provides it, in consideration of a charge called a “premium,” the company or group will assume responsibility for payment for the losses covered by the policy. The insurance policy or risk retention group coverage is evidenced by the specific endorsement or certificate of

insurance and the policy itself.

The “up-front” cost to the owner or operator is the premium charged by the company or group for the coverage. Premiums vary from company to company and group to group and the circumstances of the covered UST's. As a generalization, the higher the risk assumed by the company or group, the higher the premium. Also, the higher the deductible, the lower the premium.

(There is a detailed discussion of commercial insurance and risk retention group coverage in the body of this document.)

4. **Surety Bond:** (provisions and text of mechanism in 40 CFR Section 280.98)
A petroleum UST owner or operator using a surety bond (frequently called a performance bond) as a financial responsibility mechanism ultimately assumes the risk of financial loss for conducting corrective action and paying third-party liabilities of bodily injury or property damage. A surety bond is a promise by a third-party (the surety) to either meet the unmet obligations or fund a standby trust fund if the owner or operator using the mechanism fails to conduct corrective action or pay third-party liability claims. The owner or operator using this mechanism is relying on the financial strength of the surety to either pay for or perform the obligations of the owner or operator if that party fails to do so. The surety bond is evidenced by the bond itself.

The “up-front” cost to the owner or operator is the bond premium and the standby trust. Typically, bond premium is at the rate of 2% of the face amount of the bond, or \$20,000 for a \$1 million bond. Typically, there is a fee of approximately \$2,500 to set up the standby trust, and if a loss covered by the bond occurs, an annual fee of approximately 0.1% to 1% is charged on the balance of the trust. In the event of a release, the surety is obligated to either meet the unmet obligations or fund the standby trust to the extent of the commitment made in the bond. Because of the reliance on the financial strength of the surety, the surety must be on the list of sureties approved to provide bonds running to the federal government as published in the Department of the Treasury circular 570. The surety bond contains a provision that if the bond is called the owner or operator is obligated to repay the surety for its losses, or if the bond is collateralized, the collateral is forfeited.

5. **Letter of Credit:** (provisions and text of mechanism in 40 CFR Section 280.99)
A petroleum UST owner or operator using a letter of credit as a financial responsibility mechanism ultimately assumes the risk of financial loss for conducting corrective action and paying third-party liabilities of bodily injury or property damage. A letter of credit is a promise by a third party (usually a bank) to fund a standby trust fund if the owner or operator using the mechanism fails to conduct corrective action or pay third-party liability claims. The owner or operator using this mechanism is relying on the financial strength of the bank to provide the funds necessary to meet those obligations of the owner or operator if that party fails to do so. The letter of credit is evidenced by the letter itself.

The “up-front” cost to the owner or operator is the fee for issuing the letter of credit and the standby trust. Typically, the fee for the letter is between 1% and 15% of the face amount. Three percent or \$30,000 is typical for a \$1 million

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letter of credit. Typically, there is a fee of approximately \$2,500 to set up the standby trust, and if a loss covered by the letter occurs, an annual fee of approximately 0.1% to 1% is charged on the balance of the trust. In the event of a release, the bank is obligated to fund the standby trust to the extent of the commitment made in the letter of credit. Because of the reliance on the financial strength of the bank, certain standards are established for eligible institutions. If the letter of credit is called, the owner or operator must repay the bank for the amount placed in the standby trust, or if the letter is collateralized, the collateral is forfeited. The amount of the letter of credit is considered part of the owner's or operator's overall line of credit and the amount of the letter may not be available for other uses. The ability to "call" the letter of credit is typically granted to the agency responsible for overseeing the cleanup or enforcing the cleanup requirements (see 8. Trust Fund below).

6. **State Required Mechanism:** (provisions in 40 CFR Section 280.100)
These mechanisms are state-specific and beyond the scope of this document.
7. **State Fund or Other State Assurance:** (provisions in 40 CFR Section 280.101)
These mechanisms are state-specific and beyond the scope of this document. Contact the fund administrator to determine available coverage and related costs.
8. **Trust Fund:** (provisions and text of mechanism in 40 CFR Section 280.102)
A petroleum UST owner or operator using a trust fund as a financial responsibility mechanism ultimately assumes the risk of financial loss for conducting corrective action and paying third-party liabilities of bodily injury or property damage. A trust fund, used as a financial responsibility mechanism, is an agreement between the owner or operator and a trustee (usually a bank, but may be a firm specializing in trust administration.) If the owner or operator fails to conduct corrective action or pay third-party liabilities the director of the implementing agency can direct payments from the fund to perform the obligations not met. The owner or operator funds the trust to the extent that it is used to comply with the financial responsibility requirements. The owner or operator using this mechanism is relying on the funds on deposit with the trustee to meet those obligations of the owner or operator if that party fails to do so. The trust fund is evidenced by the trust agreement.

The "up-front" cost to the owner or operator is the amount to which the trust is funded. In addition, the annual fees for the administration and maintenance of the trust are approximately 1% and 0.1%, respectively, applied to the balance of the fund. For a \$1 million fund, this is \$11,000. The greatest expense may be the lost opportunity costs of the encumbered funds. The trustee has no direct interest in the owner or operator and acts as an impartial third party. The trustee 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.

B. Local Government Mechanisms

The following four mechanisms are designed exclusively for use by local governments. Local governments are not restricted to use of these mechanisms and may elect to use any other available mechanisms, either singly or in combination.

- 1. Local Government Bond Rating Test:** (provisions and text of mechanism in 40 CFR Section 280.104) A local government petroleum UST owner or operator using the bond rating test as a financial responsibility mechanism ultimately assumes the risk of financial loss for conducting corrective action and paying third-party liabilities of bodily injury or property damage. The local government owner or operator using this mechanism is relying on its financial strength, based on outstanding issues of general obligation or revenue bonds and the ratings of those bonds, to meet its obligations. Coverage is evidenced in a letter from the local government's CFO.

There is no "up-front" cost to the local government using the bond rating test; however, in the event of a release, the local government is obligated to pay for resulting losses to the extent of the commitment made in the CFO letter. Because of the reliance on the financial strength of the local government using this mechanism, the EPA established rigorous requirements that must be met. The major qualifying factor is that the local government has at least \$1 million of outstanding general obligation or revenue bonds that are investment rated. Investment rating is determined by EPA specified rating ranges of two nationally recognized bond-rating organizations.

- 2. Local Government Financial Test:** (provisions and text of mechanism in 40 CFR Section 280.105) A local government petroleum UST owner or operator using the financial test as a financial responsibility mechanism ultimately assumes the risk of financial loss for conducting corrective action and paying third-party liabilities of bodily injury or property damage. This test is for local governments unable to meet the bond-rating test. The local government owner or operator using this mechanism is relying on its financial strength, based on financial records, to meet its obligations. This mechanism is similar, in concept, to the financial test of self-insurance used in the private sector, except the test is designed for the unique accounting used by local governments. Coverage is evidenced in a letter from the local government's CFO that includes the required worksheet evidencing eligibility.

There is no "up-front" cost to the local government using the financial test; however, in the event of a release, the local government is obligated to pay for resulting losses to the extent of the commitment made in the CFO letter. Because of the reliance on the financial strength of the local government using this mechanism, the EPA established rigorous requirements that must be met.

- 3. Local Government Guarantee:** (provisions and text of Mechanism in 40 CFR Section 280.106) A local government petroleum UST owner or operator using a guarantee as a financial responsibility mechanism assumes no direct risk of financial loss for conducting corrective action and paying third-party liabilities of bodily injury or property damage. A local government Guarantee is a promise by a third-party, which is either a state or another local government, to honor the obligations of the local government using the mechanism if that government fails to conduct corrective action or pay third-party liability claims. The local government using this mechanism is relying on the financial strength of a state or another local government that has a close governmental relationship with the local government. The guarantee coverage is evidenced by a letter from the guarantor's CFO. There may, or may not be a standby trust used with the mechanism, as

determined by the parties involved.

The “up-front” cost to the local government owner or operator or the guarantor (as agreed between them) is the standby trust agreement, if used. In the event of a release, the guarantor is obligated to meet the local government’s obligations to the extent of the commitment made in the CFO letter. Because of the reliance on the financial strength of the guarantor, the guarantor, if another local government, must meet all of the requirements established for using the local government bond rating test, financial test or fund (reviewed below). Frequently states or local governments are prevented from providing guarantees to local governments because of their constitution, charter or other enabling provision.

4. **Local Government Fund:** (provisions and text of Mechanism in 40 CFR Section 280.107) A local government petroleum UST owner or operator using the local government fund as a financial responsibility mechanism ultimately assumes the risk of financial loss for conducting corrective action and paying third-party liabilities of bodily injury or property damage. The local government owner or operator using this mechanism is relying on its own funds to meet its obligations. Coverage is evidenced in a letter from the local government’s CFO.

The “up front” costs to the local government using this mechanism is the capital placed into the restricted use fund. EPA has provided that the fund used for the demonstration is dedicated to UST financial responsibility obligations and either fully funded or, under specified circumstances, funded in increments over a seven year period. A fund, alternatively, may be dedicated to general emergencies (that include UST financial responsibility obligations) and funded to five times the demonstrated amount.

5. **Alternate Financial Assurance Mechanisms:** A petroleum UST owner or operator may substitute any alternate financial assurance mechanism providing that at all times an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of section 280.93 is maintained. States with state program approval (SPA) have the authority to approve an alternate mechanism (40 CFR 280.37(c)). However, in states that do not have SPA, EPA has to approve the alternate mechanism."

Section 2. Background on Pollution Liability Insurance

A. Pollution Liability Insurance Information

Pollution Liability Insurance is also known as Environmental Impairment Liability (EIL) Insurance. The terms are synonymous.

- 1. Insurance is the transfer of risk from the insured to the insurance company by means of** a contractual relationship in which the insurance company is paid a premium by the insured. In return for the premium, the insurance company promises to *indemnify* the insured in the event of a loss covered by the contract. To *indemnify* means to restore the insured to the same position as before the loss (a petroleum release from the UST system) occurred.

For example: A retail business owner or operator is responsible for a host of issues; fire, theft, storm damage, injury to a patron from slipping on a wet floor, etc. If the business operator has protected himself or herself with appropriate insurance, the risk and cost of these potential liabilities have been transferred from the business operator to the insurance company.

- 2. Insurance Regulation provides the insurance industry with direction, control, and management.** The governing federal insurance law is Public Law 15, which turns over the regulation of insurance to the states. Each of the fifty states, Washington, D.C., and Puerto Rico has its own insurance code. The Insurance Department of each regulates insurance; the name may be different from state to state, but the basic functions are the same. While most states have an independent Insurance Department, in some states the function is included as a division of another department, for example the state's Commerce Department.

Typical state Insurance Department functions include: promoting insurance company solvency by supervising investments and conducting regular audits; licensing of brokers and agents; regulating rates and policies; taxation issues; market conduct; and, managing a guaranty fund to protect the insured from losses caused by an insolvent admitted insurance company.

- 3. Insurance Companies selling pollution liability insurance coverage are either an *admitted* company, or a *non-admitted* company.**
 - a..** An *admitted* insurance company is authorized (licensed) by the State insurance department to transact the business of insurance in the state and is subject to the supervision and scrutiny of that department. An admitted company is required to file the policy rates and forms for approval in each state it is "admitted."
 - b.** A *non-admitted* company provides insurance on a surplus lines basis for exposures. The non-admitted company is not licensed by the state to issue or service insurance policies within the state. However, the non-admitted company must be approved by a state to be eligible to issue policies in that state. Hence, non-admitted companies may legally offer policies once

approved. Approval is given when a non-admitted company is deemed to meet basic state specific requirements that may include, for example, financial condition, track record or expertise. Non-admitted companies are subject to regulation by each state in which they are approved. In most states, most UST policies are sold by non-admitted companies. A non-admitted company is not directly subject to regulation by a state's insurance department, but must adhere to the insurance regulations of the state. The non-admitted company is subject to the supervision and scrutiny of the insurance department of its home state, which may be intensified in the event that a complaint of bad faith from another state is received. A non-admitted or unauthorized insurance company is not always required to file the policy rates and forms for approval.

4. **Insurance Policies.** General liability policies do not cover damage that results from the release or escape of pollutants, unless specific coverage is added by endorsement. The owner or operator of petroleum underground storage tanks must purchase a separate pollution liability insurance policy, or endorsement, to cover the damage resulting from a petroleum release.
 - a. Claims-Made Policy. A claims-made insurance policy pays only for claims made or reported during the period covered by the policy. The policy eliminates coverage for incidents that occur during the policy period but which are reported to the insurance company after the policy period expires. (Currently, almost all pollution liability insurance policies covering petroleum underground storage tanks are claims-made policies.)
 - b. Occurrence-Basis Policy. The occurrence policy pays for losses occurring during the policy period regardless of when the claim is reported. (Very few pollution liability insurance policies are currently written as occurrence policies.)
5. **The Pollution Exclusion.** An exclusion is a contractual provision that denies coverage for certain losses. From 1970 through 1985, the Comprehensive General Liability (CGL) policy included an exclusion for discharges of pollutants that were not "sudden and accidental." Since 1985, most, if not all, liability policies have contained pollution exclusion for most pollution damage. It is because of this exclusion that an owner or operator must purchase UST pollution liability insurance. Commercial General Liability Coverage may be written as a monoline policy or part of a commercial package policy. "CGL" now means "commercial" general liability forms, which have replaced the earlier "comprehensive" general liability forms. The latest commercial general liability forms include all sublines and provide very broad coverage. Two variations are available including "occurrence" or "claims-made" coverage.
6. **Coverage.** Pollution liability insurance policies normally cover only losses arising from a release from the UST system. Coverage includes cleanup costs and bodily injury and property damage arising out of the release. Policies do not normally cover such things as replacement of tanks, lines or dispensers; losses caused by spill or overflow during loading; or business interruption. Some insurance companies will provide coverage of these losses for an additional premium.

7. **First Dollar Coverage.** As noted previously, 40 CFR requires that a pollution liability insurance policy provide *first dollar* coverage in order to avoid having tank owners or operators default on their deductible responsibilities and/or problems with activating policy coverage. In current common practice, most insurance companies handle deductibles like the deductible for an auto insurance policy.
8. **Insurance Policy Construction.** UST policies are similar to other types of insurance policies, and consist of the following elements:
 - a. Insuring Agreement. This section describes in general what the insurance policy will cover in the event of a loss.
 - b. Definitions. Definitions of the terms used in the policy. These have specific meaning to the policy under consideration. Words may not have the same meaning in different companies policies.
 - c. Limits. This section describes how per-occurrence and annual aggregate policy limits will apply.
 - d. Exclusions. Describes specific circumstances in which no coverage will apply or be provided.
 - e. Conditions. Lists how the policy will respond under different circumstances. For example, how premiums are returned if the policy is canceled, how the policy will respond if there is other insurance in place, etc.
9. **Insurance Policy Terminology**
 - a. Retroactive Date. The date on a claims-made policy will trigger the beginning period of insurance coverage. If a loss occurred prior to the retro-date, the claim will not be covered, even if a claim is made during the policy period. Some insurance companies will agree to provide an earlier retro-date for a fee.
 - b. Deductible (Self-Insured Retention). A deductible is an amount the insured must pay before the insurance company pays. However, 40 CFR, requires a different approach for a UST policy. The insurance company must pay *first dollar* on a claim and then seek reimbursement from the insured for the amount.
 - c. Extended Reporting Period. An Extended Reporting Period Endorsement does not extend the policy period, it only extends the time in which claims may be reported that occurred during the policy period. The loss must occur during the original policy period, but will be covered if reported during the extended reporting period.

Claims are often made long after an accident or an event that caused a loss (release from a UST). Because most pollution liability policies are written on a claims-made basis, the insurance company pays only claims that are

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reported during the policy period. An insured should consider *Tail* coverage to protect against claims not known at the end of the policy period. If a claims-made policy is renewed or replaced, the insured should require that the retro-date is the same as, or earlier than, the retro-date on the expired or terminated policy.

As previously noted, 40 CFR, Part 280 requires that a pollution liability insurance policy covering petroleum underground storage tanks must include a six month extended reporting period. Normally the insured must purchase this coverage, but 40 CFR requires that it be provided as part of the coverage. Coverage beyond the required six months, if available, must be purchased by the insured. Some states have specific requirements in regard to the extended reporting period endorsement.

- d. Endorsement. An endorsement is a written or printed form attached to the policy, which alters specific provisions of the insurance contract. For example, adding a lending institution as an additional insured would be in an endorsement.

10. Evaluation of Insurance Companies.

At least five independent financial rating firms provide evaluations of insurance companies. The ratings firm with the longest history of evaluating insurance companies is the A.M. Best Company. Its ratings are published annually in two editions (property-casualty and life-health) which are widely available in libraries as well as on the Internet. These books contain considerable information about insurance companies including the names of officers, home office and address, company history, composition of assets, balance sheets, and significant operating ratios. The chart below provides a summary of the Best's rating categories, and provides a summary of the failure frequency of insurance companies in each level and category.

Best's Rating Categories					
Secure _____			_____ Vulnerable _____		
<u>Level</u>	<u>Category</u>	<u>Failure Frequency</u>	<u>Level</u>	<u>Category</u>	<u>Failure Frequency</u>
A++	Superior	0.02%	B	Fair	1.21%
A+	Superior		B-	Fair	
A	Excellent	0.21%	C++	Marginal	2.22%
A-	Excellent		C+	Marginal	
B++	Very Good	0.50%	C	Weak	2.39%
B+	Very Good		C-	Weak	

11. Company, Broker, Agent/Insurance Producer --- Functions & Responsibilities.

a. Insurance Company. The insurance company writes insurance policies, assumes the financial risk associated with these policies, and pays claims. A *Risk Retention Group* is like an insurance company, except the group is composed of individuals or firms who pool their premium monies to pay losses incurred by group members. Title 40 CFR treats insurance companies and risk retention groups equally as insurers.

b. Broker. An Insurance Broker is a licensed insurance producer/agent who represents the insured, not an insurance company. The Broker is not restricted to placing business with any one insurer although he or she must place business "through" another licensed insurance producer/agent.

c. Agent/Insurance Producer. "Agent/Insurance producer" means a person required to be licensed under the laws of a state to sell, solicit or negotiate insurance. There are two types of insurance producers, the independent agent and the direct writer. The independent agent/insurance producer may place business with any insurance company with which he or she holds a contract. The direct writer is the representative of only one insurance company, and sells the policies of that company.

d. Managing General Agent (MGA). Since it is expensive for an insurance company to open an office in a particular state (or each state), some insurance companies sell their products through a MGA. The MGA may represent the insurance company in a state, a region, or the whole country. The MGA steps into the shoes of the insurance company and is usually responsible for underwriting a risk, pricing policies, and collecting premiums. Most MGAs do not normally adjust claims. Claims should be reported as indicated by the insurance company.

Section 3. Important Questions To Ask

The following questions are intended to assist the user of this guide in comparing pollution liability insurance to other financial assurance mechanisms for statewide application. For many UST owners, there are only two practical methods for demonstrating FR: either a state-supported financial assistance program or commercial pollution liability insurance.

A. General Questions Regarding Existing Program Objectives.

(Note: The questions in this first section are intended to assist the user in evaluating the status of the existing financial assurance mechanism and in determining the objectives for comparing it to other mechanisms.)

- 1. Question:** What are the objectives of the state's existing financial assurance program? Does the existing FR mechanism (i.e., state fund, commercial insurance etc.) meet these objectives? If not, what can or is being done to attain the objectives?

Remarks: Before an objective evaluation can be made of alternate financial assurance mechanisms, the user should have a clear knowledge of what the objectives and stakeholder concerns of the existing program are. For example, is the existing program intended to provide funding only for the cleanup of old releases and not cover new releases? Is the existing program intended to meet some or all of the federal FR requirements? This may require a close examination of existing statutes and original program legislation.

- 2. Question:** Does the current financial assurance mechanism being examined meet federal and state requirements for financial responsibility?

Remarks: It should be clearly defined if one of the program objectives is to provide a mechanism that meets the federal and state (if applicable) FR requirements. If yes, the objective should be further refined to determine if it is complete or if other mechanisms may be necessary to assure full compliance with the federal and state requirements.

- 3. Question:** What type of petroleum release sites are eligible for coverage under the current program and what types of sites are not covered?

Remarks: The type of facilities covered and conditions of coverage under the existing program should be clearly identified before a thorough and objective comparison can be made with other mechanisms.

- 4. Question:** What options are available for those sites not covered?

Remarks: If the existing program does not cover certain sites or categories of sites, are other methods available to them? The user should know what FR options are available to sites not currently covered by the existing program. If other options are available, are they practical and affordable? For example, some state funds include coverage for residential tanks and aboveground tanks. It is important to evaluate if alternative FR mechanisms provide the same coverage.

5. Question: Are there any environmental or economic benefits to commercial pollution liability insurance as compared to a state supported financial assurance program?

Remarks: This is a complex question that warrants a close examination of many issues. Determining whether or not there are environmental economic benefits when comparing a state fund to pollution liability insurance requires an objective comparison of the two FR mechanisms relative to the overall goals. Many of the issues that should be considered are addressed throughout this document.

6. Question: Are there programmatic risks/ benefits comparing the current financial mechanism fund to another such as pollution liability insurance?

Remarks: Following are several examples of factors warranting consideration:

- Additional skill sets needed by state staff to develop and implement an insurance-based FR system;
- The resource implications of moving to an insurance-based FR program;
- Compliance evaluation with the new FR mechanism;
- Enforcement priorities;
- The overall compliance status of the regulated community, and its impacts on the ability to obtain other FR mechanisms;
- The liability limits and types of claims covered in the event of a release; and
- The cost to the regulated community.

7. Question: What features would qualify a pollution liability insurance policy as an acceptable financial assurance mechanism?

Remarks: It is important that these features be defined up-front before private carriers of pollution liability insurance are evaluated. The most important feature to be considered is that the coverage provided by the policy meets all requirements of 40 CFR, Part 280 and any additional state or local regulations. For example, 40 CFR, Part 280 does not establish standards (such as Best's ratings) for insurance companies or risk retention groups; however, insurance carriers are regulated in most states and must meet minimum requirements to sell insurance in that state. Financial stability is also a very important feature and the A.M. Best's rating is the best indicator of stability. Other important factors to compare include claims servicing, program offerings and the price (premium) of coverage.

Decision makers need to recognize whether the state assurance fund also covers other activities than petroleum USTs and address this accordingly.

8. Question: Will there be sufficient competition to maintain fair and reasonable premiums for the long run?

Remarks: Market forces may be such that a threshold number of insured sites are either necessary or desirable before there is a financial incentive for commercial insurance to be written. Key decision makers should explore this issue with their insurance departments and local carriers to obtain informed opinions. Decision makers should also identify which factors would enhance the interest of carriers

and the potential for competition (such as increased inspection frequency, publishing low and verified leak rates from new and upgraded systems versus overall leak rates, etc.)

- 9. Question:** If commercial insurance becomes the primary FR mechanism, is there a need for a backup or alternate means of financial assurance if commercial insurers decide to slow or cease providing coverage?

Remarks: It is very important to address this issue in order to better ensure the long-term guarantee of FR compliance. Commercial insurance availability and affordability may wane if market conditions become negative. Decision makers should identify those factors that are key to maintaining the desirable conditions, i.e., low leak rates and low severity, and those actions that are critical to continuing the condition (e.g., frequent inspections, timely compliance and enforcement). Decision makers need to identify those partnership elements that will enhance overall environmental protection.

- 10. Question:** Will there be UST owners and operators who will be unable to obtain commercial insurance coverage and, if so, how will the implementing agency address this situation?

Remarks: There will likely be sites that will be excluded by commercial insurance because of the underwriting criteria or the cost of the premium. These owners or operators may not be able to meet the FR requirements unless there are alternate means available to them. Decision makers need to recognize this dilemma and identify factors that will lessen the risk of the site and whether alternate coverage opportunities should be provided by the state or accept the fact that some owners and operators will not be able to cover the cost and will go out of business.

- 11. Question:** What role should the implementing agency play with regard to the oversight of cleanup and cost control of project costs under the different FR mechanisms?

Remarks: The implementing agency will likely require the oversight of cleanup activities yet the approval of expenditures will be performed by others. Decision makers and stakeholders should have a common understanding of how clean-ups will be managed under alternative FR mechanisms.

B. Questions Regarding Policy, Documentation and Coverage Issues of Private Pollution Liability Insurance. *(The questions in this section are intended to be asked of the provider of commercial pollution liability insurance.)*

- 1. Question:** What is the application process, and what happens to an application?

Remarks: In order to provide an accurate comparison of pollution liability insurance with other FR mechanisms, the user should gain a thorough understanding of the application process. Each insurance company has its own application and each requests a variety of information, which may include age and size of the tank(s), type of leak detection, date(s) of last tank tightness testing, design and construction of the tank(s), and information on any prior releases.

The application is the basis of the premium rating decision by the insurance company and typically becomes a part of the insurance policy. On request, insurance companies will provide copies of *specimen* applications so that the applicant will know what information and supporting documentation will be required.

2. Question: What type of site information is required under different FR mechanisms?

Remarks: It is important to learn as much information up-front regarding application requirements. For example, a private insurance company may require submission of inventory records, tank tightness test results, and/or other documentation related to UST systems. A site assessment may also be required before determining insurability, limits of coverage or in establishing the premium. It should be understood who pays for the cost of this work.

3. Question: What documentation or certification is provided to UST owners?

Remarks: This question is important because regulated tank owners must be able to demonstrate financial responsibility. Documentation of private pollution liability insurance coverage is provided by the policy itself, a binder, a letter of confirmation of coverage, or an *Acord* Certificate of Liability Insurance. The insurance company or MGA issues the policy. The broker or agent/insurance producer, not the insurance company, issues the binder, *Acord* certificate, or letter of confirmation.

The *policy*, issued by the insurance company, is often not received by the insured until 60 to 90 days after coverage has been bound.

A *binder* is a temporary insurance contract used to provide insurance coverage until the actual contract can be issued. The binder is issued by the insurance agent or broker and is usually good for 60 to 90 days, depending on state insurance law. The binder usually includes a statement of coverage, the limits of coverage, the deductible, premium, and description of the site.

An *Acord* certificate is a one-page document which states the name of the producer, the insured, a summary of coverage provided, limits of liability, a description of the location, and the certificate holder. The *Acord* certificate includes the following statement: "This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below."

It is not unreasonable for a state to require that a binder, an *Acord* certificate, or a letter of confirmation of coverage be provided as proof of financial responsibility. The agent or broker would be able to respond promptly to such a request by the insured or the state. To require that a copy of the policy be provided would result in a time delay in documentation of coverage, and would result in a lot of paper to be reviewed and stored.

An endorsement worded as specified in 40 CFR, Section 280.97 (b) [1], or a certificate of insurance worded as specified in Section 280.97 (b) [2] are usually issued by the insurance company, or an MGA on behalf of the insurance company.

The language/wording is also incorporated into the policy in several places.

- 4. Question:** What dollar coverage limits are available from the insurance company for a UST policy?

Remarks: Most UST pollution liability insurance policies include language stating that all coverage is in compliance with the requirements of 40 CFR Part 280 or similar wording. The insurance policy, the insurance binder, and the Acord certificate state the limits of coverage. When considering the policy coverage provided by a given insurance company, one should request a copy of the application, as well as a copy of a *specimen* policy. Policies should be reviewed to determine what costs are included as well as excluded in the coverage limits.

- 5. Question:** What deductibles does the insurance company offer?

Remarks: Typically, deductibles offered by insurance companies for retail outlets vary from \$1,000 to \$25,000. Larger deductibles are available and may be more appropriate for larger multiple facilities. Because of the “first dollar” requirement of 40 CFR, some insurers require the applicant to provide a financial statement if a deductible of more than \$50,000 is sought.

When seeking information on deductibles, it is important to also obtain information on how premium rates change with different deductibles. The premium charged for the policy directly reflects the deductible sought by the applicant. For identical UST sites, the premium for a policy with a \$5,000 deductible will be higher than the premium for a policy with a \$20,000 deductible.

- 6. Question:** What operational requirements will the insurance company impose on the insured?

Remarks: Most insurance companies require that the UST system(s) be operated in accordance with federal, state and local jurisdiction requirements. Some insurance companies may periodically ask the insured to provide copies of the latest tank and line tightness testing results, inventory records or leak detection records. The application for insurance typically includes a statement signed by the owner or operator that he or she is operating in compliance with all appropriate laws and regulations. Some insurance companies conduct periodic inspections of facilities to ensure compliance. It is very important that clear, unambiguous responses be provided to this question.

- 7. Question:** What happens if the owner does not comply with operational requirements?

Remarks: It is very important to have clear information on how noncompliance or perceived noncompliance with operation requirements will affect coverage of a release, especially if it will result in a denial or delay in payment. Will all types of noncompliance be treated in the same manner? For example, will the failure to keep adequate inventory records have the same consequences as the deliberate disconnection of a leak detection warning system? If coverage for a petroleum release is denied because of noncompliance with operation requirements, what is the mechanism of appeal and what state resources are there to resolve an

emergency situation?

- 8. Question:** What are the exclusions in a typical UST pollution liability policy, and what do the exclusions eliminate from coverage?

Remarks: A clear detailed understanding of exclusions is crucial, as they may be grounds for denial of coverage. Exclusions must be stated in the insurance policy. Typical exclusions include: unlawful, fraudulent or dishonest acts; release prior to policy inception; loading or unloading from a delivery vehicle; noncompliance with any statute, law or regulation; repair, replacement or upgrade of the UST system; punitive damages; operation and maintenance costs; petroleum releases that occur after the property is sold, abandoned or given away; workers compensation and unemployment benefits. A *marine exclusion* might eliminate an UST system located within a certain distance of surface water, whether a lake, stream or salt water. Exclusions are sometimes, but not always, stated in a binder and sometimes on an Acord certificate.

- 9. Question:** Do the exclusions include paper violations, such as failure to report inventory records within an allotted time frame?

Remarks: It is important to understand whether minor paperwork, reporting, or record keeping violations will result in denial of coverage.

- 10. Question:** How will premium rates vary between UST systems (i.e., replaced vs. upgraded, double-walled vs. single-walled, etc.?)

Remarks: Each insurance company has unique underwriting and premium rating methods, which are proprietary and closely held. While the age of the UST system is an important factor in determining the insurance premiums, insurers also carefully consider other factors. These may include the leak detection method, equipment type, size or volume, tank system design and construction, depth to groundwater, soil chemistry, facility location and operation and maintenance practices.

- 11. Question:** What factors will cause insurance premiums to increase? For example, will premiums increase as a tank system ages?

Remarks: It is very important to obtain a clear, unambiguous response to this question, especially regarding factors over which the insured may have little or no control. For example, tank aging is an unavoidable process unless the tank owner replaces equipment regularly. It is very important to understand how premiums may change with tank age. Leak detection methods may also be considered in determining premiums. The age of a tank system that depends on manual inventory and tank tightness testing will have a direct correlation on premium and premiums can be expected to increase with age. However, the premium for a tank system with a sophisticated monitoring, inventory and alarm system may not necessarily increase at the same rate.

- 12. Question:** Will pollution liability insurance coverage be provided for all tanks, including bare steel tanks with cathodic protection that has been added?

Remarks: Commercial insurance companies may choose to accept only the low or moderate risk tanks and ignore the higher risk tanks. For example, will tanks that have been retrofitted with cathodic protection be considered higher risk than new tanks? What about tanks that have been upgraded with internal lining? Will retrofitted tanks be insured? How will the premiums be different for new tanks?

13. Question: How will the insurance company distinguish between old contamination and new contamination?

Remarks: Commercial insurance will not cover corrective action expenses for old contamination. It is important to understand how this problem will be handled when considering alternative FR mechanisms. Private insurance policies will most likely be written to cover only new releases. Many companies require a site investigation before providing coverage. Segregating the old from the new after the fact can be difficult if not impossible in some situations.

14. Question: How do insurance policies that have retroactive dates affect coverage for UST owners?

Remarks: Understanding how the Retroactive Date affects coverage is important. The Retro-Date is the date on a Claims-Made policy, which triggers the beginning period of insurance coverage. If a loss occurred prior to the Retro-Date, the claim will not be covered, even if a claim is made during the policy period.

C. Questions Regarding Claims Handling and Management. *(These questions relate to the crucial aspect of UST commercial pollution liability insurance – claims handling and management. An owner or operator purchases pollution liability insurance to ensure that contamination from a release under the terms of the insurance policy is cleaned up. The claims process/system of an insurance company must accomplish that purpose in order for a commercial insurance policy to be deemed effective.)*

1. Question: What is the claims process for the insurance company?

Remarks: This is probably the most important aspect of reviewing the performance of an insurance company. The insurance company should state step-by-step exactly what happens to a claim; who (insurance company or contracted service provider) responds for the insured, how quick is the response, what investigation processes does the insurance company practice, what guidance is provided to the insured, who selects the remediation contractor, etc. The roles of the agent or broker, the insurance company's environmental engineer, who selects the contractor to accomplish corrective action, etc., must be clearly stated. It may be advisable to check with the state insurance department to see if consumer complaints have been registered against particular insurance providers. The insurance department might be able to check with other states to determine any claims-related complaints.

2. Question: What is an ideal claims process for tank pollution liability insurance claims?

Remarks: While there is no published or specified optimum or ideal pollution liability claims process or system, the tank owner, as well as the state, would be

best served by closely reviewing the process of the commercial insurer and determine if it includes the following steps or procedures:

- Prompt notification to those who can investigate the possible release.
- Prompt investigation of the release.
- Clear authority to make decisions and authorize expenditures.
- Clear understanding of standards.
- Prompt reporting of actions taken and costs incurred.
- Clear and prompt process for resolving disputes.
- Prompt notification to state health officials, if any, of imminent threats to the public health.

3. Question: What can a policyholder do when a claim is denied?

Remarks: It is worth noting that the insurance company does not necessarily have to formally deny a claim to cause difficulty or unreasonable burden for the tank owner. The insurance company could just ignore the claim, or fail to take a pro-active stance with regard to claims handling. The result is the same - the cleanup doesn't happen, public health and the environment may be threatened, and the policyholder does not know where he or she stands.

In either case, if the action of the insurance company appears to fall short of policy agreements, the insurance company is potentially subject to *bad faith* legal action.

In the case of a claim being denied by an insurance company, the policyholder has several options to pursue.

- The policyholder needs to understand the reason for denial. If the insurance company has based its denial on erroneous or incomplete information, the policyholder should immediately communicate correct or complete information to the insurance company.
- Request or demand the assistance of the broker or agent that sold the policy. The broker or agent has certain obligations to the policyholder, and failure to properly represent a client could be the basis for legal action against the broker or agent. Smaller brokers or agents will probably have limited or no experience with environmental claims. Their orientation is on sales, not necessarily service or assistance with claims.
- File a complaint with the state's insurance department.
- File a complaint with the consumers' protection division of the state's Attorney General's office.

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- Retain legal representation.

4. Question: Who will manage cleanups? Who selects the service provider? What steps are taken to ensure that the cleanup meets the requirements of state and local authorities?

Remarks: The answers to these questions are critical in making a thorough comparison of pollution liability insurance to other FR mechanisms. For example, will the tank owner have some control over how the cleanup is taking place or will the insurance company manage the entire project?

5. Question: How will the insurance company handle a claim that results from a vehicle hitting a pump, or where site construction activities which are unrelated to the tank system installation or operation result in a spill or leak from that system?

Remarks: While coverage would depend on the policy definition of *UST system*, it is important to understand how this type of situation would be handled before it occurs. If the policy defines UST system to include tank, lines and dispenser, the claim would be covered, provided, of course, that the release occurred during the policy period. The same would apply to a construction error or defect. In situations where coverage is not provided, the insurance company should be asked if they will pay for cleanup actions up-front and then subrogate against the insurance company representing the negligent party.

Section 4. Example Check Sheet For Evaluating UST Financial Responsibility Options

Part 1 -General Questions

- What are the objectives of the State's Existing Financial Assurance Program?
- Does the current financial assurance mechanism being examined meet federal and state requirements for financial responsibility?
- What type of petroleum release sites are eligible for coverage under the current program and what types of sites will not be covered?
- What options are available for those sites not covered?

Part 2 - Questions Relating to Private Pollution Liability Insurance

- What issues are driving the evaluation of commercial insurance as a replacement or enhancement of the state financial assurance fund?
- Are there environmental or economic benefits to commercial insurance for the regulator, tank owner/operator or the state fund mechanism?
- Are there programmatic risks/benefits to commercial insurance?
- Will there be sufficient competition among providers of commercial pollution liability insurance to maintain fair and reasonable premiums for the long run?
- If commercial insurance becomes the primary FR mechanism, is there a need for a backup or alternate means of financial assurance if commercial insurers decide to slow or cease providing coverage?
- How will sites with pre-existing contamination be addressed?
- Will there be UST owners and operators who will be unable to obtain commercial insurance coverage and, if so, how will the implementing agency address this situation?

Part 3 - Questions Regarding Policy, Documentation and Coverage Issues of Private Pollution Liability Insurance

- What is the application process?
- What type of site information will the commercial insurer require before agreeing to insure UST systems?
- What type of compliance information will the commercial insurer require?

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- What documentation or certification is provided to the insured?
- What dollar coverage limits are available from the insurance company for a UST policy?
- What deductibles does the commercial insurer offer?
- What operational requirements will the commercial insurer impose on the insured?
- What are the consequences if the owner does not comply with operational requirements imposed by the commercial insurer?
- What are the exclusions in the UST pollution liability policy, and what do the exclusions eliminate from coverage?
- Do the exclusions include denial of coverage due to paper violations, such as failure to report inventory records within an allotted time frame?
- How will premium rates vary between UST systems (i.e., replaced vs. upgraded, double-walled vs. single-walled, etc.?)
- What factors will cause insurance premiums to increase? For example, will premiums increase as a tank system ages?
- Will pollution liability insurance coverage be provided for all tanks, including bare steel tanks with cathodic protection that has been added?
- How will the insurance company distinguish between old contamination and new contamination?
- Does the insurance company offer any leak prevention or education programs?

Part 4 - Questions Regarding Claims Handling and Management by Commercial Insurance

- What is the claims process for the insurance company?
- What are the options for policyholders whose claim is denied?
- Who will manage cleanups?

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 - b. RMIS Web. (Library of claims, safety, government information)
<http://www.rmisweb.com>
 - c. National Underwriter. (Insurance industry resource center; news, industry links)
<http://www.nuco.com>
 - d. Business Insurance Magazine.
<http://www.businessinsurance.com>
 - e. RIMS – Risk & Insurance Management Society. (Pool of risk management data; includes daily newsletter)
<http://www.rims.org>
 - f. AM BEST's. (Insurance company ratings and financial analysis)
<http://www.ambest.com>

- g. ISO – Insurance Services Office. (Statistical, actuarial and policy form information)
<http://www.iso.com>
- h. Anderson, Kill & Olick. (Law firm specializing in insurance litigation)
<http://www.andersonkill.com>

Glossary

"Accidental release" means, per 40 CFR § 280.92, any sudden or non-sudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

"Accommodation Line" means, per InsWeb Insurance glossary, business accepted from an agent or broker which would normally be rejected according to strict underwriting standards but which is accepted because of the overall profitability of the agent's or customer's other business. As an example, an insurer might accept coverage on property that would not normally meet its underwriting standards, if the other lines of insurance that it carries for the customer were profitable.

"Admitted Company" means, per InsWeb Insurance glossary, an insurance company authorized and licensed to do business in a given state. Note: an admitted insurance company is subject to the insurance regulations of the state where it is admitted, and is subject to the supervision or scrutiny of the state insurance department.

"Agent" means, per InsWeb Insurance glossary, one who solicits, negotiates or effects contracts of insurance on behalf of an insurer. [*The agent's*] right to exercise various functions, *agent's* authority, and *agent's* obligations and the obligations of the insurer to the agent are subject to the terms of the agency contract with the insurer, to statutory law, and to common law.

"Aggregate Limit" usually refers, per InsWeb Insurance Glossary, to Liability Insurance and indicates the amount of coverage that the insured has under the contract for a specific period of time, usually the contract period, no matter how many separate accidents may occur.

"Application" means, per InsWeb Insurance glossary, a form on which the prospective insured states facts requested by the insurer on the basis of which, together with information from other sources, the insurer decides whether to accept the risk, modify the coverage offered, or decline the risk.

"Bodily Injury" shall have, per 40 CFR § 280.92, 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. "Bodily Injury" means, per InsWeb Insurance glossary, a legal liability that may arise as a result of the injury or death of another person.

"Broker" means, per InsWeb Insurance glossary, one who represents an insured in the

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solicitation, negotiation or procurement of contracts of insurance, and who may render services incidental to those functions. By law the broker may also be an agent of the insurer for certain purposes such as delivery of the policy or collection of the premium.

“Captive Agent” means, per InsWeb Insurance glossary, one who sells insurance for only one company as opposed to an agent who represents several companies. See also Exclusive Agency System.

"Chief Financial Officer," in the case of local government owners and operators, means, per 40 CFR § 280.92, the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

"Captive Insurance Company" means a special purpose insurance company that insures the risks of its parent company and its affiliates. A captive insurance company represents an option for many corporations and groups that want to take financial control and manage risks by underwriting their own insurance rather than paying premiums to third-party insurers.

"Controlling Interest" means, per 40 CFR § 280.92, direct ownership of at least 50 percent of the voting stock of another entity.

“Certificate of Authority” means, per InsWeb Insurance glossary, (1) A certificate showing the powers that an insurer grants to its agents. (2) A certificate issued by a state department of insurance showing the power of an insurer to write contracts of insurance in that state.

“Certificate of Insurance” means, per InsWeb Insurance glossary, (1) A statement of the coverage and general provisions of a master contract in group insurance that is issued to individuals covered in the group. (2) A form that verifies that a policy has been written and states the coverage in general, often used as proof of insurance in loan transactions and for other legal requirements. Note: per 40 CFR Part 280, the Certificate of Insurance used for FR compliance must be worded as provided in § 280.97.

“Claim” means, per InsWeb Insurance glossary, a demand made by the insured, or the insured's beneficiary, for payment of the benefits provided by the contract.

“Claimant” means, per InsWeb Insurance glossary, the person making a demand for payment of benefits.

“Claims-Made Coverage” means, per InsWeb Insurance glossary, a policy providing liability coverage only if a written claim is made during the policy period or any applicable extended reporting period. For example, a claim made in the current year could be charged against the current policy even if the injury or loss occurred many years in the past. If the policy has a retroactive date, an occurrence prior to that date is not covered. Contrast with Occurrence Coverage.

“Combined Single Limit” means, per InsWeb Insurance glossary, a single limit of protection for both Bodily Injury and/or Property Damage, contrasted with split limits, where specific limits apply to Bodily Injury and Property Damage separately. Note: Per 40 CFR Part 280, the combined single limit is to cover corrective action as well as third-

party liabilities of bodily injury and property damage.

“Contract” means, per InsWeb Insurance glossary, (1) an agreement entered into by two or more persons under which one or more of them agree, for a consideration, to do or refrain from doing acts in accordance with the wishes of the other party(s). (2) In insurance, the agreement by which an insurer agrees, for a consideration, to provide benefits, reimburse losses or provide services for an insured. A "policy" is the written statement of the terms of the contract. (3) An agreement under which an agency or agent does business with an insurer.

“Coverage” means, per InsWeb Insurance glossary, the scope of the protection provided under a contract of insurance.

“Covered Loss” means, per InsWeb Insurance glossary, illness, injury, death, property loss, legal liability, or any other situation or loss for which an insurance company will pay benefits under a policy when such event occurs.

“Deductible” means, per InsWeb Insurance glossary, the portion of an insured loss to be borne by the insured before [*the insured*] is entitled to recovery from the insurer. Note: 40 CFR Part 280 requires, in an insurance or Risk retention Group policy, the insurance company to pay from first dollar on a claim and then seek reimbursement from the insured for the deductible amount.

“Effective Date” means, per InsWeb Insurance glossary, the date on which the protection of an insurance policy or bond goes into effect.

“Endorsement” means, per InsWeb Insurance glossary, a written or printed form attached to the policy that alters provisions of the contract. Note: per 40 CFR Part 280, the endorsement form used for FR compliance must be worded as provided in § 280.97.

“Entry Date into Claims-Made” means, per InsWeb Insurance glossary, initial effective date of a "claims-made" liability policy. An entry date is used to determine extent of maturity for rating purposes. If claims-made coverage is interrupted and reestablished, or if a retroactive date is changed on renewal, the entry date will change.

“Exclusion” means, per InsWeb Insurance glossary, a contractual provision that denies coverage for certain perils, persons, property, or locations.

“Exclusions” means, per InsWeb Insurance glossary, specific situations, conditions, or circumstances that are listed in the contract as being not covered.

How are the above different?

“Extended Reporting Period” or “ERP” means, per InsWeb Insurance glossary, a period allowing for making claims after expiration of a "claims-made" liability policy.

“Goodwill” means, per InsWeb Insurance glossary, an intangible business asset. It refers to the value of a business that has been built up through the reputation of the business concern and its owners.

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“Guaranty Funds” means, per InsWeb Insurance glossary, funds created by state law from contributions by insurance companies operating in the state which are used to make good any unpaid claims or otherwise to make money available to insolvent companies. Each state that has a fund has a different plan. See Insurance Guaranty Act. Same as Insolvency Funds.

“Hazard” means, per InsWeb Insurance glossary, a specific situation that increases the probability of the occurrence of loss arising from a peril, or that may influence the extent of the loss. For example, accident, sickness, fire, flood, liability, burglary, and explosion are perils. Slippery floors, unsanitary conditions, shingled roofs, congested traffic, unguarded premises, and non-inspected boilers are also hazards.

“Indemnify” means, per InsWeb Insurance glossary, to restore the victim of a loss to the same position as before the loss occurred.

“Indemnity” means, per InsWeb Insurance glossary, restoration to the victim of a loss by payment, repair, or replacement.

“Independent Agency System” means, per InsWeb Insurance glossary, an insurance distribution system within which independent contractors, known as agents, sell and service Property-Liability Insurance solely on a commission or fee basis under contract with one or more insurers that recognize the agent's ownership, use, and control of policy records and expiration data.

“Independent Agent” means, per InsWeb Insurance glossary, an agent operating as an independent contractor under the independent agency system.

“Insurance” means, per InsWeb Insurance glossary, a formal social device for reducing risk by transferring the risks of several individual entities to an insurer. The insurer agrees, for a consideration, to assume, to a specified extent, the losses suffered by the insured.

“Insurance company” - See “Insurer.”

“Insurance Policy” means, per InsWeb Insurance glossary, the printed form that serves as the contract between an insurer and an insured. Note: put more directly, an insurance policy is a contract between two parties in which the insurance company is paid a premium by the insured. In return for the premium, the insurance company promises to *indemnify* the insured in the event of a loss covered by the contract.

“Insured” means, per InsWeb Insurance glossary, the party to an insurance arrangement whom the insurer agrees to indemnify for losses, provide benefits for, or render services to. This term is preferred to such terms as policyholder, policy owner, and assured.

“Insurer” means, per InsWeb Insurance glossary, the party to an insurance arrangement who undertakes to indemnify for losses, provide pecuniary benefits, or render services. It is desirable to use the word "insurer" in preference to "carrier" or "company" since it is a functional word applicable without ambiguity to all types of individuals or organizations performing the insurance function. The word insurer is generally used in statutory law.

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“Insuring Agreement” (or Clause) means, per InsWeb Insurance glossary, that portion of an insurance contract which states the perils insured against, the persons and/or property covered, their locations, and the period of the contract.

"Legal defense cost" means, per 40 CFR§ 280.92, any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

1. By EPA or a state to require corrective action or to recover the costs of corrective action;
2. By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or
3. By any person to enforce the terms of a financial assurance mechanism.

“License” means, per InsWeb Insurance glossary, a certification of authority for an agent or insurer to operate, given by the appropriate jurisdiction.

“Limitations” means, per InsWeb Insurance glossary, exceptions to coverage and limitations of coverage as contained in an insurance contract. For instance, a limit of liability would be one limitation on an Automobile policy. Another example would be policies written to cover only certain described automobiles, or, in the case of General Liability Insurance, certain described premises.

“Limits” means, per InsWeb Insurance glossary, (1) Ages below or above which the insurer will not issue a policy or above which it will not continue a policy presently in force. (2) The maximum amount of benefits payable for a given situation or occurrence, e.g., a limit of \$50,000 on the contents of a home, or a \$40,000 per accident limit for Property Damage Liability.

"Local government" per 40 CFR § 280.92, 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 school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

“Loss” generally refers, per InsWeb Insurance Glossary, to (1) the amount of reduction in the value of an insured's property caused by an insured peril, (2) the amount sought through an insured's claim, or (3) the amount paid on behalf of an insured under an insurance contract.

“Managing General Agent” or “MGA” means, per Maryland Insurance Article § 8-201, an independent business that performs some or all of the functions usually performed by company branch offices. A Managing General Agent may perform services for a single insurer, though it is more common for them to represent several insurers. The Managing General Agent usually does not sell directly to insurance consumers but appoints and supervises producers throughout the territory. Its territory may consist of an entire state or

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several states. A few Managing General Agents cover very large territories, though frequently for specialty lines of insurance.

“Non admitted Insurer” means, per InsWeb Insurance glossary, an insurer not licensed to do business in the jurisdiction in question. This is essentially the same as Unauthorized Insurer and Unlicensed Insurer. It can also be an insurance company that provides insurance on a surplus lines basis for exposures. The non-admitted company is not licensed by the state to issue or service insurance policies within the state. However, the non-admitted company must be approved by a state to be eligible to issue policies in that state. Non-admitted companies are subject to regulation by each state in which they are approved. A non-admitted company is not directly subject to regulation by a state’s insurance department, but must adhere to the insurance regulations of the state. The *non-admitted* company is subject to the supervision and scrutiny of the insurance department of its home state.

“Nonrenewal” means, per InsWeb Insurance glossary, termination of insurance coverage at an expiration date or anniversary date. This action may be taken by an insurer who refuses to renew, or by an insured who rejects a renewal offer.

"Occurrence" means, per 40 CFR § 280.92, 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 these regulations 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." “Occurrence” means, per InsWeb Insurance glossary, an event that results in an insured loss. In some lines of insurance, such as Liability, it is distinguished from accident in that the loss does not have to be sudden and fortuitous and can result from continuous or repeated exposure which results in bodily injury or property damage neither expected nor intended by the insured.

“Occurrence Coverage” means, per InsWeb Insurance glossary, a policy form providing liability coverage only for injury or damage that occurs during the policy period, regardless of when the claim is actually made. For example, a claim made in the current policy year could be charged against a prior policy period, or may not be covered, if it arises from an occurrence prior to the effective date. Contrast with Claims-Made Coverage.

"Owner or operator" when the owner or operator are separate parties, refers, per 40 CFR § 280.92, to the party that is obtaining or has obtained financial assurances.

“Peril” means, per InsWeb Insurance glossary, the cause of a possible loss. Contrast with Hazard and Risk.

"Petroleum Marketing Facilities" per 40 CFR § 280.92, include 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.

"Petroleum Marketing Firms" per 40 CFR § 280.92, are all firms owning petroleum-marketing facilities. Firms owning other types of facilities with UST's as well as petroleum-marketing facilities are considered to be petroleum marketing firms.

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“Policy” means, per InsWeb Insurance glossary, the written statement of a contract effecting insurance, or certificates thereof, by whatever name called, and including all clauses, riders, endorsements, and papers attached thereto and made a part thereof.

“Policy Period” (or Term) means, per InsWeb Insurance glossary, the period during which the policy contract affords protection, e.g., six months or one or three years.

“Premium” means, per InsWeb Insurance glossary, the price of insurance protection for a specified risk for a specified period of time.

"Property Damage" shall have the meaning, per 40 CFR § 280.92, given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks, which are covered by the policy. “Property Damage” means, per InsWeb Insurance glossary, damage to the property of another, including loss of the use of the property, as distinguished from liability for bodily injury to another. In the majority of cases it is written along with Bodily Injury Liability protection.

"Provider of Financial Assurance" means, per 40 CFR § 280.92, an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in Sections 280.95 - 280.103, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

“Provisions” means, per InsWeb Insurance glossary, statements contained in an insurance policy which explain the benefits, conditions and other features of the insurance contract.

“Rate” means, per InsWeb Insurance glossary, the cost of a given unit of insurance. For example, in Ordinary Life Insurance, it is the price of \$1,000 of the face amount. In Disability Income Insurance, it is usually the price per \$10 or per \$100 of monthly benefits. In Property Insurance, it is the rate per \$100 of value to be insured. The premium, then, is the rate multiplied by the number of units of insurance purchased.

“Renewal” means, per InsWeb Insurance Glossary, the reestablishment of the in-force status of a policy, the term of which has expired or will expire unless it is renewed.

“Retroactive Date” means, per InsWeb Insurance glossary, date on a "claims made" liability policy, which triggers the beginning period of insurance coverage. A retroactive date is not required. If one is shown on the policy, any claim made during the policy period will not be covered if the loss occurred before the retroactive date.

“Risk” means, per InsWeb Insurance glossary, (1) Uncertainty as to the outcome of an event when two or more possibilities exist. See also Pure Risk and Speculative Risk. (2) A person or thing insured. Contrast with Hazard and Peril.

“Risk Retention Groups” means, per InsWeb Insurance glossary, liability insurance companies owned by their policyholders. Membership is limited to people in the same business or activity, which exposes them to similar liability risks. The purpose is to

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assume and spread liability exposure to group members and to provide an alternative risk financing mechanism for liability. Note: 40 CFR Part 280 treats insurance companies and risk retention groups equally as insurers.

“Self-Insurance” means, per InsWeb Insurance glossary, making financial preparations to meet pure risks by appropriating sufficient funds in advance to meet estimated losses, including enough to cover possible losses in excess of those estimated. Few organizations are large or dispersed enough to make this a sound alternative to insurance.

“Self-Insured Retention” or “SIR” means, per InsWeb Insurance glossary, that portion of a risk or potential loss assumed by an insured. It may be in the form of a deductible, self-insurance, or no insurance. Note: 40 CFR Part 280 requires, in an insurance or Risk Retention Group policy, the insurance to pay from first dollar on a claim and then seek reimbursement from the insured for the deductible amount.

"Substantial Business Relationship" means, per 40 CFR § 280.92, 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.

"Substantial Governmental Relationship" means, per 40 CFR § 280.92, 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 UST 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.

“Surplus Lines” means, per InsWeb Insurance glossary, a risk or a part of a risk for which there is no market available through the original broker or agent in its jurisdiction. Therefore, it is placed with nonadmitted insurers on an unregulated basis, in accordance with the surplus or excess lines provisions of the state law.

"Tangible Net Worth" means, per 40 CFR § 280.92, 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.

“Term” means, per InsWeb Insurance glossary, the period of time for which a policy or bond is issued.

"Termination" under § 280.97(b)(1) and § 280.97(b)(2) means, per 40 CFR § 280.92, 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. “Termination” means, per InsWeb Insurance glossary, the time the coverage under an insurance policy ends, either because its term has expired or because it has been canceled by either party.

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“Transfer of Risk” means, per InsWeb Insurance glossary, shifting all or part of a risk to another party. Insurance is the most common method of risk transfer, but other devices, such as hold harmless agreements, also transfer risk. One of the four major risk management techniques.

“Trustee” means, per InsWeb Insurance glossary, a person appointed to manage the property of another.

“Underwriter” means, per InsWeb Insurance glossary, a technician trained in evaluating risks and determining rates and coverages for them. The term derives from the practice at Lloyd's of each person willing to accept a portion of the risk writing his name under the description of the risk.

“Underwriting” means, per InsWeb Insurance glossary, the process of selecting risks and classifying them according to their degrees of insurability so that the appropriate rates may be assigned. The process also includes rejection of those risks that do not qualify.

“Write” means, per InsWeb Insurance glossary, to insure, to underwrite, or to accept an application.

Note: Web Sites with definitions/glossaries of insurance terms and descriptions of insurance coverage:

<http://www.insweb.com/learningcenter/glossary/>
http://www.coverageglossary.com/lcgroup_explanations.html
<http://www.nils.com/rupps/>
<http://www.ucalgary.ca/MG/inrm/glossary/>