

9 VAC 25-640-10 *et seq.* ABOVEGROUND STORAGE TANK AND PIPELINE FACILITY
FINANCIAL RESPONSIBILITY REQUIREMENTS

CHAPTER 640

ABOVEGROUND STORAGE TANK AND PIPELINE FACILITY

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9 VAC 25-640-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 et seq.).

"Accidental discharge" means any sudden or nonsudden discharge of oil from a facility that results in a need for containment and cleanup which was neither expected nor intended by the operator.

"Annual aggregate" means the maximum financial responsibility requirement that an owner or operator is required to demonstrate annually.

"Board" means the State Water Control Board.

Change in service means change in operation, conditions of the stored product, specific gravity, corrosivity, temperature or pressure that has occurred from the original that may affect the tank s suitability for service.

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

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"Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

"Department" or "DEQ" means the Department of Environmental Quality.

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared: (i) a 10-K report submitted to the U.S. Securities & Exchange Commission (SEC); (ii) an annual report of tangible net worth submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration; or (iv) a year-end financial statement authorized under 9 VAC 25-640-70 B or C of this chapter. "Financial reporting year" may thus comprise a fiscal or calendar year period.

"Legal defense cost" means any expense that an operator or provider of financial assurance incurs in defending against claims or actions brought (i) by the federal government or the board to require containment or cleanup or to recover the costs of containment and cleanup, or to collect civil penalties under federal or state law or to assert any claim on behalf of the Virginia Petroleum Storage Tank Fund; (ii) by any person to enforce the terms of a financial assurance mechanism.

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"Local government entity" means a municipality, county, town, commission, separately chartered and operated special district, school board, political subdivision of a state or other special purpose government which provides essential services.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a discharge from an AST. Note: This definition is intended to assist in the understanding of this chapter 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."

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oil and all other liquid hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charters by demise, rents or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel.

"Person" means an individual; trust; firm; joint stock company; corporation, including a government corporation; partnership; association; any state or agency thereof; municipality; county; town; commission; political subdivision of a state; any interstate body; consortium; joint venture; commercial entity; the government of the United States or any unit or agency thereof.

"Pipeline" means all new and existing pipe, rights of way, and any equipment, facility, or building used in the transportation of oil, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with

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pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

"Provider of financial assurance" means a person that provides financial assurance to an operator of an aboveground storage tank through one of the mechanisms listed in 9 VAC 25-640-70 through -120, including a guarantor, insurer, group self insurance pool, surety, or issuer of a letter of credit.

"Storage capacity" means the total capacity of an AST or a container, whether filled in whole or in part with oil, a mixture of oil, or mixtures of oil with nonhazardous substances, or empty. An AST that has been permanently closed in accordance with the requirements of 9 VAC 25-91-10 *et seq.* has no storage capacity.

"Substantial business relationship" means the extent of a business relationship necessary under Virginia 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 operator.

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

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"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. This term does not include flow-through process tanks as defined in 40 CFR Part 280.

"Termination" under Appendix III and Appendix IV means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

Underground storage tank means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground connecting pipes, is ten percent or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;
2. Tanks used for storing heating oil for consumption on the premises where stored;
3. Septic tanks;
4. Pipeline facilities (including gathering lines) regulated under:
 - a. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, *et seq.*),
 - b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, *et seq.*), or
 - c. Any intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4 a or 4 b of this definition;

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5. Surface impoundments, pits, ponds, or lagoons;
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; or
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 term "underground storage tank" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"Vehicle" means any motor vehicle, rolling stock, or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" means every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

9 VAC 25-640-20. Applicability.

A. Unless otherwise exempted in this section or excluded in 9 VAC 25-640-30, operators of aboveground storage tank facilities having a maximum storage capacity of 25,000 gallons or greater of oil must demonstrate financial responsibility in accordance with the requirements of this chapter as a condition of operation.

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B. Unless otherwise exempted in this section or excluded in 9 VAC 25-640-30, operators of pipelines must demonstrate financial responsibility in accordance with the requirements of this chapter as a condition of operation.

C. State and federal government entities whose debts and liabilities are the debts and liabilities of the Commonwealth of Virginia or the United States have the requisite financial strength and stability to fulfill their financial assurance requirements and are relieved of the requirements to further demonstrate an ability to provide financial responsibility under this chapter.

D. Local government entities are not required to comply with the requirements of this chapter.

E. If there is more than one operator for a facility, only one operator is required to demonstrate financial responsibility; however, all operators are jointly responsible for ensuring compliance with financial responsibility requirements.

9 VAC 25-640-30. Exclusions.

The requirements of this chapter do not apply to:

A. Vessels;

B. Licensed motor vehicles, unless used solely for the storage of oil;

C. An AST with a storage capacity of 660 gallons or less of oil;

D. An AST containing petroleum, including crude oil or any fraction thereof, which is liquid at standard temperature and pressure (60° F at 14.7 pounds per square inch absolute) subject to and specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of

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§ 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC § 9601 *et seq.*);

E. A wastewater treatment tank system that is part of a wastewater treatment facility regulated under § 402 or § 307(b) of the federal Clean Water Act (33 USC § 1251 *et seq.*);

F. An AST that is regulated by the Department of Mines, Minerals and Energy under Chapter 22.1 (§ 45.1-361.1 *et seq.*);

G. An AST used for the storage of products that are regulated pursuant to the federal Food, Drug and Cosmetic Act (21 USC § 301 *et seq.*);

H. An AST that is used to store hazardous wastes listed or identified under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (Solid Waste Disposal Act) (42 USC § 6901 *et seq.*);

I. An AST that is used to store propane gas, butane gas or other liquid petroleum gases;

J. An AST used to store nonpetroleum hydrocarbon-based animal and vegetable oils;

K. A liquid trap or associated gathering lines directly related to oil or gas production, or gathering operations;

L. A surface impoundment, pit, pond, or lagoon;

M. A Storm water or wastewater collection system;

N. Equipment or machinery that contains oil for operational purposes, including but not limited to lubricating systems, hydraulic systems, and heat transfer systems;

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O. An AST used to contain oil for less than 120 days when: (i) used in connection with activities

related to the containment and cleanup of oil; (ii) used by a federal, state or local entity in

responding to an emergency; or (iii) used temporarily on-site to replace permanent storage

capacity;

P. Oil-filled electrical equipment, including, but not limited to, transformers, circuit breakers or

capacitors;

Q. A flow-through process tank;

R. Oily water separators;

S. An AST containing dredge spoils;

T. An AST located on a farm or residence used for storing motor fuel for noncommercial purposes

with an aggregated storage capacity of 1,100 gallons or less;

U. Pipes or piping beyond the first valve from the AST that connects an AST with production

process tanks or production process equipment;

V. An AST storing asphalt and asphalt compounds which are not liquid at standard conditions of

temperature and pressure (60° F at 14.7 pounds per square inch absolute);

W. Underground storage tanks regulated under a state program;

X. An AST with a capacity of 5,000 gallons or less used for storing heating oil for consumptive

use on the premises where stored.

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9 VAC 25-640-40. Compliance dates.

Operators of existing facilities are required to comply with the requirements of this chapter within sixty (60) days of the effective date of this chapter. Operators of new facilities shall comply with the requirements of this chapter by the date the facility begins operation.

9 VAC 25-640-50. Amount and scope of required financial responsibility.

A. Operators shall demonstrate per occurrence and annual aggregate financial responsibility for containment and cleanup of discharges of oil in an amount equal to (i) five cents per gallon of the aggregate aboveground storage capacity for ASTs in all Virginia facilities up to a maximum of one million dollars, and (ii) five million dollars for pipelines.

B. If the operator uses separate mechanisms or combinations of mechanisms to demonstrate financial responsibility for the containment and clean up of oil, (i) the amount of assurance provided by the combination of mechanisms shall be in the full amount specified in subsection A of this section, and (ii) the operator shall demonstrate financial responsibility in the appropriate amount of annual aggregate assurance specified in subsection A of this section by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

C. The amounts of assurance required under this section exclude legal defense costs.

D. The required demonstration of financial responsibility does not in any way limit the liability of the operator under Virginia Code § 62.1-44.34:18.

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E. Operators which demonstrate financial responsibility shall maintain copies of those records on which the determination is based. The following documents may be used by operators to support a financial responsibility requirement determination:

1. Copies of the registration form required under 9 VAC 25-91-10 *et seq.*
2. Any other form of documentation which the board may deem to be acceptable evidence to support the financial responsibility requirement determination.

9 VAC 25-640-60. Allowable mechanisms and combinations of mechanisms.

A. Subject to the limitations of subsection B of this section, an operator may use any one or combination of the mechanisms listed in 9 VAC 25-640-70 through -120 to demonstrate financial responsibility under this chapter for one or more aboveground storage tanks or pipelines.

B. An operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this regulation, the financial statements of the operator are not consolidated with the financial statements of the guarantor.

9 VAC 25-640-70. Financial test of self-insurance.

A. An operator and/or guarantor, may satisfy the requirements of 9 VAC 25-640-50 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the operator and/or guarantor shall meet the requirements of subsections B or C, and D of this section based on year-end financial statements for the latest completed financial reporting year.

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B. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable amount required by 9 VAC 25-640-50 for which a financial test is used to demonstrate financial responsibility.

2. The operator and/or guarantor shall comply with either subdivision a or b below:

- a. (1) The financial reporting year-end financial statements of the operator and/or guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination; and
(2) The financial reporting year-end financial statements of the operator and/or guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- b. (1) (a) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or
(b) Report annually the tangible net worth of the operator and/or guarantor to Dun and Bradstreet, and Dun and Bradstreet must have assigned a financial strength rating which at least equals the amount of financial responsibility required by the operator in 9 VAC 25-640-50.
(2) The financial reporting year-end financial statements of the operator and/or guarantor, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

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3. The operator and/or guarantor, shall have a letter signed by the chief financial officer worded identically as specified in Appendix I/Alternative I.
- C.
1. The operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable amount required by 9 VAC 25-640-50 for which a financial test is used to demonstrate financial responsibility.
 2. The financial reporting year-end financial statements of the operator and/or guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.
 3. The financial reporting year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
 4. If the financial statements of the operator and/or guarantor are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the operator and/or guarantor shall obtain a special report by an independent certified public accountant stating that:
 - a. The accountant has compared the data that the letter from the chief financial officer specified as having been derived from the latest financial reporting year's end financial statements of the operator and/or guarantor with the amounts in such financial statements; and
 - b. In connection with that comparison, no matters came to the accountant's attention which caused him to believe that the specified data should be adjusted.

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5. The operator and/or guarantor shall have a letter signed by the chief financial officer, worded identically as specified in Appendix I/Alternative II.

D. To meet the financial demonstration test under subsections B or C of this section, the chief financial officer of the operator and/or guarantor shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded identically as specified in Appendix I with the appropriate alternative, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

E. If an operator using the test to provide financial assurance finds that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, the operator shall obtain alternative coverage and submit to the board the appropriate original forms listed in 9 VAC 25-640-170 B within 150 days of the end of the year for which financial statements have been prepared.

F. The board may require reports of financial condition at any time from the operator and/or guarantor. If the board finds, on the basis of such reports or other information, that the operator and/or guarantor no longer meets the financial test requirements of subsection B or C and D of this section, the operator shall obtain alternate coverage and submit to the board the appropriate original forms listed in 9 VAC 25-640-170 B within 30 days after notification of such finding.

G. If the operator fails to obtain alternate assurance within 150 days of finding that he no longer meets the requirements of the financial test based on the financial reporting year-end financial

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statements, or within 30 days of notification by the board that he no longer meets the requirements of the financial test, the operator shall notify the board of such failure within 10 days.

9 VAC 25-640-80. Guarantee.

A. An operator may satisfy the requirements of 9 VAC 25-640-50 by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be:

1. A firm that:

- a. Possesses a controlling interest in the operator;
- b. Possesses a controlling interest in a firm described under subdivision A 1 a of this section; or,
- c. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the operator; or,

2. A firm engaged in a substantial business relationship with the operator and issuing the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year the guarantor shall demonstrate that it meets the financial test criteria of 9 VAC 25-640-70 B or C and D based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I and shall deliver the letter to the operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the operator. If the board

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notifies the guarantor that he no longer meets the requirements of the financial test of 9 VAC 25-640-70 B or C and D, the guarantor shall notify the operator within 10 days of receiving such notification from the board. In both cases, the guarantee will terminate no less than 120 days after the date the operator receives the notification, as evidenced by the return receipt. The operator shall obtain alternate coverage as specified in 9 VAC 25-640-200.

C. The guarantee shall be worded identically as specified in Appendix II, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

D. An operator who uses a guarantee to satisfy the requirements of 9 VAC 25-640-50 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the board under 9 VAC 25-640-180. This standby trust fund shall meet the requirements specified in 9 VAC 25-640-130.

9 VAC 25-640-90. Insurance and group self-insurance pool coverage.

- A. 1. An operator may satisfy the requirements of 9 VAC 25-640-50 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or group self insurance pool.
2. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.
3. Group self-insurance pools shall comply with Virginia Code § 62.1-44.34:16 and applicable State Corporation Commission Bureau of Insurance regulations.

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B. Each insurance policy shall be amended by an endorsement worded in no respect less favorable than the coverage as specified in Appendix III, or evidenced by a certificate of insurance worded identically as specified in Appendix IV, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

C. Each insurance policy shall be issued by an insurer or a group self-insurance pool that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or approved surplus lines insurer in the Commonwealth of Virginia.

D. Each insurance policy shall provide first dollar coverage. The insurer or group self-insurance pool shall be liable for the payment of all amounts within any deductible applicable to the policy to the provider of containment and cleanup as provided in this chapter, with a right of reimbursement by the insured for any such payment made by the insurer or group. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9 VAC 25-640-70 through -120.

9 VAC 25-640-100. Surety bond.

A. An operator may satisfy the requirements of 9 VAC 25-640-50 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

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B. The surety bond shall be worded identically as specified in Appendix V, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

C. Under the terms of the bond, the surety will become liable on the bond obligation when the operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

D. The operator who uses a surety bond to satisfy the requirements of 9 VAC 25-640-50 shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the board under 9 VAC 25-640-180. This standby trust fund shall meet the requirements specified in 9 VAC 25-640-130.

9 VAC 25-640-110. Letter of credit.

A. An operator may satisfy the requirements of 9 VAC 25-640-50 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit shall be worded identically as specified in Appendix VI, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

C. An operator who uses a letter of credit to satisfy the requirements of 9 VAC 25-640-50 also shall establish a standby trust fund when the letter of credit is acquired. Under the terms of the

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letter of credit, all amounts paid pursuant to a draft by the board will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the board under 9 VAC 25-640-180. This standby trust fund shall meet the requirements specified in 9 VAC 25-640-130.

D. The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit will be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the operator receives the notice, as evidenced by the return receipt.

9 VAC 25-640-120. Trust fund.

A. An operator may satisfy the requirements of 9 VAC 25-640-50 by establishing an irrevocable trust fund that conforms to the requirements of this section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the grantor and the trustee, or by the trustee and the State Water Control Board, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the operator. The wording of the trust agreement

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shall be identical to the wording specified in Appendix VII, and shall be accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The irrevocable trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

D. If the value of the trust fund is greater than the required amount of coverage, the operator may submit a written request to the board for release of the excess.

E. If other financial assurance as specified in this chapter is substituted for all or part of the trust fund, the operator may submit a written request to the board for release of the excess.

F. Within 60 days after receiving a request from the operator for release of funds as specified in subsection D or E of this section, the board will instruct the trustee to release to the operator such funds as the board specifies in writing.

9 VAC 25-640-130. Standby trust fund.

A. An operator using any one of the mechanisms authorized by 9 VAC 25-640-80, 9 VAC 25-640-100, and 9 VAC 25-640-110 shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

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B. The standby trust agreement or trust agreement shall be worded identically as specified in Appendix VII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The board will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the board determines that no additional containment and cleanup costs will occur as a result of a discharge covered by the financial assurance mechanism for which the standby trust fund was established.

D. An operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

9 VAC 25-640-140. Substitution of financial assurance mechanisms by operator.

A. An operator may substitute any alternate financial assurance mechanisms as specified in this chapter, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of 9 VAC 25-640-50.

B. After obtaining alternate financial assurance as specified in this chapter, an operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

9 VAC 25-640-150. Cancellation or nonrenewal by a provider of financial assurance.

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the operator.

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1. Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the operator receives the notice of termination, as evidenced by the return receipt.
2. Termination of insurance or group self-insurance pool coverage, except for nonpayment or misrepresentation by the insured, may not occur until 60 days after the date on which the operator receives the notice of termination, as evidenced by the return receipt.
Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 15 days after the date on which the operator receives the notice of termination, as evidenced by the return receipt.

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in 9 VAC 25-640-200, the operator shall obtain alternate coverage as specified in this section and shall submit to the board the appropriate original forms listed in 9 VAC 25-640-170 B documenting the alternate coverage within sixty (60) days after receipt of the notice of termination. If the operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the operator shall immediately notify the board of such failure and submit:

1. The name and address of the provider of financial assurance;
2. The effective date of termination; and
3. A copy of the financial assurance mechanism subject to the termination maintained in accordance with 9 VAC 25-640-170.

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FINANCIAL RESPONSIBILITY REQUIREMENTS

9 VAC 25-640-160. Reporting by operator.

A. Except as specified in 9 VAC 25-640-170 B 7, an operator of a facility existing as of the effective date of this chapter shall submit the appropriate original forms listed in 9 VAC 25-640-170 B documenting current evidence of financial responsibility to the board within sixty (60) days after the effective date of this chapter and shall submit new original forms thirty days before the anniversary date for each year thereafter.

B. Except as specified in 9 VAC 25-640-170 B 7, an operator of a facility which does not exist as of the effective date of this chapter shall submit the appropriate original forms listed in 9 VAC 25-640-170 B documenting current evidence of financial responsibility to the board at least thirty (30) days before the facility commences operation or sixty (60) days after the effective date of this chapter, whichever is later, and shall submit new original forms thirty days before the anniversary date for each year thereafter.

C. An operator shall notify the board if the operator fails to obtain alternate coverage as required by this chapter within 30 days after the operator receives notice of:

1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,
2. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,
3. Failure of a guarantor to meet the requirements of the financial test,
4. Other incapacity of a provider of financial assurance.

9 VAC 25-640-10 *et seq.* ABOVEGROUND STORAGE TANK AND PIPELINE FACILITY
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- D. An operator shall submit the appropriate original forms listed in 9 VAC 25-640-170 B documenting current evidence of financial responsibility to the board as required by 9 VAC 25-640-70 E, 9 VAC 25-640-70 F and 9 VAC 25-640-150 B.
- E. An operator shall submit to the board the appropriate original forms listed in 9 VAC 25-640-170 B documenting current evidence of financial responsibility upon substitution of its financial assurance mechanism(s) as provided by 9 VAC 25-640-140.
- F. The board may require an operator to submit evidence of financial assurance as described in 9 VAC 25-640-170 B or other information relevant to compliance with this chapter at any time. The board may require submission of originals or copies, at its sole discretion.

9 VAC 25-640-170. Record keeping.

A. Operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this chapter for an aboveground storage tank and/or pipeline until released from the requirements of this regulation under 9 VAC 25-640-190. An operator shall maintain such evidence by filing original evidence of financial responsibility with the Department.

B. Operators shall maintain the following types of evidence of financial responsibility:

1. An operator using an assurance mechanism specified in 9 VAC 25-640-70 through -120 shall maintain the original instrument worded as specified.
2. An operator using a financial test or guarantee shall maintain (i) the chief financial officer's letter, and (ii) year-end financial statements for the most recent completed financial reporting year or the Dun and Bradstreet rating on which the chief financial officer's letter

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was based. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.

3. An operator using a guarantee, surety bond, or letter of credit shall maintain the signed standby trust fund agreement and any amendments to the agreement.
4. An operator using an insurance policy or group self-insurance pool coverage shall maintain a copy of the signed insurance policy or group self-insurance pool coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.
5. a. An operator using an assurance mechanism specified in 9 VAC 25-640-70 through -120 shall maintain an original certification of financial responsibility worded identically as specified in Appendix IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

b. The operator shall submit a new original certification at or before the time specified in 9 VAC 25-640-160 or whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).
6. An operator using a trust agreement or who is required to prepare a standby trust agreement pursuant to 9 VAC 25-640-130 shall maintain a certification of acknowledgment worded identically as specified in Appendix VIII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
7. For subsequent annual submissions required under 9 VAC 25-640-160:

9 VAC 25-640-10 *et seq.* ABOVEGROUND STORAGE TANK AND PIPELINE FACILITY
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- a. The operator may submit an endorsement, a rider or a notice of extension from the provider of financial assurance evidencing continuation of coverage in lieu of a new original surety bond or letter of credit or insurance policy, provided the form of the endorsement, rider or notice of extension is approved by the board;
- b. The operator need not submit a new original guarantee or trust fund, provided the same mechanism is to continue to act as the operator s demonstration mechanism for the subsequent year or years;
- c. The operator need not submit a new standby trust agreement, provided the financial assurance mechanism remains the same;
- d. The operator must submit a new original mechanism as specified in subsection 2 of subsection B of this section;
- e. The operator need not submit a new original certification of acknowledgment, provided the associated trust agreement has not changed;
- f. The operator must submit a new original certification of financial responsibility.

9 VAC 25-640-180. Drawing on financial assurance mechanisms.

A. The board shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the board, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

- 1. a. The operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit; and

9 VAC 25-640-10 *et seq.* ABOVEGROUND STORAGE TANK AND PIPELINE FACILITY FINANCIAL RESPONSIBILITY REQUIREMENTS

b. The board determines or suspects that a discharge from an aboveground storage tank or pipeline covered by the mechanism has occurred and so notifies the operator, or the operator has notified the board pursuant to 9 VAC 25-91-10 *et seq.* of a discharge from an aboveground storage tank or pipeline covered by the mechanism;
or

2. The conditions of subsection B of this section are satisfied.

B. The board may draw on a standby trust fund when the board makes a final determination that a discharge has occurred and immediate or long-term containment and/or cleanup for the discharge is needed, and the operator, after appropriate notice and opportunity to comply, has not conducted containment and cleanup as required under 9 VAC 25-91-10 *et seq.*

9 VAC 25-640-190. Release from the requirements.

An operator is no longer required to maintain financial responsibility under this chapter for an aboveground storage tank or pipeline after the tank or pipeline has been permanently closed pursuant to the requirements of 9 VAC 25-91-10 *et seq.*, except when the board determines cleanup of a discharge from the aboveground storage tank or pipeline is required.

9 VAC 25-640-200. Bankruptcy or other incapacity of operator provider of financial assurance.

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an operator as debtor, the operator shall notify the board by certified mail of such commencement.

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B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the operator by certified mail of such commencement as required under the terms of the guarantee specified in 9 VAC 25-640-80.

C. An operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, group self-insurance pool coverage policy, surety bond, or letter of credit. The operator shall obtain alternate financial assurance as specified in this chapter and submit to the board the appropriate original forms specified in 9 VAC 25-640-170 B within 30 days after receiving notice of such an event. If the operator does not obtain alternate coverage within 30 days after such notification, he shall immediately notify the board in writing.

9 VAC 25-640-210. Replenishment of guarantees, letters of credit or surety bonds.

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

1. Replenish the value of financial assurance to equal the full amount of coverage required,

or

9 VAC 25-640-10 *et seq.* ABOVEGROUND STORAGE TANK AND PIPELINE FACILITY FINANCIAL RESPONSIBILITY REQUIREMENTS

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

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 9 VAC 25-640-50. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

9 VAC 25-640-220. Virginia Petroleum Storage Tank Fund.

The Fund may be used for all uses authorized by Virginia Code § 62.1-44.34:11 in accordance with the requirements specified in 9 VAC 25-590-210.

9 VAC 25-640-230. Notices to the State Water Control Board.

All requirements of this chapter for notification to the State Water Control Board shall be addressed as follows:

Director

Department of Environmental Quality

629 E. Main Street

P. O. Box 10009

Richmond, Virginia 23240-0009.

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9 VAC 25-640-240. Delegation of authority.

The Director of the Department of Environmental Quality or a designee acting for him may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

9 VAC 25-640-250. Evaluation of chapter.

A. Within three years after the effective date of this chapter, the Department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this chapter; (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.

B. Upon review of the Department s analysis, the board shall confirm the need to (i) continue this chapter without amendments, (ii) repeal this chapter or (iii) amend this chapter. If the board s decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

APPENDIX I - LETTER FROM CHIEF FINANCIAL OFFICER

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

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I am the chief financial officer of [insert: name and address of the operator or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "Guarantee"] to demonstrate financial responsibility for the containment and cleanup of discharges of oil in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating [insert: "(an) aboveground storage tank(s)" and/or "(a) pipeline(s)].

Aboveground storage tanks at the following facilities and/or pipelines are assured by this financial test by this [insert: "operator" and/or "guarantor"]:

[List for each facility: the name and address of the facility where tanks assured by this financial test are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

This [insert: "operator " or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on the financial statements for the latest completed fiscal year.

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[Fill in the information for Alternative I if the criteria of 9 VAC 25-640-70 B are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of 9 VAC 25-640-70 C are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of AST annual aggregate coverage being assured by a financial test, and/or guarantee

.....\$ _____

2. Amount of pipeline annual aggregate coverage covered by a financial test, and/or guarantee

.....\$ _____

3. Sum of lines 1 and 2\$ _____

4. Total tangible assets\$ _____

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may

deduct that amount from this line or add that amount to line 6]\$ _____

6. Tangible net worth [subtract line 5 from line 4].....\$ _____

Yes No

7. Is line 6 at least equal to line 3 above?..... _____

8. Have financial statements for the latest financial reporting year been filed with the Securities

and Exchange Commission? _____

9. Have financial statements for the latest financial reporting year been filed with the Energy

Information Administration? _____

9 VAC 25-640-10 *et seq.* ABOVEGROUND STORAGE TANK AND PIPELINE FACILITY FINANCIAL RESPONSIBILITY REQUIREMENTS

10. Have financial statements for the latest financial reporting year been filed with the Rural

Electrification Administration? _____

11. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet

provided a financial strength rating of at least equal to the amount of annual AST/pipeline

aggregate coverage being assured? [Answer "Yes" only if both criteria have been met.]

..... _____

12. If you did not answer Yes to one of lines 8 through 11, please attach a report from an

independent certified public accountant certifying that there are no material differences between the

data reported in lines 4 through 7 above and the financial statements for the latest financial

reporting year.

ALTERNATIVE II

1. Amount of AST annual aggregate coverage being assured by a financial test, and/or guarantee

.....\$ _____

2. Amount of pipeline annual aggregate coverage covered by a financial test, and/or guarantee

.....\$ _____

3. Sum of lines 1 and 2\$ _____

4. Total tangible assets.....\$ _____

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may

deduct that amount from this line or add that amount to line

.....\$ _____

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6. Tangible net worth [subtract line 5 from line 4]\$ _____

7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.].....\$ _____

Yes No

8. Is line 6 at least equal to line 3 above?..... _____

9. Are at least 90 percent of assets located in the U.S.? [If "No," complete line

10.]..... _____

10. Is line 7 at least equal to line 3?..... _____

[Fill in either lines 11-14 or lines 15-17:]

11. Current assets\$ _____

12. Current liabilities\$ _____

13. Net working capital [subtract line 12 from line 11]\$ _____

Yes No

14. Is line 13 at least equal to line 3?..... _____

15. Current bond rating of most recent bond issue

16. Name of rating service

17. Date of maturity of bond

18. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration?

9 VAC 25-640-10 *et seq.* ABOVEGROUND STORAGE TANK AND PIPELINE FACILITY FINANCIAL RESPONSIBILITY REQUIREMENTS

YES NO

.....

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-17 above and the financial statements for the latest financial reporting year.]

[For Alternatives I and II, complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Appendix I of 9 VAC 25-640-10 et seq. as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

APPENDIX II - GUARANTEE

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the State Water Control Board of the Commonwealth of Virginia and obligees, on behalf of [operator] of [business address].

9 VAC 25-640-10 *et seq.* ABOVEGROUND STORAGE TANK AND PIPELINE FACILITY FINANCIAL RESPONSIBILITY REQUIREMENTS

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of 9 VAC 25-640-70 B or C and D and agrees to comply with the requirements for guarantors as specified in 9 VAC 25-640-80.

(2) Operator operates the following aboveground storage tank(s) and/or pipelines covered by this guarantee:

[List for each facility: the name and address of facility where tanks assured by this financial test are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this guarantee. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

This guarantee satisfies the requirements of 9 VAC 25-640-10 et seq. for assuring funding for taking containment and cleanup measures necessitated by a discharge of oil; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified aboveground storage tank(s) and/or pipelines in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3). [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the operator); "On behalf of our affiliate" (if guarantor is a related firm of the operator); or

9 VAC 25-640-10 *et seq.* ABOVEGROUND STORAGE TANK AND PIPELINE FACILITY
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"Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with operator)][operator], guarantor guarantees to the State Water Control Board that:

In the event that operator fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the State Water Control Board has determined or suspects that a discharge has occurred at an aboveground storage tank and/or pipeline covered by this guarantee, the guarantor, upon instructions from the State Water Control Board, shall fund a standby trust fund in accordance with the provisions of 9 VAC 25-640-180, in an amount not to exceed the coverage limits specified above.

In the event that the State Water Control Board determines that operator has failed to perform containment and cleanup for discharges arising out of the operation of the above-identified tank(s) and/or pipelines in accordance with 9 VAC 25-91-10 et seq., the guarantor upon written instructions from the State Water Control Board shall fund a standby trust in accordance with the provisions of 9 VAC 25-640-180, in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if, at the end of any financial reporting year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 9 VAC 25-640-70 B or C and D, guarantor shall send within 120 days of such failure, by certified mail, notice to operator. The guarantee will terminate 120 days from the date of receipt of the notice by operator, as evidenced by the return receipt.

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- (5) Guarantor agrees to notify operator by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding.
- (6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of operator pursuant to 9 VAC 25-91-10 et seq. or 9 VAC 25-640-10 et seq.
- (7) Guarantor agrees to remain bound under this guarantee for so long as operator shall comply with the applicable financial responsibility requirements of 9 VAC 25-640-10 et seq. for the above-identified tank(s) and/or pipelines, except that guarantor may cancel this guarantee by sending notice by certified mail to operator, such cancellation to become effective no earlier than 120 days after receipt of such notice by operator, as evidenced by the return receipt.
- (8) The guarantor's obligation does not apply to any of the following:
- (a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
 - (b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;
 - (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

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(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an aboveground storage tank and/or pipeline;

(e) Bodily damage or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-640-10 *et seq.*

(9) Guarantor expressly waives notice of acceptance of this guarantee by the State Water Control Board or by operator.

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix II of 9 VAC 25-640-10 *et seq.* as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

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APPENDIX III - ENDORSEMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: _____ [name of each covered location] _____

Address: _____ [address of each covered location] _____

Policy Number: _____

Period of Coverage: _____ [current policy period] _____

Name of [Insurer or Group Self Insurance Pool]:

Address of [Insurer or Group Self Insurance Pool]:

Name of Insured: _____

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Address of Insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following aboveground storage tanks and/or pipelines in connection with the insured's obligation to demonstrate financial responsibility under 9 VAC 25-640-10 *et seq.*:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism.]

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

9 VAC 25-640-10 *et seq.* ABOVEGROUND STORAGE TANK AND PIPELINE FACILITY FINANCIAL RESPONSIBILITY REQUIREMENTS

for containment and cleanup of a discharge of oil in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the aboveground storage tank(s) and/or pipelines identified above.

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

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

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Pool"] of its obligations under the policy to which this endorsement is attached.

c. The ["Insurer" or "Pool"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of containment and cleanup, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Pool"].

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This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9 VAC 25-640-70 through -120.

c. Whenever requested by the State Water Control Board, the ["Insurer" or "Pool"] agrees to furnish to State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"], except for on-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

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

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are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this endorsement is in no respect less favorable than the coverage specified in Appendix III of 9 VAC 25-640-10 et seq. and has been so certified by the State Corporation Commission of the Commonwealth of Virginia. I further certify that the ["Insurer" or "Pool"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the Commonwealth of Virginia"].

[Signature of authorized representative of Insurer or Group Self Insurance Pool] [Name of person signing]

[Title of person signing], Authorized

Representative of [name of Insurer or Group Self Insurance Pool]

[Address of Representative]

APPENDIX IV - CERTIFICATE OF INSURANCE

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: _____ [name of each covered location]_____

Address: _____ [address of each covered location]_____

Policy Number: _____

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Endorsement (if applicable): _____

Period of Coverage: _____ [current policy period] _____

Name of [Insurer or Group Self Insurance Pool]:

Address of [Insurer or Group Self Insurance Pool]:

Name of Insured: _____

Address of Insured: _____

Certification:

- b. [Name of Insurer or Group Self Insurance Pool], [the “Insurer” or “Pool”], as identified above, hereby certifies that it has issued liability insurance covering the following aboveground storage tank(s) and/or pipelines in connection with the insured’s obligation to demonstrate financial responsibility under 9 VAC 25-640-10 *et seq.*:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism.]

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List for each pipeline: the home office address and the names of the cities and counties in
the Commonwealth where the pipeline is located.]

for containment and cleanup of discharges of oil; in accordance with and subject to the limits of
liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different
tanks, pipelines or locations, indicate the type of coverage applicable to each tank, pipeline or
location] arising from operating the aboveground storage tank(s) and/or pipelines identified above.

The limits of liability are [insert the dollar amount of the containment and cleanup “each
occurrence” and “annual aggregate” limits of the Insurer’s or Group’s liability; if the amount of
coverage is different for different types of coverage or for different aboveground storage tanks or
locations, indicate the amount of coverage for each type of coverage and/or for each aboveground
storage tank, pipeline or location], exclusive of legal defense costs, which are subject to a separate
limit under the policy. This coverage is provided under [policy number]. The effective date of said
policy is [date].

2. The [“Insurer” or “Pool”] further certifies the following with respect to the insurance described
in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the [“Insurer” or “Pool”] of its
obligations under the policy to which this certificate applies.

b. The [“Insurer” or “Pool”] is liable for the payment of amounts within any deductible
applicable to the policy to the provider of containment and cleanup with a right of
reimbursement by the insured for any such payment made by the [“Insurer” or “Pool”].

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This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9 VAC 25-640-70 through -120.

c. Whenever requested by the State Water Control Board, the ["Insurer" or "Pool"] agrees to furnish to the State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies]

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

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are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this instrument is identical to the wording in Appendix IV of 9 VAC 25-640-10 *et seq.* and that the ["Insurer" or "Pool"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or approved surplus lines insurer, in the Commonwealth of Virginia"].

[Signature of authorized representative of Insurer]

[Type name] [Title], Authorized Representative of [name of Insurer or Group Self Insurance Pool]

[Address of Representative]

APPENDIX V - PERFORMANCE BOND

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Date bond executed: _____

Period of coverage: _____

Principal: [legal name and address of operator] _____

Type of organization: [insert "individual" "joint venture," "partnership," "corporation," or appropriate identification of type of organization] _____

State of incorporation (if applicable): _____

Surety(ies): [name(s) and business address(es)] _____

Scope of Coverage:

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forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under § 62.1-44.34:16 of the Code of Virginia and under 9 VAC 25-640-10 *et seq.* to provide financial assurance for containment and cleanup necessitated by discharges of oil; [if coverage is different for different tanks or locations or pipelines, indicate the type of coverage applicable to each tank or location or pipeline] arising from operating the aboveground storage tanks and/or pipelines identified above, and

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

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully contain and cleanup, in accordance with the State Water Control Board's instructions for containment and cleanup of discharges of oil arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 9 VAC 25-640-10 *et seq.*, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

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

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an aboveground storage tank and/or pipeline;

(e) Bodily injury or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-640-10 *et seq.*

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

Upon notification by the State Water Control Board that the Principal has failed to contain and cleanup in accordance with 9 VAC 25-91-10 *et seq.* and the State Water Control Board's instructions, the Surety(ies) shall perform containment and cleanup in accordance with 9 VAC 25-91-10 *et seq.* and the board's instructions, or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the State Water Control Board under 9 VAC 25-640-180.

Upon notification by the State Water Control Board that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the State Water Control Board has determined or suspects that a discharge has occurred, the Surety(ies) shall place funds in an amount not exceeding the

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annual aggregate penal sum into the standby trust fund as directed by the State Water Control

Board under 9 VAC 25-640-180.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix V of 9 VAC 25-640-10 *et seq.* as such regulations were constituted on the date this bond was executed.

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PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY (IES)

[Name and address]

State of Incorporation:

Liability limit: \$ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same
manner as for Surety above.]

Bond premium: \$ _____

APPENDIX VI - IRREVOCABLE STANDBY LETTER OF CREDIT

**[Note: The instructions in brackets are to be replaced by the relevant information and the
brackets deleted.]**

[Name and address of issuing institution]

[Name and address of the Director]

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Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in

your favor, at the request and for the account of [operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No. _____ and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of § 62.1- 44.34:16 of the Code of Virginia."

This letter of credit may be drawn on to cover containment and cleanup necessitated by discharges of oil arising from operating the aboveground storage tank(s) and pipelines identified below in the amount of [in words] \$ [insert dollar amount] per occurrence and [in words] \$ [insert dollar amount] annual aggregate:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank covered by this instrument.

For pipelines, list: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

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

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

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- (b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by an operator that is not the direct result of a discharge of oil from an aboveground storage tank and/or pipeline;
- (e) Bodily injury or property damage for which an operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-640-50.

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

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

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We certify that the wording of this letter of credit is identical to the wording specified in Appendix VI of 9 VAC 25-640-10 *et seq.* as such regulations were constituted on the date shown immediately below.

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

[Date]

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

APPENDIX VII - TRUST AGREEMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the operator], a [name of state] [insert "corporation," "partnership," "association," "proprietorship," or appropriate identification of type of entity], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of _____" or "a national bank"], the "Trustee."

Whereas, the State Water Control Board of the Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring that an operator of an aboveground storage tank and/or pipeline shall provide assurance that funds will be available when needed for containment and cleanup of a discharge of oil arising from the operation of the aboveground storage tank and/or pipeline. The attached Schedule A contains for each facility the name and address of the facility

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where tanks covered by this [trust agreement or standby trust agreement] are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number and for pipelines the home office address and names of the cities and counties in the Commonwealth where the pipeline is located;

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

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

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Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State Water Control Board of the Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the State Water Control Board's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the State Water Control Board.

Section 4. Payment for Containment and Cleanup.

The Trustee shall make payments from the Fund as the State Water Control Board shall direct, in writing, to provide for the payment of the costs of containment and cleanup of a discharge of oil arising from operating the tanks and/or pipelines covered by the financial assurance mechanism identified in this Agreement.

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

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

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- (b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an oil aboveground storage tank or pipeline;
- (e) Bodily injury or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9 VAC 25-640-50.

The Trustee shall reimburse the Grantor, or other persons as specified by the State Water Control Board, from the Fund for containment and cleanup in such amounts as the State Water Control Board shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the State Water Control Board specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

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

Section 6. Trustee Management.

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The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. § 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

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(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates

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representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by

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the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present

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Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and instructions by the State Water Control Board to the Trustee shall be in writing, signed by the Executive Director of the Department of Environmental Quality, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the State Water Control Board hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the State Water Control Board, except as provided for herein.

Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the State Water Control Board if the Grantor ceases to exist.

Section 15. Irrevocability and Termination.

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Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the State Water Control Board, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the State Water Control Board issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation.

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

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix VII of 9 VAC 25-640-10 *et seq.* as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

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APPENDIX VIII - CERTIFICATE OF ACKNOWLEDGMENT

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

State of _____

County of _____

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

[Signature of Notary Public]

[Name of Notary Public]

My Commission expires: _____.

APPENDIX IX - CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Operator hereby certifies that it is in compliance with the requirements of 9 VAC 25-640-10 *et seq.*

The financial assurance mechanism[s] used to demonstrate financial responsibility under 9 VAC

25-640-10 *et seq.* is [are] as follows:

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Indicate type of Mechanism:

 Letter from Chief Financial Officer

 Guarantee

 Insurance Endorsement or Certificate

 Letter of Credit

 Surety Bond

 Trust Fund

Name of Issuer: _____

Mechanism Number (if applicable): _____

Total number of gallons of aboveground storage capacity for which demonstration is provided:

Amount of coverage for mechanism:

\$ _____ containment and cleanup per occurrence and annual aggregate

Effective period of coverage: _____ to _____

Do(es) mechanism(s) cover(s): containment and cleanup caused by either sudden accidental

discharges or nonsudden accidental discharges or accidental discharges? Yes No

If "No," specify in the following space the items the mechanism covers:

[Signature of operator]

[Name of operator]

[Title] [Date]

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[Signature of notary]

[Name of notary] [Date] My Commission expires: _____.