

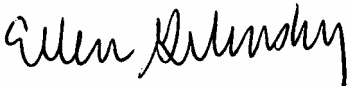
COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF WATER QUALITY PROGRAMS  
ELLEN GILINSKY, Ph.D., DIRECTOR

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**Subject:** Guidance Memo No. 05-2016  
Lender Liability Exemption Guidelines

**To:** Fred Cunningham

**From:** Ellen Gilinsky, Ph.D., Director 

**Date:** November 29, 2005

**Copies:** Regional Directors, Regional Ground Water Managers, Renee Hooper, Lisa Dewey, Betty Lamp, John Giese, Cindy Berndt

**Summary:**

This memorandum summarizes the procedures for lenders and DEQ central office petroleum staff to use to assess whether a particular lender qualifies for an exemption to statutory and regulatory liability for underground storage tank compliance and cleanup requirements.

**Electronic Copy:**

An electronic copy of this guidance in PDF format is available for staff internally on DEQNET, and for the general public on DEQ's website at: <http://www.deq.virginia.gov>.

**Contact information:**

Please contact Renee Hooper at (804) 698-4018/ [rthooper@deq.virginia.gov](mailto:rthooper@deq.virginia.gov) or Lisa Dewey at (804) 698-4216/ [lcdewey@deq.virginia.gov](mailto:lcdewey@deq.virginia.gov), with any questions concerning the application of this guidance.

**Disclaimer:**

**This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any particular method for the analysis of data, establishment of a wasteload allocation, or establishment of a permit limit. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.**

Effective July 1, 1996, State Water Control Law allows certain persons or entities ("holders") to foreclose on properties on which petroleum underground storage tanks (USTs) are located without assuming owner/operator liability. (For the purposes of this document, the term UST means petroleum USTs and also includes UST systems, as more particularly described in section VI.) Holders also may conduct cleanup of leaking USTs on foreclosed properties and qualify for reimbursement from the Virginia Petroleum Storage Tank Fund (Fund) without assuming owner/operator liability for a petroleum release.

## **I. Authority**

The Department of Environmental Quality (DEQ) Petroleum Underground Storage Tank Financial Responsibility Requirements regulation (9 VAC 25-590-10, et seq.) has incorporated the federal regulation on lender liability by reference in 9 VAC 25-590-240. The federal regulation addressing lender liability, entitled Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, is found at 40 C.F.R. 280.200 through 280.230 (1997).

**CODE** § 62.1-44.34:11.A.2.q provides that disbursements from the Fund may be made for:

reasonable and necessary per occurrence costs for releases reported after December 22, 1989, in taking corrective action for any release of petroleum into the environment from an underground storage tank, which are in excess of \$5,000 up to \$1 million, by a person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

## **II. Overview of the Exemption**

### **A. Introduction to Eligibility Requirements**

A holder who forecloses on a loan secured by property containing USTs is eligible to request approval from DEQ for an exemption from UST owner liability for USTs existing on property that secures the loan. Under the exemption, a holder is exempt from most regulatory requirements (i.e., pollution prevention compliance, corrective action requirements and financial responsibility requirements), except for those discussed in Section V, below. Qualification for the exemption requires that the holder take certain actions with respect to a delinquent loan and property obtained through foreclosure. It also requires that the USTs meet certain requirements and that the holder take certain actions with respect to USTs for which there is no operator. Sections IV through VI, below, contain details regarding these requirements. Broadly described, the exemption is available in the following circumstances:

- to a holder
- from the time that the holder extends the credit up through and including foreclosure and re-sale
- for certain USTs
- provided that the holder DOES NOT:
  - participate in the management of the UST
  - operate the UST (either someone else is the operator, or the UST is not in operation)
  - engage in petroleum production, refining, and marketing
- provided that the holder DOES:

- act expeditiously to divest itself of the USTs or the property where the USTs exist.

To take advantage of the liability exemption, a holder must first notify DEQ using the Lender Liability Exemption Application form (see attachment) and obtain DEQ's written approval of the liability exemption.

## **B. Fund Access**

In some circumstances, holders **who qualify for the exemption** may wish to conduct corrective action to clean up contamination from leaking USTs on foreclosed properties and to qualify for reimbursement from the Virginia Petroleum Storage Tank Fund (Fund). In these circumstances, once the Lender Liability exemption has been approved, the holder must obtain Regional Office approval for all cleanup activities. The holder must conduct corrective action activities in accordance with DEQ requirements to be eligible for reimbursement of reasonable and necessary corrective action costs. DEQ's cleanup and reimbursement guidance is contained in The Storage Tank Program Technical Manual (Guidance Document #01-2024) and The Virginia Petroleum Storage Tank Fund Reimbursement Guidance Manual (Guidance Document #00-2004), respectively.

If a holder conducts the cleanup and is qualified for the exemption, then the financial responsibility requirement that must be satisfied before corrective action reimbursements will be made is \$5,000. Holders are not eligible for reimbursement of third party claim costs.

## **III. Definitions**

The definitions contained in Articles 9 and 10 of the State Water Control Law and the Virginia Petroleum Underground Storage Tank Financial Responsibility Requirements regulation, 9 VAC 25-590-10, et seq., apply to this guidance.

The following definitions also apply<sup>1</sup>:

A "borrower, debtor or obligor" is a person whose UST or UST system or facility or property on which the UST or UST system is located is encumbered by a security interest. These terms may be used interchangeably.

"Foreclosure" means that legal, marketable or equitable title or deed has been issued, approved and recorded, and that the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the UST, UST system, facility and property on which the UST or UST system is located.

A "holder" is a person who maintains indicia of ownership primarily to protect a security interest in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located. The term includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who

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<sup>1</sup>For the sake of brevity, certain of the following definitions are excerpts of those found in the regulation. Where they differ, the definitions in the regulation govern.

holds ownership indicia primarily to protect a security interest; or a receiver or person who acts on behalf or for the benefit of a holder.

“Indicia of ownership” means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired or incident to foreclosure. Examples of such indicia include, but are not limited to, a mortgage, deed of trust, legal or equitable title, a surety bond, guarantee of obligation, assignment, lien, pledge or other form of encumbrance.

“Petroleum production, refining and marketing.” **Production** means the production of crude oil or other forms of petroleum, as well as the production of petroleum products from purchased materials. **Refining** means the cracking, distillation, separation, conversion, upgrading and finishing of refined petroleum or petroleum products. **Marketing** means the distribution, transfer or sale of petroleum or petroleum products for wholesale or retail purposes. A holder who stores petroleum products for on-site consumption only is not considered to be engaged in petroleum production, refining and marketing.

The phrase “primarily to protect a security interest” means a holder’s indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation. (This phrase does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other reasons for maintaining indicia of ownership, but the primary reason that any ownership indicia are held must be protection for a security interest.)

A “security interest” means an interest in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include, but are not limited to, mortgages, deeds of trust, liens, and title pursuant to lease financing transactions.

A “written bona fide offer” means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed UST or UST system or facility or property on which the UST or UST system is located, including all material terms of the transaction, from a ready, willing and able purchaser who demonstrates to the holder’s satisfaction the ability to perform.

#### **IV. Participation in the Management of a UST**

##### **A. Holders Who Participate in Management Are Not Exempt from Liability**

Holders who participate in the management of a UST are not exempt from liability under State Water Control Law. “Participation in the management” of a UST means that the holder is engaging in the decisionmaking control of, or activities related to, operation of the UST. A holder participates in management of the UST if the holder:

1. exercises decisionmaking control over the operational (as opposed to administrative or financial) aspects of the UST or UST system; or
2. exercises control at a level comparable to a manager of the borrower’s enterprise such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise with respect to the operational (as opposed to administrative or

financial) aspects of the enterprise. (For example, a holder performing the functions of a plant manager, operations manager, chief operating officer, etc., of the facility or business at which the UST is located is considered to be exercising management control.)

The operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum contained in the UST. Operational aspects of the enterprise do not include administrative or financial aspects of the enterprise (such as those functions performed by a credit manager, accounts payable/receivables manager, personnel manager, controller, chief financial officer or similar functions), or actions associated with mandatory or voluntary environmental compliance or protection measures.

## **B. Holders Who Do Not Participate in Management Are Exempt from Liability**

Participation in management does not include the following:

1. merely having the capacity or ability to influence, or the unexercised right to control UST operations;
2. actions conducted prior to or at the inception of the loan, including requiring the prospective borrower to conduct environmental investigations or clean-up to comply with applicable law or regulations;
3. loan policing and work out, foreclosure, winding up and post-foreclosure activities;
4. requiring or conducting environmental compliance activities or activities to protect human health and the environment. These activities may include: site assessments, inspections and audits; release detection, reporting, response, or corrective action; temporary or permanent closure of a UST; UST upgrading or replacement; and leak detection and maintenance of corrosion protection; all of which must be done in compliance with applicable laws and regulations; or
5. preparing for sale or liquidation of the UST or facility or property on which the UST is located.

## **C. Loan Policing, Workout, Foreclosure, Post-Foreclosure and Winding Up**

A holder who engages in loan policing prior to foreclosure remains within the exemption as long as the holder does not participate in the management of the UST. Policing actions may include requiring the borrower to clean up contamination from the UST during the term of the security interest; requiring the borrower to comply with applicable state and federal environmental laws and regulations; monitoring and inspecting the USTs or the business or financial condition of the borrower during the term of the loan; or taking other actions to police the security interest.

A holder who engages in loan work out activities prior to foreclosure will remain within the exemption as long as the activities do not constitute participation in management of the UST. Loan workout activities may include actions that seek to prevent, cure, or mitigate a default on the part of the borrower, or to preserve the value of the security. Permitted loan work out activities include, but are not limited to: restructuring or renegotiating the terms of the security

interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts; requiring or exercising rights pertaining to an escrow agreement; providing specific or general financial advice and exercising any right or remedy the holder is entitled to under law or under any warranties, covenants, conditions, representations or promises from the borrower.

A holder who participates in foreclosure and post-foreclosure activities to protect a security interest remains within the exemption as long as the holder does not participate in the management of the UST. Indicia of ownership held after foreclosure continue to be considered for the primary purpose of protecting the security interest as long as the holder undertakes to sell, re-rent, or otherwise divest itself of the UST or the property upon which the UST is located in a reasonably expeditious manner (i.e., within twelve months of the date title/deed to the holder has been recorded and the holder has obtained access to the UST)<sup>2</sup>. This can be accomplished by listing the UST or the property on which the UST is located with a broker, dealer or agent that deals with that type of property or by monthly advertising that the UST or property is for sale. A holder who outbids, rejects, or fails to act<sup>3</sup> upon a written bona fide, firm offer of fair consideration for the UST or the property upon which the UST is located, received at any time after six months following foreclosure, is **not** considered to hold indicia of ownership primarily for the purpose of protecting a security interest, unless the holder is required by law to make a higher bid, obtain a higher offer, or to seek or obtain an offer in a different manner to avoid liability. Fair consideration is the value of the security interest, including all costs and debts incurred by the holder. The value of the security interest is calculated as an amount equal to or in excess of the sum of the following:

- outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure;
- unpaid interest, rent or penalties (whether arising before or after foreclosure);
- reasonable and necessary costs, fees or other charges the holder incurs related to work out, foreclosure, retention, preservation, protection, and preparation before sale or re-release;
- environmental investigation costs;
- corrective action costs that are approved for reimbursement from the Fund but are not paid to the holder (i.e., the financial responsibility requirement);
- other costs incurred as a result of reasonable efforts to comply with applicable federal, state and local laws and regulations.

Amounts the holder receives in connection with any partial disposition of the property and amounts the borrower pays after the holder's acquisition of title (if not already applied to the borrower's obligations) must be deducted from the previous sum.

In the case of a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest of the junior holder.

A holder may perform winding up operations after foreclosure. Winding up includes those actions that are necessary to close down an UST, secure the site and otherwise protect the

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<sup>2</sup> The twelve month period begins to run from the date the holder first acquires title to or possession of the UST or property where the UST is located, whichever is later.

<sup>3</sup> Within 90 days of receipt.

value of the foreclosed assets for subsequent sale or liquidation. A holder also may take measures to preserve and protect the UST and arrange for an existing or new operator to continue or initiate operation of the UST. A holder may conduct post-foreclosure policing activities without being considered to participate in management. (Permitted policing activities are described above.)

## **V. Operator Liability**

If there is an operator other than the holder who is in control of or has responsibility for the daily operation of the UST, the holder is not considered an operator.

If there is not an operator other than the holder, the holder typically will not be considered an operator, provided that the holder takes certain steps. A foreclosing holder can avoid liability as an operator if petroleum is not added to, stored in, or dispensed from the USTs. Additionally, the holder must empty<sup>4</sup> all known USTs within 60 days after foreclosure and any after-discovered USTs within 60 days of discovery, and temporarily<sup>5</sup> or permanently<sup>6</sup> close the USTs. If the holder operates the USTs by storing, adding or dispensing petroleum following foreclosure, it will be considered an operator.

## **VI. Tank Type Eligibility for Exemption**

The lender liability exemption applies only to certain USTs. To be eligible, the USTs must contain petroleum as defined in the UST Technical Regulation 9 VAC 25-580-10.

The following types of tanks are exempt from the regulation and not eligible for the lender liability exemption:

1. Farm or residential USTs having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;
2. USTs which contain heating oil that is used to heat the premises where the UST is located;
3. Septic tanks;
4. Pipeline facilities, including gathering lines, regulated under (i) the National Gas Pipeline Safety Act of 1968, (ii) the Hazardous Liquid Pipeline Safety Act of 1979, or any intrastate pipeline facility regulated under state laws comparable to the provisions of law in (i) or (ii) above;
5. Surface impoundments, pits, ponds, or lagoons;

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<sup>4</sup> No more than 2.5 centimeters (1 inch) of residue (or 0.3 percent by weight of the total capacity of the UST) may remain in the system. Vent lines must remain open and functioning. Lines, pumps, manways and ancillary equipment must be capped and secured.

<sup>5</sup> For temporary closure, the holder must comply with corrosion protection requirements. Where applicable, this means the holder must continue operation and maintenance of corrosion protection systems and report suspected releases. If the UST is temporarily closed for more than twelve months and the UST is not in compliance with corrosion protection or release detection requirements, the holder must conduct site assessment and report suspected releases. The UST may remain in temporary closure until a subsequent purchaser has acquired marketable title. Once a purchaser has acquired marketable title, the purchaser must decide whether to operate or close the UST in accordance with applicable laws and regulations.

<sup>6</sup> Permanent closure must be conducted in accordance with the regulatory requirements for permanent closures.

6. Storm water or wastewater collection systems;
7. Flow-through process tanks;
8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and
9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.

The following types of USTs meet the definition of UST under Article 9 of the State Water Control Law, but are excluded from the requirements of the regulation:

1. Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances;
2. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Sections 307(b) or 402 of the Clean Water Act;
3. Equipment or machinery that contains a regulated substance for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
4. UST systems with a capacity of 110 gallons or less;
5. UST systems that contain a de minimis concentration of regulated substance; and
6. Emergency spill or overflow containment USTs that are expeditiously emptied after use.

Of the excluded tanks listed above, the lender liability exemption is available only for:

1. Equipment or machinery that contains a regulated substance for operational purposes such as hydraulic lift tanks and electrical equipment tanks; and
2. UST systems with a capacity of 110 gallons or less.

The following types of USTs are deferred from all but the corrective action requirements of the regulation:

1. Wastewater treatment tank systems;
2. Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 et seq.);
3. Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50, Appendix A;



4. Airport hydrant fuel distribution systems; and

5. UST systems with field-constructed tanks.

Of these deferred tanks, the lender liability exemption is available only for UST systems with field-constructed tanks.

Additionally, UST systems that store fuel solely for use by emergency power generators are eligible for the lender liability exemption, provided that such tanks are not exempt tanks.

## **VII. Options for Access to the Fund by Lenders**

A holder may be reimbursed for certain clean-up costs from the Fund without assuming liability for the cleanup if the holder meets the requirements described above. If the exemption applies, the financial responsibility requirement is set by law at \$5,000. If the exemption from liability does not apply, the holder still may qualify for access to the Fund by assuming liability from (or “stepping into the shoes of”) the entity or person who owned or operated the tank. When a holder steps into the shoes of another, the holder assumes the financial responsibility of the UST owner or operator from whom the holder is assuming liability. Whether the exemption applies or the holder “steps into the shoes” of another, the holder must conduct corrective action activities in accordance with DEQ requirements and obtain Regional Office approval of corrective actions prior to completing those activities.

One additional means for a holder to access the Fund for reimbursement is for the responsible person to assign the right of payment to the holder. In this case, DEQ issues the reimbursement check to the assignee. Using this arrangement, a holder may be reimbursed without assuming a liability for the release or for the UST.

Fact sheets located in the Petroleum Program’s download library at [www.deq.state.va.us](http://www.deq.state.va.us) contain more detailed guidance regarding assumption of liability procedures. The Reimbursement Guidance Manual, located at the same address, contains more detailed guidance regarding assignment of payment procedures.

<p align="center"><b>Lender Liability Exemption Application</b></p> <p align="center"><b>Virginia Department of Environmental Quality</b></p> <p align="center"><b>Office of Spill Response and Remediation</b></p> <p align="center"><b>P. O. Box 10009</b></p> <p align="center">Richmond VA 23240-0009 (804) 698-4010</p>	<b>DEQ USE ONLY</b>
	<b>Fac. ID</b>
	<b>PC#</b>
	<b>Reviewer:</b> _____
(11/05)	<b>Approved:</b> Yes _____ No _____

<b>VI. I. Applicant</b>		<b>VII. II. Facility</b>	
A. Applicant Name		A. Facility Name	
B. Applicant Address		B. Facility Address	
C. City, State, Zip		C. City, State, Zip	
D. Telephone (       )		D. Telephone (       )	
E. Fax (       )		E. Contact Name	
F. Contact Name		F. Facility Identification Number	
G. e-mail address		G. Pollution Complaint Number(s)	
<b>VIII. III. Operator</b>		<b>IX. IV. Loan Information</b>	
A. Operator Name		A. Borrower Name	
B. Operator Address		B. Borrower Address	
C. City, State, Zip		C. City, State, Zip	
D. Telephone (       )	E. Fax (       )	D. Loan Date	
F. Contact Name		E. Default Date	F. Foreclosure Date
G. e-mail Address		G. Value of security interest	

<b>X. V. Sale Information</b> (Complete either A through I, J through M, or all)	
A. Listing Agent Name	D. Telephone ( )
B. Listing Agent Address	E. Fax ( )
C. City, State, Zip	G. e-mail Address
H. Date listing started	I. Duration of listing
J. Name of publication advertising sale or lease of property	K. Telephone Number of Publication ( )
L. Date ad started	M. Frequency of publication (e.g., daily, weekly, monthly)

<b>XI. VI. Offers Received</b> (Please provide information on additional offers on a separate sheet and check here: _____.)		
A. Offeror Name and Address		
B. Offeror Telephone		
C. Date of Offer		
D. Amount of Offer		
E. Action on Offer (✓ if yes)	<input type="checkbox"/> Outbid <input type="checkbox"/> Failed to act <input type="checkbox"/> Rejected <input type="checkbox"/> Accepted	<input type="checkbox"/> Outbid <input type="checkbox"/> Failed to act <input type="checkbox"/> Rejected <input type="checkbox"/> Accepted
F. For an accepted offer, enter the transaction type (e.g., sale or lease) and effective date. For outbidding, failure to act, and rejections, explain the reason for such action.		

## VII. Tank Information

(For additional USTs, enter number of additional pages: \_\_\_\_\_.)

A. UST Capacity					
B. UST Contents					
C. Date UST Installed					
D. Is UST currently operated? (If no, proceed to E. If yes, stop here.)	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
E. Date UST discovered (if after foreclosure)					
F. Date product was last stored in UST					
G. Date product was last added to UST					
H. Date product was last dispensed from UST					
I. Date UST was emptied					
J. Type of closure	<input type="checkbox"/> Temporary <input type="checkbox"/> Permanent	<input type="checkbox"/> Temporary <input type="checkbox"/> Permanent	<input type="checkbox"/> Temporary <input type="checkbox"/> Permanent	<input type="checkbox"/> Temporary <input type="checkbox"/> Permanent	<input type="checkbox"/> Temporary <input type="checkbox"/> Permanent
K. Date of closure					
L. Temporary closure information (✓ all that apply)	<input type="checkbox"/> Tank meets corrosion protection requirements <input type="checkbox"/> Tank meets release detection requirements <input type="checkbox"/> Site assessment has been conducted Enter date of site assessment: _____	<input type="checkbox"/> Tank meets corrosion protection requirements <input type="checkbox"/> Tank meets release detection requirements <input type="checkbox"/> Site assessment has been conducted Enter date of site assessment: _____	<input type="checkbox"/> Tank meets corrosion protection requirements <input type="checkbox"/> Tank meets release detection requirements <input type="checkbox"/> Site assessment has been conducted Enter date of site assessment: _____	<input type="checkbox"/> Tank meets corrosion protection requirements <input type="checkbox"/> Tank meets release detection requirements <input type="checkbox"/> Site assessment has been conducted Enter date of site assessment: _____	<input type="checkbox"/> Tank meets corrosion protection requirements <input type="checkbox"/> Tank meets release detection requirements <input type="checkbox"/> Site assessment has been conducted Enter date of site assessment: _____

## VII. Certification

I hereby certify that:

1. I have attached copies of the loan documentation related to this application for the lender liability exemption (e.g., note, deed of trust, security agreement).
2. The underground storage tanks identified in this application are located at the property securing the loan that is the subject of this application.
3. After December 6, 1995, the applicant did not own or operate the underground storage tanks that are the subject of this application.
4. After December 6, 1995, the applicant did not participate in the management of the underground storage tanks that are the subject of this application.
5. The applicant conducted assessment for suspected releases and reported all such suspected releases to DEQ for underground storage tanks for which there is no operator.
6. The applicant is not engaged in petroleum production, refining or marketing.
7. All data and information supplied with this application are true and correct.
8. I have the authority to sign this application on behalf of the applicant.

The holder must ensure that the person who signs the application has the authority to do so and to make the representations contained in the certification section. Any person who knowingly makes any false statement on this form shall be guilty of a felony punishable by a term of imprisonment of up to three years and a fine of not less than \$5,000 but up to \$50,000 per violation. If convicted of a violation, any defendant that is not an individual shall be sentenced to pay a fine of not less than \$10,000.

Name (print): \_\_\_\_\_ Title (print): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# LENDER LIABILITY EXEMPTION APPLICATION INSTRUCTIONS

## Section I. Applicant

To be eligible for the lender liability exemption, the applicant must be a holder of a security interest in a petroleum UST or UST system or in a facility or property upon which a petroleum UST or UST system is located, from the time that the person extends the credit up through and including foreclosure. The name, address and contact information for the holder of the security interest must be entered in this Section I.

## Section II. Facility

The information for the facility where the tanks/property held as security for the loan are located must be entered in this section. The Facility Identification Number and the Pollution Complaint Number may be obtained by calling the Department of Environmental Quality at the telephone number shown on page 1 of the application.

## Section III. Operator

If there is an operator for the USTs that are the subject of this application, the name, address and contact information for the operator must be entered in this section. An operator is the person or entity who exercises day-to-day decision making control with respect to operation of the UST/facility. If there is no operator, this section should be left blank.

## Section IV. Loan Information

Borrower information must be entered in this section. For foreclosure date, enter the date that the marketable title/deed to the holder has been issued, approved and recorded and the holder has obtained access to the property. The value of the security interest is calculated as the amount equal to or in excess of the sum of the following:

- outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title ( or possession in the case of a lease financing transaction) pursuant to foreclosure
- unpaid interest, rent or penalties (whether arising before or after foreclosure)
- reasonable and necessary costs, fees or other charges the holder incurs related to work out, foreclosure, retention, preservation, protection, and preparation before sale or re-lease

- environmental investigation costs
- investigation, characterization, monitoring and corrective action costs that are approved for reimbursement from the Virginia Petroleum Storage Tank Fund but are not paid to the holder (i.e., the financial responsibility requirement)
- other costs incurred as a result of reasonable efforts to comply with applicable federal, state and local laws and regulations.

Amounts the holder receives in connection with any partial disposition of the property and amounts the borrower pays after the holder's acquisition of title (if not already applied to the borrower's obligations) must be deducted from the previous sum.

In the case of a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest of the junior holder.

### **Section V. Sale Information**

The holder is required either to hire a listing agent or to advertise the property. If the holder has hired a listing agent, parts A through I must be completed. If the holder has advertised the property, parts J through M must be completed. The holder must complete all parts if it has both hired a listing agent and advertised the property.

### **Section VI. Offers Received**

The holder must provide the requested information for all offers received for the property that is the subject of this application. For an accepted offer, the holder must indicate the type of transaction (e.g. sale or lease) and the effective date (e.g., date of property transfer or commencement of leasehold). If the holder outbid, failed to act (within 90 days of receipt) or rejected an offer, the holder must explain the reason for such action in section F.

If the holder has received more than two offers, the requested information for the additional offers must be provided on a separate sheet and the blank in the heading section must be checked.

### **Section VII. Tank Information**

To obtain assistance with determining information about the USTs at the facility, the holder may call DEQ at the telephone number shown on page 1 of the application. For "Date of Closure," the holder must enter the date on which all closure requirements have been met. Virginia Regulation 9 VAC 25-580-10 et seq. contains the requirements for temporary and permanent closures.

If more than five USTs are the subject of this application, the applicant should enter the information on one or more additional copies of page 3 of the application. The applicant must enter the total number of additional pages in the blank in the heading section.

### **Section VIII. Certification**

Please see the Lender Liability Exemption Guidelines (DEQ Guidance Document # \_\_\_\_\_) for more information regarding actions that constitute operating or participating in the management of underground storage tanks.

**The holder must ensure that the person who signs the application has the authority to do so and to make the representations contained in the certification section. Any person who knowingly makes any false statement on this form shall be guilty of a felony punishable by a term of imprisonment of up to three years and a fine of not less than \$5,000 but up to \$50,000 per violation. If convicted of a violation, any defendant that is not an individual shall be sentenced to pay a fine of not less than \$10,000.**