

ARTICLE 9. UNDERGROUND STORAGE TANKS

Rule 1. Applicability, Incorporation by Reference, and Definitions

329 IAC 9-1-1 Applicability and incorporation by reference

Authority: IC 4-22-2-21; IC 13-14-8; IC 13-23-1

Affected: IC 4-22-9-5; IC 13-11-2; IC 13-12-3-2; IC 13-23

Sec. 1. (a) This article applies to all owners and operators of a UST as described in 40 CFR 280.10*.

(b) Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations (CFR) means the July 1, 2016, edition, as incorporated by reference in this article.

(c) Owners and operators of a UST as described in 40 CFR 280.10* shall comply with the technical standards and corrective action requirements for USTs at 40 CFR 280*, with the following exceptions:

(1) Definitions of "owner" and "operator" in 40 CFR 280.12.

(2) 40 CFR 280.22.

(3) 40 CFR 280.53.

(4) 40 CFR 280.60.

(5) 40 CFR 280.61.

(6) 40 CFR 280.63 through 40 CFR 280.67.

(7) 40 CFR 280, Subpart G.

(8) 40 CFR 280, Subpart H.

(9) 40 CFR 280, Subpart I.

(d) When used in 40 CFR 280* as incorporated by this rule, substitute the following:

(1) A reference to "state" means Indiana.

(2) A reference to "implementing agency" means the Indiana department of environmental management.

(3) A reference to 40 CFR 280.22 means 329 IAC 9-2-2.

(4) A reference to 40 CFR 280.53 means 329 IAC 9-4-4.

(5) A reference to 40 CFR 280, Subpart F means 329 IAC 9-5.

(6) A reference to 40 CFR 280, Subpart G means 329 IAC 9-6.

(7) A reference to 40 CFR 280, Subpart H means 329 IAC 9-8.

(8) A reference to an October 13, 2015, compliance date means June 28, 2018.

(9) A reference to an April 11, 2016, compliance date means December 26, 2018.

(10) A reference to an October 13, 2018, compliance date means June 28, 2021, except in 40 CFR 280, Subpart J.

(11) A reference to an October 13, 2021, compliance date means June 28, 2024.

(12) A reference to an October 13, 2022, compliance date means June 28, 2025.

(e) In addition to the definitions in this section, the definitions in IC 13-11-2 and 40 CFR 280.12* apply throughout this rule.

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204. (*Solid Waste Management Division; 329 IAC 9-1-1; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1062; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3683; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 145; filed Aug 3, 2009, 1:48 p.m.: 20090902-IR-329080055FRA; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA; filed Mar 18, 2019, 2:41 p.m.: 20190417-IR-329180281FRA*)

329 IAC 9-1-1.1 Interim prohibition for deferred UST systems (Repealed)

Sec. 1.1. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-2 Applicability of definitions (Repealed)

Sec. 2. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-3 "Aboveground release" defined (Repealed)

Sec. 3. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-4 "Agency" defined (Repealed)

Sec. 4. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-5 "Ancillary equipment" defined (Repealed)

Sec. 5. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-6 "Belowground release" defined (Repealed)

Sec. 6. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-7 "Beneath the surface of the ground" defined (Repealed)

Sec. 7. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-8 "Cathodic protection" defined (Repealed)

Sec. 8. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-9 "Cathodic protection tester" defined (Repealed)

Sec. 9. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-10 "CERCLA" defined (Repealed)

Sec. 10. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-10.1 "Chemical of concern" or "COC" defined (Repealed)

Sec. 10.1. *(Repealed by Solid Waste Management Division; filed Aug 30, 2004, 9:35 a.m.: 28 IR 177)*

329 IAC 9-1-10.2 "Clean closure" defined (Repealed)

Sec. 10.2. *(Repealed by Solid Waste Management Division; filed Aug 30, 2004, 9:35 a.m.: 28 IR 177)*

329 IAC 9-1-10.4 "Change-in-service" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 10.4. "Change-in-service" means continued use of the UST or UST system to store a nonregulated substance. *(Solid Waste Management Division; 329 IAC 9-1-10.4; filed Aug 30, 2004, 9:35 a.m.: 28 IR 146)*

329 IAC 9-1-10.6 "Chemical of concern" defined

Authority: IC 13-14-8; IC 13-23-1
Affected: IC 13-23

Sec. 10.6. "Chemical of concern" means the parameter to be analyzed as a possible contaminant. (*Solid Waste Management Division; 329 IAC 9-1-10.6; filed Aug 30, 2004, 9:35 a.m.: 28 IR 146; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-10.7 "Chronic failure to comply" defined (Repealed)

Sec. 10.7. (*Repealed by Solid Waste Management Division; filed Nov 25, 2014, 3:43 p.m.: 20141224-IR-329130272FRA*)

329 IAC 9-1-10.8 "Closure" defined (Repealed)

Sec. 10.8. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-11 "Commissioner" defined (Repealed)

Sec. 11. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-12 "Compatible" defined (Repealed)

Sec. 12. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-13 "Connected piping" defined (Repealed)

Sec. 13. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-14 "Consumptive use" defined (Repealed)

Sec. 14. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-14.1 "Corrective action" defined (Repealed)

Sec. 14.1. (*Repealed by Solid Waste Management Division; filed Aug 30, 2004, 9:35 a.m.: 28 IR 177*)

329 IAC 9-1-14.3 "Contaminant" defined

Authority: IC 13-14-8; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-11-2-42; IC 13-23

Sec. 14.3. "Contaminant" has the meaning set forth at IC 13-11-2-42. However, for purposes of this article, the term does not include hazardous waste regulated under 329 IAC 3.1. (*Solid Waste Management Division; 329 IAC 9-1-14.3; filed Aug 30, 2004, 9:35 a.m.: 28 IR 146*)

329 IAC 9-1-14.5 "Corrective action" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 14.5. "Corrective action" means action taken to minimize, contain, eliminate, remediate, mitigate, or clean up a release,

including emergency measures taken as part of an initial response to the release under 329 IAC 9-5-2. (*Solid Waste Management Division; 329 IAC 9-1-14.5; filed Aug 30, 2004, 9:35 a.m.: 28 IR 146*)

329 IAC 9-1-14.7 "Corrective action plan" defined

Authority: IC 13-14-8; IC 13-23-1
Affected: IC 13-23

Sec. 14.7. "Corrective action plan" means the corrective action plan described under 329 IAC 9-5-7(a) and 329 IAC 9-5-7(b). (*Solid Waste Management Division; 329 IAC 9-1-14.7; filed Aug 30, 2004, 9:35 a.m.: 28 IR 146; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-15 "Corrosion expert" defined (Repealed)

Sec. 15. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-15.1 "Delivery prohibition" defined

Authority: IC 13-14-8; IC 13-23-1; IC 13-23-1-2
Affected: IC 13-23-1-4

Sec. 15.1. "Delivery prohibition" means the commissioner:
(1) determined a UST to be ineligible under IC 13-23-1-4; and
(2) issued a temporary order prohibiting the owner or operator of the ineligible UST from allowing a regulated substance to be:
(A) delivered;
(B) deposited; or
(C) accepted.

(*Solid Waste Management Division; 329 IAC 9-1-15.1; filed Nov 25, 2014, 3:43 p.m.: 20141224-IR-329130272FRA*)

329 IAC 9-1-15.2 "Department" defined (Repealed)

Sec. 15.2. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-15.5 "Deposit" defined

Authority: IC 13-14-8; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 15.5. "Deposit" means the act of placing in or filling of an underground storage tank with a regulated substance. (*Solid Waste Management Division; 329 IAC 9-1-15.5; filed May 7, 2010, 10:02 a.m.: 20100602-IR-329070468FRA*)

329 IAC 9-1-16 "Dielectric material" defined (Repealed)

Sec. 16. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-17 "Electrical equipment" defined (Repealed)

Sec. 17. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-18 "Excavation zone" defined (Repealed)

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Sec. 18. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-18.5 "Existing" defined (Repealed)

Sec. 18.5. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-19 "Existing tank system" defined (Repealed)

Sec. 19. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-19.5 "Failure to comply" defined (Repealed)

Sec. 19.5. *(Repealed by Solid Waste Management Division; filed Nov 25, 2014, 3:43 p.m.: 20141224-IR-329130272FRA)*

329 IAC 9-1-20 "Farm tank" defined (Repealed)

Sec. 20. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-21 "Fire marshal" defined

Authority: IC 13-14-8; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 21. "Fire marshal" means the office of the state fire marshal, division of fire and building safety, Indiana department of homeland security. *(Solid Waste Management Division; 329 IAC 9-1-21; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1065; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 31, 2018, 9:57 a.m.: 20180620-IR-329180246ACA)*

329 IAC 9-1-22 "Flow-through process tank" defined (Repealed)

Sec. 22. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-23 "Free product" defined (Repealed)

Sec. 23. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-23.1 "Galvanic cathodic protection" defined (Repealed)

Sec. 23.1. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-23.2 "Galvanic cathodic protection system" defined (Repealed)

Sec. 23.2. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-24 "Gathering lines" defined (Repealed)

Sec. 24. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-24.1 "Geologically susceptible area" defined (Repealed)

Sec. 24.1. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-24.2 "Ground water" defined

Authority: IC 13-14-8; IC 13-23-1
Affected: IC 13-23

Sec. 24.2. "Ground water" has the meaning set forth in 327 IAC 2-1-9(25). (*Solid Waste Management Division; 329 IAC 9-1-24.2; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3690; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-25 "Hazardous substance UST system" defined (Repealed)

Sec. 25. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-26 "Heating oil" defined (Repealed)

Sec. 26. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-27 "Hydraulic lift tank" defined (Repealed)

Sec. 27. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-27.1 "Impressed current cathodic protection" defined (Repealed)

Sec. 27.1. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-27.2 "Impressed current cathodic protection system" defined (Repealed)

Sec. 27.2. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-27.3 "In-place closure" defined

Authority: IC 13-14-8; IC 13-23-1
Affected: IC 13-23

Sec. 27.3. "In-place closure" means a permanent closure where the UST is emptied and cleaned by removing all liquids and accumulated sludges, filled with an inert material, or closed in some other manner approved by the commissioner, but is not removed from the ground. (*Solid Waste Management Division; 329 IAC 9-1-27.3; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3691; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-1-27.4 "Karst terrains" defined (Repealed)

Sec. 27.4. (*Repealed by Solid Waste Management Division; filed Aug 3, 2009, 1:48 p.m.: 20090902-IR-329080055FRA*)

329 IAC 9-1-27.5 "Interstitial monitoring" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-18-17-6; IC 13-23-3

Sec. 27.5. "Interstitial monitoring" means a release detection method that continuously monitors the interstitial space of an underground storage tank and piping. The term includes only those release detection systems that are capable of detecting a breach in the primary containment of the underground storage tank and piping component being monitored before the regulated substance or petroleum stored is released to the environment. (*Solid Waste Management Division; 329 IAC 9-1-27.5; filed Aug 3, 2009, 1:48*

p.m.: 20090902-IR-329080055FRA)

329 IAC 9-1-27.6 "Interstitial space" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-18-17-6; IC 13-23-3

Sec. 27.6. "Interstitial space" means the space between the primary and secondary containment systems. *(Solid Waste Management Division; 329 IAC 9-1-27.6; filed Aug 3, 2009, 1:48 p.m.: 20090902-IR-329080055FRA)*

329 IAC 9-1-27.8 "Karst terrains" defined (Repealed)

Sec. 27.8. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-28 "Liquid trap" defined (Repealed)

Sec. 28. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-29 "Maintenance" defined (Repealed)

Sec. 29. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-29.1 "Modified closure" defined (Repealed)

Sec. 29.1. *(Repealed by Solid Waste Management Division; filed Aug 30, 2004, 9:35 a.m.: 28 IR 177)*

329 IAC 9-1-30 "Motor fuel" defined (Repealed)

Sec. 30. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-31 "New tank system" defined (Repealed)

Sec. 31. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-32 "Noncommercial purposes" defined (Repealed)

Sec. 32. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-33 "On the premises where stored" defined (Repealed)

Sec. 33. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-34 "Operational life" defined (Repealed)

Sec. 34. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-34.1 "Operator" defined (Repealed)

Sec. 34.1. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-35 "Overfill release" defined (Repealed)

Sec. 35. (Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)

329 IAC 9-1-35.1 "Owner" defined (Repealed)

Sec. 35.1. (Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)

329 IAC 9-1-35.2 "Person" defined (Repealed)

Sec. 35.2. (Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)

329 IAC 9-1-35.5 "Permanent closure" defined

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-23

Sec. 35.5. "Permanent closure" means a UST has been emptied and cleaned by removing all liquids and accumulated sludges. Removal closure and in-place closure are types of permanent closure. (Solid Waste Management Division; 329 IAC 9-1-35.5; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)

329 IAC 9-1-36 "Petroleum UST system" defined (Repealed)

Sec. 36. (Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)

329 IAC 9-1-36.5 "Piezometer" defined (Repealed)

Sec. 36.5. (Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)

329 IAC 9-1-37 "Pipe" or "piping" defined (Repealed)

Sec. 37. (Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)

329 IAC 9-1-38 "Pipeline facilities" defined (Repealed)

Sec. 38. (Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)

329 IAC 9-1-38.1 "Product" defined (Repealed)

Sec. 38.1. (Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)

329 IAC 9-1-38.2 "Regulated substance" defined (Repealed)

Sec. 38.2. (Repealed by Solid Waste Management Division; filed May 7, 2010, 10:02 a.m.: 20100602-IR-329070468FRA)

329 IAC 9-1-38.3 "Release" defined (Repealed)

Sec. 38.3. (Repealed by Solid Waste Management Division; filed May 7, 2010, 10:02 a.m.: 20100602-IR-329070468FRA)

329 IAC 9-1-38.5 "Red tag" defined

Authority: IC 13-14-8; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 38.5. "Red tag" means a tag, device, or mechanism, such as a tamper-resistant strap, fill pipe bag, numbered zip tie, or any combination thereof, that clearly identifies an underground storage tank as being under delivery prohibition or the act of attaching the tag, device, or mechanism. The red tag shall:

- (1) indicate the UST is prohibited from receiving a regulated substance;
- (2) be tamper resistant; and
- (3) state "Do Not Fill" in bold face type.

(Solid Waste Management Division; 329 IAC 9-1-38.5; filed May 7, 2010, 10:02 a.m.: 20100602-IR-329070468FRA; filed Nov 25, 2014, 3:43 p.m.: 20141224-IR-329130272FRA)

329 IAC 9-1-38.7 "Regulated substance" defined (Repealed)

Sec. 38.7. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-38.9 "Release" defined (Repealed)

Sec. 38.9. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-39 "Release detection" defined (Repealed)

Sec. 39. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-39.5 "Removal closure" defined

Authority: IC 13-14-8; IC 13-23-1
Affected: IC 13-23

Sec. 39.5. "Removal closure" means a permanent closure where a UST is emptied and cleaned by removing all liquids and accumulated sludges and then completely extracted from the ground. *(Solid Waste Management Division; 329 IAC 9-1-39.5; filed Aug 30, 2004, 9:35 a.m.: 28 IR 147; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-40 "Repair" defined (Repealed)

Sec. 40. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-40.5 "Replaced" defined (Repealed)

Sec. 40.5. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-41 "Residential tank" defined (Repealed)

Sec. 41. *(Repealed by Solid Waste Management Division; filed Aug 30, 2004, 9:35 a.m.: 28 IR 177)*

329 IAC 9-1-41.1 "SARA" defined (Repealed)

Sec. 41.1. *(Repealed by Solid Waste Management Division; filed Aug 30, 2004, 9:35 a.m.: 28 IR 177)*

329 IAC 9-1-41.5 "SARA" defined (Repealed)

Sec. 41.5. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-41.8 "Secondary containment" defined (Repealed)

Sec. 41.8. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-42 "Septic tank" defined (Repealed)

Sec. 42. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-42.1 "Source area" defined (Repealed)

Sec. 42.1. *(Repealed by Solid Waste Management Division; filed Aug 30, 2004, 9:35 a.m.: 28 IR 177)*

329 IAC 9-1-43 "Stormwater or wastewater collection system" defined (Repealed)

Sec. 43. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-44 "Surface impoundment" defined (Repealed)

Sec. 44. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-45 "Tank" defined (Repealed)

Sec. 45. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-45.5 "Under-dispenser spill containment" defined (Repealed)

Sec. 45.5. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-46 "Underground area" defined (Repealed)

Sec. 46. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-47 "Underground release" defined (Repealed)

Sec. 47. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-47.1 "Underground storage tank" or "UST" defined (Repealed)

Sec. 47.1. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-48 "Upgrade" defined (Repealed)

Sec. 48. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-1-49 "UST system" or "tank system" defined (Repealed)

Sec. 49. (Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)

329 IAC 9-1-50 "Wastewater treatment tank" defined (Repealed)

Sec. 50. (Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)

329 IAC 9-1-51 References to federal laws (Repealed)

Sec. 51. (Repealed by Solid Waste Management Division; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3761)

329 IAC 9-1-52 "Wellhead protection area" defined

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-23

Sec. 52. "Wellhead protection area" has the meaning set forth in 327 IAC 8-4.1-1(27). (Solid Waste Management Division; 329 IAC 9-1-52; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3695; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)

Rule 2. Performance Standards

329 IAC 9-2-1 New UST systems (Repealed)

Sec. 1. (Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)

329 IAC 9-2-1.1 New UST systems within a one (1) year time of travel to a community public water supply well (Repealed)

Sec. 1.1. (Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)

329 IAC 9-2-2 Notification requirements

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-23-3

Sec. 2. (a) All notifications required to be submitted under this article must be submitted on a form provided by the department and in a format prescribed by the commissioner.

(b) The owner of a UST system, UST, or tank shall submit a notification form to register the UST system, UST, or tank to the department within thirty (30) days of becoming the owner of, or bringing into use, the UST system, UST, or tank. Bringing "into use" means the UST system, UST, or tank:

- (1) contains or has contained a regulated substance; and
- (2) has not been closed under 329 IAC 9-6.

(c) An owner required to submit a notification under this section shall provide:

- (1) a notification for each UST owned;
- (2) complete information required on the form for each UST owned; and
- (3) if applicable, a separate notification form for each separate place of operation at which the USTs are located.

(d) An owner may provide notification for several USTs at one (1) location using one (1) form.

(e) All owners and operators of new or replaced UST systems shall certify, on each notification form submitted compliance with the following requirements:

- (1) Installation of all tanks and piping under 40 CFR 280.20*.
- (2) Cathodic protection of steel tanks and piping under 40 CFR 280.20*.
- (3) Release detection under 40 CFR 280, Subpart D*.

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(4) Financial responsibility under 329 IAC 9-8.

(f) All owners and operators of UST systems shall ensure that the person who performs tank system:

- (1) installations;
- (2) testing;
- (3) upgrades;
- (4) closures;
- (5) removals; and
- (6) change-in-service;

is certified by the department of homeland security, division of fire and building safety. The certified person who performs the work shall certify on the notification form that the work performed complies with methods specified in this article and 40 CFR 280, Subpart C*.

(g) All owners and operators of UST systems shall submit a notification to the department within thirty (30) days of completing any of the following actions:

- (1) Temporary closure of a UST system under 329 IAC 9-6-5.
- (2) Permanent closure of a UST system under 329 IAC 9-6.
- (3) Upgrade of a UST system to meet requirements of 40 CFR 280.21*.
- (4) Installation of a method of release detection under 40 CFR 280, Subpart D*.
- (h) Any person who sells a facility with a regulated

UST or UST system shall notify the purchaser of the purchaser's obligation to submit a notification under subsection (b).

(i) Pursuant to 42 U.S.C. 6991a, et seq., in effect on September 30, 1996, notification of the service status of the UST system must be provided to the department by the owner or operator of a UST system that is:

- (1) in the ground on or after May 8, 1986; and
- (2) not taken out of operational life on or before January 1, 1974.

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204. (*Solid Waste Management Division; 329 IAC 9-2-2; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1068; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3699; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 150; errata filed Oct 7, 2004, 11:55 a.m.: 28 IR 608; filed Aug 3, 2009, 1:48 p.m.: 20090902-IR-329080055FRA; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA; errata filed May 31, 2018, 9:55 a.m.: 20180627-IR-329160204ACA*)

329 IAC 9-2-3 Release detection certification of compliance

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-23

Sec. 3. The owner or operator of a UST shall demonstrate compliance with the release detection requirements of 40 CFR 280, Subpart D* and this article by providing a certification of compliance on the form required under section 2 of this rule. The certification must demonstrate that the person who performs the work that brings the UST in compliance with 40 CFR 280, Subpart D has been certified by the office of the state fire marshal under 675 IAC 12-12.

*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204. (*Solid Waste Management Division; 329 IAC 9-2-3; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

Rule 2.1. Upgrading of Existing UST Systems (Repealed)

(*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

Rule 3. Reporting and Record Keeping

329 IAC 9-3-1 Reporting and record keeping

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-23

Sec. 1. (a) The owner and operator of an UST system shall cooperate fully with inspections, monitoring, and testing conducted by the agency, as well as requests for document submission, testing, and monitoring by the owner or operator under Section 9005 (42 U.S.C. 6991d) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq., in effect on September 30, 1996.

(b) The owner and operator shall submit the following information to the agency:

(1) Notification for all UST systems under 329 IAC 9-2-2 that includes the following:

(A) Certification of installation for new UST systems under 40 CFR 280.20(e).

(B) Locational information within an accuracy of 1:24,000, plus or minus forty (40) feet, or plus or minus twelve and two-tenths (12.2) meters in any of the following formats, if known:

(i) Universal transverse mercator (UTM) coordinates.

(ii) Latitude and longitude coordinates.

(iii) UTM coordinates and latitude and longitude coordinates.

(2) Reports of all releases, including the following:

(A) Suspected releases under 40 CFR 280.50.

(B) Spills and overfills under 329 IAC 9-4-4.

(C) Confirmed releases under 329 IAC 9-5-2.

(3) Corrective actions planned or taken, including the following:

(A) Free product removal under 329 IAC 9-5-4.2.

(B) Initial abatement measures under 329 IAC 9-5-3.2.

(C) Initial site characterization under 329 IAC 9-5-5.1.

(D) Investigation of soil and ground water cleanup under 329 IAC 9-5-6.

(E) Corrective action plan under 329 IAC 9-5-7.

(4) A notification upon completion of all upgrade activities under 40 CFR 280.21.

(5) A notification before closure or change-in-service under 329 IAC 9-6-2.1.

(6) A notification upon completion of:

(A) temporary closure under 329 IAC 9-6-5; or

(B) closure or change-in-service under 329 IAC 9-6.

(7) A notification upon completion of the installation of a method of release detection under 40 CFR 280.41 and 40 CFR 280.42.

(8) Results of the site investigation conducted at closure or change-in-service under 329 IAC 9-6-4.

(9) Documentation supporting the suitability of the underground storage tank to be upgraded with cathodic protection. The documentation must be submitted within thirty (30) days after the determination is completed under 40 CFR 280.21(b)(2). The documentation must include a signed affidavit from the corrosion expert who designed the field-installed cathodic protection system.

(10) Documentation supporting the suitability of the underground storage tank to be upgraded with an internal lining. The documentation must be submitted within thirty (30) days after the determination is completed under 40 CFR 280.21(b)(1).

(11) Documentation supporting the suitability of the underground storage tank to be upgraded with an internal lining combined with cathodic protection. The documentation must be submitted within thirty (30) days after the determination is completed under 40 CFR 280.21(b)(3). The documentation also must include the following:

(A) A report of the condition of the underground storage tank prior to lining that includes the following:

(i) A diagram showing the location and size of any repair necessary to the interior of the underground storage tank prior to lining.

(ii) A diagram showing the location and size of any repair necessary to the exterior of the underground storage tank prior to cathodic protection.

(iii) Documentation showing the tank has met both thickness and tank deflection criteria specified in the

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- publications for upgrades under clause (B).
- (B) The suitability of the tank for lining must meet the following requirements:
- (i) American Petroleum Institute Standard 1631, "Interior Lining and Periodic Inspections of Underground Storage Tanks", Fifth Edition, June 2001*.
 - (ii) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", Revised 2011**.
 - (iii) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", Third Edition, May 1996 (reaffirmed December 2010)*.
- (12) Documentation of operation and maintenance of corrosion protection equipment under 40 CFR 280.31. The results of the postinstallation cathodic protection:
- (A) test for a galvanic cathodic protection system; and
 - (B) inspection for an impressed current cathodic protection system;
- must be submitted within thirty (30) days after the test or inspection is completed for a new UST system and an upgraded UST system.
- (13) Documentation supporting the suitability of the excavation zone for the proper function of:
- (A) vapor observation wells under 40 CFR 280.43(e); and
 - (B) ground water observation wells under 40 CFR 280.43(f);
- as a method of release detection. The documentation must be submitted within thirty (30) days after the observation wells installation is completed for a new UST system and an upgraded UST system.
- (14) Documentation supporting the suitability of the excavation zone to support a secondary barrier in the excavation zone as a method of release detection under 40 CFR 280.43(g)(2). The documentation must be submitted within thirty (30) days after the installation of the secondary barrier is completed for a new UST system and an upgraded UST system.
- (15) Documentation supporting the suitability of the secondary barrier as a method of release detection under 40 CFR 280.43(g)(2). The documentation must be submitted within thirty (30) days after the installation of the secondary barrier is completed for a new UST system and an upgraded UST system.
- (c) The owner and operator shall maintain the following information:
- (1) Documentation of operation and maintenance of corrosion protection equipment under 40 CFR 280.31. The results of the postinstallation cathodic protection:
- (A) test for a galvanic cathodic protection system; and
 - (B) inspection for an impressed current cathodic protection system;
- must be maintained under subsections (d) and (e) within thirty (30) days after the test or inspection is completed for a new UST system and an upgraded UST system.
- (2) Documentation of UST system repairs under 40 CFR 280.33(g).
- (3) Documentation of compliance with release detection requirements under this section.
- (4) Results of the site investigation conducted at closure under 329 IAC 9-6-4.
- (5) Documentation supporting the suitability of the underground storage tank to be upgraded with cathodic protection. The documentation must be maintained under subsections (d) and (e) within thirty (30) days after the determination is completed under 40 CFR 280.21(b)(2). The documentation must include a signed affidavit from the corrosion expert who designed the field-installed cathodic protection system.
- (6) Documentation supporting the suitability of the underground storage tank to be upgraded with an internal lining. The documentation must be maintained under subsections (d) and (e) within thirty (30) days after the determination is completed under 40 CFR 280.21(b)(1).
- (7) Documentation supporting the suitability of the underground storage tank to be upgraded with an internal lining combined with cathodic protection. The documentation must be maintained under subsections (d) and (e) within thirty (30) days after the determination is completed under 40 CFR 280.21(b)(3). The documentation also must include the following:
- (A) A report of the condition of the underground storage tank prior to lining that includes the following:
 - (i) A diagram showing the location and size of any repair necessary to the interior of the underground storage tank prior to lining.
 - (ii) A diagram showing the location and size of any repair necessary to the exterior of the underground storage

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tank prior to cathodic protection.

(iii) Documentation showing the tank has met both thickness and tank deflection criteria specified in the publications for upgrades under clause (B).

- (B) A signed certification by a corrosion expert indicating the suitability of the tank for lining under the following:
- (i) American Petroleum Institute Standard 1631, "Interior Lining and Periodic Inspections of Underground Storage Tanks", Fifth Edition, June 2001*.
 - (ii) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection", Revised 2011**.
 - (iii) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", Third Edition, May 1996 (reaffirmed December 2010)*.

(8) Documentation supporting the suitability of the excavation zone for the proper function of:

- (A) vapor observation wells under 40 CFR 280.43(e); and
- (B) ground water observation wells under 40 CFR 280.43(f);

as a method of release detection. The documentation must be maintained under subsections (d) and (e) within thirty (30) days after the observation wells installation is completed for a new UST system and an upgraded UST system.

(9) Documentation supporting the suitability of the excavation zone to support a secondary barrier in the excavation zone as a method of release detection under 40 CFR 280.43(g)(2). The documentation must be maintained under subsections (d) and (e) within thirty (30) days after the installation of the secondary barrier is completed for a new UST system and an upgraded UST system.

(10) Documentation supporting the suitability of the secondary barrier as a method of release detection under 40 CFR 280.43(g)(2). The documentation must be maintained under subsections (d) and (e) within thirty (30) days after the installation of the secondary barrier is completed for a new UST system and an upgraded UST system.

(11) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used under 40 CFR 280.20(a)(4) or 40 CFR 280.20(b)(3). The documentation must be maintained under subsections (d) and (e) within thirty (30) days after the analysis is completed.

(12) All written performance claims that pertain to any release detection system used and the manner in which the claim has been justified or tested by the equipment manufacturer or installer. All claims must be maintained for the longest of the following time periods:

- (A) Five (5) years.
- (B) The time period the release detection system is used.
- (C) The time period of any unresolved litigation between the commissioner and the owner or operator of the UST system.

(13) The results of any sampling, testing, or monitoring relating to release detection systems must be maintained for at least one (1) year except that the results of tank tightness testing conducted under 40 CFR 280.43(c) must be maintained until the next test is conducted.

(14) Documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one (1) year after the servicing work is completed.

(15) Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be maintained for the longest of the following time periods:

- (A) Five (5) years from the date of installation.
- (B) The time period the release detection system is used.

(d) The owner and operator shall maintain the records required at:

- (1) the underground storage tank site and immediately available for inspection by the agency; or
- (2) a readily available alternative site and be provided for inspection to the agency upon request.

(e) In the case of closure records required under 329 IAC 9-6-4, the owner and operator are also provided with the additional alternative of mailing closure records to the agency if they cannot be kept at the site or an alternative site as allowed in subsection (d)(2).

*These documents are incorporated by reference. Copies may be obtained from the American Petroleum Institute, 1220 L Street NW, Washington, D.C. 20005-4070, or are available for review at the Indiana Department of Environmental Management,

Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

***This document is incorporated by reference. Copies may be obtained from NACE International, 1440 South Creek Drive, Houston, TX 77084-4906, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204. (Solid Waste Management Division; 329 IAC 9-3-1; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1069; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3701; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 152; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA; errata filed May 31, 2018, 9:55 a.m.: 20180627-IR-329160204ACA)*

329 IAC 9-3-1.2 Secondary containment (Repealed)

Sec. 1.2. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-3-1.3 Interstitial monitoring (Repealed)

Sec. 1.3. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-3-2 Electronic reporting and submittal

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-14-13; IC 13-23

Sec. 2. Documentation required to be submitted to the department by this article, with the exception of reports required under 329 IAC 9-4-4, may be submitted in an electronic format, in accordance with IC 13-14-13, as prescribed by the commissioner. Any documents submitted in an electronic format must also be submitted as a paper copy unless the commissioner makes a determination that only an electronic copy is needed. *(Solid Waste Management Division; 329 IAC 9-3-2; filed Aug 30, 2004, 9:35 a.m.: 28 IR 155; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

Rule 3.1. General Operating Requirements (Repealed)

(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)

Rule 4. Releases

329 IAC 9-4-1 Reporting of suspected releases (Repealed)

Sec. 1. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-4-2 Investigations due to off-site impacts (Repealed)

Sec. 2. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-4-3 Release investigations and confirmation steps (Repealed)

Sec. 3. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-4-4 Reporting and cleanup of spills and overfills

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-23

Sec. 4. (a) The owner and operator of an UST system shall contain and immediately clean up a spill or overflow, report the incident to the emergency response twenty-four (24) hour spill hotline at (888) 233-7745 in Indiana or (317) 233-7745 as soon as

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possible but within twenty-four (24) hours, and begin corrective action in accordance with 329 IAC 9-5 in the following cases:

(1) Spill or overflow of petroleum that results in a release to the environment that:

- (A) equals or exceeds twenty-five (25) gallons; or
- (B) causes a sheen on nearby surface water.

(2) Spill or overflow of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under 40 CFR 302.4*.

(b) The owner and operator of an UST system shall contain and immediately remove any contaminated media when one (1) of the following occur:

(1) Spill or overflow of petroleum that is less than twenty-five (25) gallons.

(2) Spill or overflow of a hazardous substance that is less than the reportable quantity under 40 CFR 302.4*.

If the removal of any contaminated media cannot be accomplished within twenty-four (24) hours, the owner and operator shall immediately notify the agency.

*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204. (*Solid Waste Management Division; 329 IAC 9-4-4; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1070; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3707; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 158; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

Rule 4.5. Delivery Prohibition Program

329 IAC 9-4.5-1 Affixing red tags (Repealed)

Sec. 1. (*Repealed by Solid Waste Management Division; filed Nov 25, 2014, 3:43 p.m.: 20141224-IR-329130272FRA*)

329 IAC 9-4.5-2 Removing red tags (Repealed)

Sec. 2. (*Repealed by Solid Waste Management Division; filed Nov 25, 2014, 3:43 p.m.: 20141224-IR-329130272FRA*)

329 IAC 9-4.5-3 Notice of correction of a failure to comply (Repealed)

Sec. 3. (*Repealed by Solid Waste Management Division; filed Nov 25, 2014, 3:43 p.m.: 20141224-IR-329130272FRA*)

329 IAC 9-4.5-4 Applicability

Authority: IC 13-14-8; IC 13-23-1-2

Affected: IC 13-23-1-4; IC 13-23-12-1

Sec. 4. This rule applies to owners and operators of a UST determined to be ineligible by the commissioner under IC 13-23-1-4 and this rule. (*Solid Waste Management Division; 329 IAC 9-4.5-4; filed Nov 25, 2014, 3:43 p.m.: 20141224-IR-329130272FRA*)

329 IAC 9-4.5-5 Ineligibility

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-23-1-4; IC 13-23-12

Sec. 5. The commissioner may determine a UST to be ineligible if one (1) of the following conditions are met:

(1) An inspection shows the following required equipment is not installed:

- (A) Corrosion protection.
- (B) Leak detection.
- (C) Overfill protection.

(D) Spill prevention.

(2) The owner or operator fails to:

(A) properly operate or maintain equipment for:

- (i) corrosion protection;
- (ii) leak detection;
- (iii) overfill protection; or
- (iv) spill prevention;

(B) register a UST that holds petroleum under 329 IAC 9-2-2; or

(C) pay annual registration fees due under IC 13-23-12.

(Solid Waste Management Division; 329 IAC 9-4.5-5; filed Nov 25, 2014, 3:43 p.m.: 20141224-IR-329130272FRA)

329 IAC 9-4.5-6 Notification

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-23-1-4; IC 13-23-12-1; IC 13-23-14-4

Sec. 6. (a) Notification to the UST owner or operator of ineligibility shall be provided before delivery prohibition.

(b) Notification shall:

(1) be delivered:

- (A) in person; or
- (B) by certified mail with return receipt;

(2) be delivered to the:

- (A) address of the owner or operator provided to the department on the form required by 329 IAC 9-2-2;
- (B) registered agent if the owner or operator is a business; or
- (C) facility where the UST is located; and

(3) provide:

- (A) identification of the tank that is ineligible;
- (B) a list of the violations that caused ineligibility;
- (C) actions the owner or operator must take for the UST to be reclassified from ineligible to eligible; and
- (D) the date delivery prohibition shall be imposed.

(c) If a UST is determined to be ineligible under section 5(1) of this rule, the commissioner may determine an immediate order of delivery prohibition, described in section 8 of this rule, be issued and a red tag attached to the UST. The delivery prohibition order may serve as notification of ineligibility.

(d) If a UST is determined to be ineligible under section 5(2) of this rule, the commissioner may determine, after providing a thirty (30) day warning period described in section 7 of this rule, to issue a delivery prohibition order. *(Solid Waste Management Division; 329 IAC 9-4.5-6; filed Nov 25, 2014, 3:43 p.m.: 20141224-IR-329130272FRA)*

329 IAC 9-4.5-7 Thirty (30) day warning period

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-23-1-4; IC 13-23-12-1

Sec. 7. (a) The commissioner shall provide for a thirty (30) day warning period for any UST determined to be ineligible under section 5(2) of this rule prior to issuing a delivery prohibition order described under section 8 of this rule.

(b) A UST that is not reclassified as eligible to receive a regulated substance, under section 9 of this rule, within thirty (30) days of receiving a warning under this section may receive a delivery prohibition order under section 8 of this rule. *(Solid Waste Management Division; 329 IAC 9-4.5-7; filed Nov 25, 2014, 3:43 p.m.: 20141224-IR-329130272FRA)*

329 IAC 9-4.5-8 Delivery prohibition order

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 4-21.5-4; IC 13-23-1-4; IC 13-23-14-4

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Sec. 8. (a) After notification of ineligibility under IC 13-23-1-4 and this rule, the commissioner may prohibit delivery. A delivery prohibition order shall be issued in the form of a temporary emergency order, described in IC 4-21.5-4.

(b) When a UST is under a delivery prohibition order, the owner or operator of the UST must notify any person who has delivered or is scheduled to deliver a regulated substance to the UST of the delivery prohibition.

(c) When the commissioner issues a delivery prohibition order, a red tag shall be attached to the UST.

(d) Unless authorized by the commissioner, a red tag shall not be:

- (1) removed;
- (2) defaced;
- (3) altered; or
- (4) otherwise tampered with.

(e) Violators of subsection (d) shall be assessed penalties under IC 13-23-14-4. (*Solid Waste Management Division; 329 IAC 9-4.5-8; filed Nov 25, 2014, 3:43 p.m.: 20141224-IR-329130272FRA*)

329 IAC 9-4.5-9 Reclassification

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-23-3; IC 13-23-12

Sec. 9. (a) A UST shall be reclassified from ineligible to receive a regulated substance to eligible if the:

(1) owner or operator notifies the department that all corrective actions listed in the notification have been taken; and

(2) department determines that the violations were corrected by:

- (A) reviewing and approving the provided documentation; or
- (B) reinspecting the UST.

(b) The UST owner or operator must provide applicable documentation to the department as follows to show the violations were corrected:

- (1) UST test results performed by a UST tester, who is certified under IC 13-23-3.
- (2) Proof of installation of equipment by a UST installer, who is certified under IC 13-23-3.
- (3) Proof of payment of UST fees due under IC 13-23-12.
- (4) Proof of submission of a complete registration or notification form described in 329 IAC 9-2-2.
- (5) Any other documentation the department determines is necessary to show the owner or operator corrected the violations described in the notice of ineligibility.

(c) The commissioner shall issue a written determination of eligibility upon:

- (1) review and approval of all required documentation; and
- (2) an inspection of the UST, if applicable.

(d) The written determination shall include the following:

- (1) Identification of the UST that is reclassified.
- (2) A statement that all the violations described in the notification have been corrected and approved.
- (3) A statement that the UST is eligible to receive a regulated substance.
- (4) Authorization for the owner or operator to remove the identified red tag, if applicable.
- (5) Instructions for removing and returning the red tag, if applicable.

(e) The written determination shall be delivered by one (1) of the following:

- (1) Facsimile.
- (2) Electronic mail.
- (3) Certified mail.
- (4) Other appropriate means.

(*Solid Waste Management Division; 329 IAC 9-4.5-9; filed Nov 25, 2014, 3:43 p.m.: 20141224-IR-329130272FRA*)

329 IAC 9-4.5-10 Special circumstances

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-23-1-4; IC 13-23-12-1

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Sec. 10. (a) The commissioner may defer a delivery prohibition order to an ineligible UST that holds motor fuel if the prohibition would jeopardize the availability of, or access to, motor fuel in any rural and remote area unless an urgent threat to public health, as determined by the commissioner, exists.

(b) The commissioner may only defer a delivery prohibition order for up to one hundred eighty (180) days after determining the UST is ineligible.

(c) A UST is in a rural and remote area if there are no other USTs that contain similar motor fuel for sale within thirty (30) miles by road from the ineligible UST. A motor fuel is similar to another motor fuel if it can run the same motor.

(d) The commissioner may allow delivery of a regulated substance to a UST under delivery prohibition if:

(1) a certain volume in the UST is necessary to test or calibrate the system and the delivery is only of the amount necessary to conduct the test or calibration; or

(2) the UST is used to fuel an emergency generator that:

(A) provides a power supply in the event of a commercial power failure;

(B) stores petroleum; and

(C) is used solely in connection with:

(i) an emergency system;

(ii) a legally required standby system; or

(iii) an optional standby system.

(e) If the commissioner determines a UST is subject to the special circumstances described in this section, a written decision shall be provided to the owner or operator following receipt of a request for the finding and evidence sufficient to allow the commissioner to make this determination. (*Solid Waste Management Division; 329 IAC 9-4.5-10; filed Nov 25, 2014, 3:43 p.m.: 20141224-IR-329130272FRA*)

329 IAC 9-4.5-11 Transfer of ownership

Authority: IC 13-14-8; IC 13-23-1; 42 U.S.C. 6991

Affected: IC 13-23-1-4; IC 13-23-12-1

Sec. 11. (a) If an owner who has received notice of ineligibility under section 6 of this rule transfers ownership of the ineligible UST to a new owner, the transferring owner shall provide notification as follows:

(1) The transferring owner shall notify the department within thirty (30) days of the transfer that a transfer of ownership has occurred. The following information shall be included:

(A) The name of the new owner.

(B) The address of the new owner.

(C) The date of the transfer.

(2) The transferring owner shall notify the new owner that the UST is ineligible.

(b) In accordance with IC 13-23-1-4(c), the new owner must complete the corrective actions required to comply with an order issued by the commissioner to the previous owner. (*Solid Waste Management Division; 329 IAC 9-4.5-11; filed Nov 25, 2014, 3:43 p.m.: 20141224-IR-329130272FRA; errata filed Apr 21, 2015, 11:01 a.m.: 20150506-IR-329150107ACA*)

Rule 5. Initial Response, Site Investigation, and Corrective Action

329 IAC 9-5-1 Applicability for release response and corrective action

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-12-3-2; IC 13-23

Sec. 1. The owner and operator of a petroleum or hazardous substance UST system shall, in response to a confirmed release from the UST system, comply with the requirements of this rule unless the UST system is:

(1) excluded under 40 CFR 280.10(b)*; or

(2) subject to corrective action requirements under Section 3004(u) (42 U.S.C. 6924(u)) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq., in effect on September

30, 1996.

*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204. (*Solid Waste Management Division; 329 IAC 9-5-1; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1071; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3707; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 158; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-5-2 Initial response

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 2. Upon confirmation of a release in accordance with 40 CFR 280.52 or after a release from the UST system is identified in any other manner, the owner and operator shall perform the following initial response actions within twenty-four (24) hours of a release:

- (1) Report the release to the agency:
 - (A) by telephone at (317) 232-8900 or after hours or holidays at (317) 233-7745;
 - (B) at LeakingUST@idem.in.gov for electronic mail.
- (2) Take immediate action to prevent any further release of the regulated substance into the environment.
- (3) Identify and mitigate fire, explosion, and vapor hazards.
- (4) Mitigate to the extent practicable adverse effects to human health and the environment.

(*Solid Waste Management Division; 329 IAC 9-5-2; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1071; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3709; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 160; errata filed May 31, 2018, 9:57 a.m.: 20180620-IR-329180246ACA*)

329 IAC 9-5-3 Initial abatement measures and site check (Repealed)

Sec. 3. (*Repealed by Solid Waste Management Division; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3761*)

329 IAC 9-5-3.1 Free product removal (Repealed)

Sec. 3.1. (*Repealed by Solid Waste Management Division; filed Aug 30, 2004, 9:35 a.m.: 28 IR 177*)

329 IAC 9-5-3.2 Initial abatement measures and site check

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23

Sec. 3.2. (a) The owner and operator shall perform the following abatement measures:

- (1) Remove as much of the regulated substance from the UST system as necessary to prevent further release to the environment.
- (2) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and ground water.
- (3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the underground storage tank excavation zone and entered into subsurface structures, which may include:
 - (A) storm sewers;
 - (B) sanitary sewers;
 - (C) utility lines;
 - (D) inhabitable buildings with a basement or crawlspace; or
 - (E) underground conduits.

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(4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator shall comply with applicable state and local requirements.

(5) Measure for the presence of a release where the contaminant is most likely to be present at the underground storage tank site unless the presence and source of the release have been confirmed in accordance with the site check required by 40 CFR 280.52(b) or the closure site assessment of 329 IAC 9-6-2.5. In selecting sample types, sample locations, and measurement methods, the owner and operator shall consider the nature of the stored substance, the type of backfill, depth to ground water, and other factors as appropriate for identifying the presence and source of the release.

(6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with section 4.2 of this rule.

(b) If:

(1) drinking water is affected;

(2) free product is present; or

(3) vapors are present in:

(A) storm sewers;

(B) sanitary sewers;

(C) utility lines;

(D) inhabitable buildings with a basement or crawlspace; or

(E) underground conduits;

within twenty (20) days after release confirmation, the owner and operator shall submit a report to the agency summarizing the initial abatement measures taken under subsection (a) and any resulting information or data. (*Solid Waste Management Division; 329 IAC 9-5-3.2; filed Aug 30, 2004, 9:35 a.m.: 28 IR 160; errata filed May 31, 2018, 9:57 a.m.: 20180620-IR-329180246ACA*)

329 IAC 9-5-4 Initial site characterization (Repealed)

Sec. 4. (*Repealed by Solid Waste Management Division; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3761*)

329 IAC 9-5-4.1 Initial abatement measures and site check (Repealed)

Sec. 4.1. (*Repealed by Solid Waste Management Division; filed Aug 30, 2004, 9:35 a.m.: 28 IR 177*)

329 IAC 9-5-4.2 Free product removal

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 4.2. At sites where investigations indicate the presence of free product, the owner and operator shall remove free product to the maximum extent practicable as determined by the commissioner based on free product removal technology and site conditions while continuing, as necessary, any actions initiated under sections 2, 3.2, and 5.1 of this rule, or preparation for actions required under sections 6 and 7 of this rule. In meeting the requirements of this section, the owner and operator shall do the following:

(1) Conduct free product removal in a manner that:

(A) minimizes the spread of the contaminant into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site; and

(B) properly treats, discharges, or disposes of recovery products and byproducts in compliance with applicable local, state, and federal regulations.

(2) Use abatement of free product migration as a minimum objective for the design of the free product removal system.

(3) Handle any flammable products in a manner so as to prevent fires or explosions in accordance with the site health and safety plan as required by section 7(e) of this rule.

(4) Unless directed to do otherwise by the commissioner, prepare and submit to the agency, within forty-five (45) days after

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confirming a release, a free product removal report that provides at least the following information:

- (A) The name of the person responsible for directing the free product removal measures.
- (B) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations.
- (C) The type of free product recovery system used.
- (D) Whether any discharge of free product will take place on-site or off-site during the recovery operation and where this discharge will be located.
- (E) The type of treatment applied to, and the effluent quality expected from, any discharge.
- (F) The steps that have been, or are being taken, to obtain necessary permits for any discharge.
- (G) The disposition of the recovered free product.

(Solid Waste Management Division; 329 IAC 9-5-4.2; filed Aug 30, 2004, 9:35 a.m.: 28 IR 160)

329 IAC 9-5-5 Free product removal (Repealed)

Sec. 5. (Repealed by Solid Waste Management Division; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3761)

329 IAC 9-5-5.1 Initial site characterization

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-12-3-2; IC 13-23; IC 25-17.6; IC 25-31-1; IC 25-31.5-4

Sec. 5.1. (a) In conformance with IC 13-12-3-2, the owner and operator shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial response and abatement measures in sections 2 and 3.2 of this rule. This information must include a title page that identifies the consultant performing the work, the date the report was prepared, and the following:

- (1) Data on the nature, site-specific location, and estimated quantity of release.
- (2) Data from available sources or site investigations, or both, concerning the following factors:
 - (A) Surrounding populations.
 - (B) Surface and ground water quality.
 - (C) Use and approximate locations of all wells potentially affected by the release but at a minimum include those wells specified in subsection (b)(2)(E)(v)(CC) and (b)(2)(E)(v)(DD).
 - (D) Subsurface soil conditions.
 - (E) Locations of on-site and adjacent subsurface features.
 - (F) Climatological conditions.
 - (G) Land use.
- (3) Results of the site check required under section 3.2(a)(5) of this rule.
- (4) Results of the free product investigations required under section 3.2(a)(6) of this rule, to be used by the owner and operator to determine whether free product must be recovered under section 4.2 of this rule.
- (5) Known or expected extent of the contaminant or contaminants.
- (6) Information requested by the commissioner.
 - (b) Within sixty (60) days of release confirmation, the owner and operator shall submit the information collected under subsection (a) to the agency as follows:
 - (1) In a manner that demonstrates the applicability and technical adequacy of the information.
 - (2) In a format as required by the agency that includes the following information:
 - (A) Background, including the following:
 - (i) The owner's and operator's name and address.
 - (ii) Past owners' and operators' names and addresses.
 - (iii) The facility name, address, and telephone number.
 - (iv) All prior and present operations of the facility.
 - (v) Prior construction activities.

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- (vi) List of prior spills at the facility.
 - (vii) Site proximity to sensitive areas, such as:
 - (AA) residences;
 - (BB) schools;
 - (CC) wells;
 - (DD) well fields; or
 - (EE) wellhead protection areas;delineated at 327 IAC 8-4.1.
 - (viii) Subsurface soil descriptions.
 - (ix) Information known about all ground water wells within a one (1) mile radius of the facility.
 - (x) Description of all site work completed and the date the site work was completed.
 - (xi) Number and volume of underground storage tank or tanks.
 - (xii) Underground storage tank construction material and type of leak detection.
 - (xiii) Past and present contents of each underground storage tank.
 - (xiv) Records of most recent tightness test results, inventory records, and underground storage tank gaging records for the prior calendar year.
 - (xv) Underground storage tank age and date of installation.
 - (xvi) Underground storage tank system closure report submittal date, if applicable.
- (B) Release incident description, including the following:
- (i) Date reported to the agency.
 - (ii) Release incident number given by the agency at the initial report.
 - (iii) Assigned agency site priority ranking obtained at the initial report.
 - (iv) List of material or materials released.
 - (v) List of volume lost.
 - (vi) List of areas affected, such as the:
 - (AA) soil;
 - (BB) ground water;
 - (CC) surface water features; or
 - (DD) subsurface conduits.
 - (vii) Health and environmental risks associated with the spill incident.
- (C) Initial response and abatement information, including the following:
- (i) A detailed description of immediate actions taken to prevent any further release.
 - (ii) Measures taken to prevent further migration of the spill.
 - (iii) Actions taken to identify and mitigate fire and explosion hazards posed by vapors or free product.
 - (iv) Actions taken to investigate free product release.
- (D) Free product recovery information, including the following:
- (i) The name of the person or persons responsible for product removal.
 - (ii) Estimated quantity, type, and thickness of product observed or discovered.
 - (iii) A description of the recovery system.
 - (iv) Copies of all permits from local, state, and federal agencies necessary for:
 - (AA) handling;
 - (BB) treating;
 - (CC) discharging; and
 - (DD) disposing of;the contaminants.
 - (v) Final disposition of the recovered free product and associated documentation.
- (E) Investigation information, including the following:
- (i) Types of bedrock.
 - (ii) Soil series description.

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- (iii) List of regional soil and geologic references used.
- (iv) Regional hydrogeological references used.
- (v) Appropriately scaled regional maps with the following:
 - (AA) Illustrated legends, scale, and compass direction.
 - (BB) Topographic base with ten (10) foot contour intervals.
 - (CC) Location, depth, and corresponding department of natural resources' well records for wells located within a two (2) mile radius of the site that have a capacity of over seventy (70) gallons per minute or that are municipal water supply wells.
 - (DD) Location, depth, and corresponding department of natural resources' well records for wells with a capacity of less than seventy (70) gallons per minute within a one (1) mile radius of the site.
 - (EE) Identification of facilities and land for agricultural, industrial, and commercial use within one (1) mile radius of the site.
 - (FF) Locations of surface water features within a one (1) mile radius of the site.
- (vi) Site-specific geologic information as follows:
 - (AA) A minimum of three (3) on-site, continuously sampled soil borings.
 - (BB) Soil boring locations, accurately field surveyed with a horizontal closure of less than one (1) foot error.
 - (CC) Site soil stratigraphy identification, including cross sections.
 - (DD) Soil boring logs that include the method of drilling, total depth of boring, type and thickness of formations or materials encountered, including color, hardness, and a geological description, soil vapor readings, name and address of drilling company, name and license number of drilling operator, and signature of licensed driller or environmental professional who logged the boring.
 - (EE) Soil boring logs with the same vertical scale and including surface elevations.
- (vii) Hydrogeologic information, including the following:
 - (AA) Depth to ground water measured in a piezometer or monitoring well.
 - (BB) Ground water flow directions and gradients.
 - (CC) A minimum of three (3) ground water samples collected from locations most likely to be contaminated and a description of the method of sample collection.
 - (DD) A minimum of three (3) monitoring wells or piezometers must be screened across water table fluctuation and not placed in a straight line. Monitoring wells must be installed, when time series ground water quality monitoring is required.
 - (EE) Monitoring well and piezometer location surveyed to a temporary benchmark with a vertical accuracy of one-hundredth (.01) foot and with a horizontal closure of less than one (1) foot.
 - (FF) Monitoring well or piezometer construction records submitted with the same scale that includes ground surface and the top of the well casing elevations, casing size and materials, well screen length, slot size, depth to the top and bottom of screen, method of drilling or well installation, borehole size, name and address of drilling company, name and license number of the equipment operator, type, depth, and thickness of grouting materials, method of installation, and signature of licensed driller.
 - (GG) Monitoring well or piezometer stratigraphic logs that meet the requirements of rules of the natural resources commission at 312 IAC 13, and include method of drilling, total depth of boring, type and thickness of formations or materials encountered, including color, hardness, and a geological description, soil vapor readings, borehole diameter, well diameter, name and address of drilling company, name and license number of drilling operator, and signature of licensed driller or environmental professional who logged the well or piezometer boring.
- (viii) Contamination plume identification and maps, appropriately scaled, that include the following:
 - (AA) Illustrated legends, scale, and compass directions.
 - (BB) Topographic base with appropriate contour intervals to accurately describe the site.
 - (CC) Identification of aboveground features, including buildings, roadways, manways, pump islands, and property lines.

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(DD) Identification of subsurface features, including tanks, piping, and utility conduits, storm sewers, sanitary sewers, utility lines, and french drains.

(EE) Soil borings and monitoring well locations surveyed to a temporary benchmark with a horizontal closure accuracy of one (1) foot, and monitoring well locations surveyed with a vertical accuracy of one-hundredth (.01) foot.

(FF) Sampling locations, depth of sample taken, and the contaminant concentration results.

(GG) Horizontal and vertical contaminant plume identification.

(HH) Geologic cross sections showing the water table and illustrating the vertical extent of the contaminant plume.

(II) Ground water flow directions.

(F) Sampling information, including the following:

(i) Field investigation procedures.

(ii) Field screen samples.

(iii) Laboratory procedures that include:

(AA) checking sample validity;

(BB) sample acquisition;

(CC) container;

(DD) preservation;

(EE) shipping requirements;

(FF) storage time;

(GG) chain of custody; and

(HH) decontamination of equipment between samples.

(iv) Provisions for retention of laboratory quality assurance and quality control information, so that the information may be made available to representatives of the agency upon request.

(v) Documentation, in a format prescribed by the commissioner, of the sampling and analysis conducted.

(vi) A report, in a format prescribed by the commissioner, that includes a signed laboratory certificate of analysis that lists:

(AA) analysis method;

(BB) method preparation;

(CC) date of sample receipt;

(DD) date of analysis;

(EE) a statement that the method quality assurance and quality control procedures were followed;

(FF) the chain of custody documentation, including laboratory receipts, decontamination procedures, and sampling procedures and techniques.

(vii) Analytical methods and corresponding detection limits.

(G) Results and conclusions that include the following:

(i) A discussion of the results of the site investigation.

(ii) Field and laboratory sample results in a tabular format.

(H) Recommendations that include a discussion of the need for further site investigations under section 6 of this rule to determine the nature and extent of the contaminants.

(3) In a report that is signed by a:

(A) registered professional engineer under IC 25-31-1;

(B) licensed professional geologist under IC 25-17.6;

(C) certified hazardous materials manager (CHMM) as certified by the Institute of Hazardous Material Management;
or

(D) professional soil scientist registered under IC 25-31.5-4.

(c) The commissioner may approve an alternative procedure for initial site characterization only if the procedure provides substantially equal protection for human health and the environment as the initial site characterization in subsections (a) and (b) and is in the format as described in subsection (b)(2) and (b)(3). (*Solid Waste Management Division; 329 IAC 9-5-5.1; filed Jul*

19, 1999, 12:00 p.m.: 22 IR 3710; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 161; errata filed May 31, 2018, 9:57 a.m.: 20180620-IR-329180246ACA)

329 IAC 9-5-6 Further site investigations for soil and ground water cleanup

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-12-3-2; IC 13-23

Sec. 6. (a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product as a contaminant of the ground water, the owner and operator shall conduct a further site investigation of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

- (1) Information collected and submitted under section 5.1 of this rule is incomplete or fails to define the nature and extent of contamination in the soil and ground water.
- (2) There is evidence that ground water wells have been affected by the contaminant. This evidence may include any information collected during release confirmation or previous corrective action measures.
- (3) Free product is found to need recovery in compliance with section 4.2 of this rule.
- (4) There is evidence that contaminated soils may be in contact with ground water. This evidence may include any information collected while conducting the initial response measures or investigations required under sections 1, 2, 3.2, 4.2, and 5.1 of this rule.
- (5) The commissioner requests a further site investigation based on the potential effects of contaminated soil or ground water on nearby surface water and ground water resources.

(b) During the further site investigation the owner or operator must do the following if evidence exists that a contaminant exceeds the cleanup objectives under IC 13-12-3-2:

- (1) Install a minimum of three (3) ground water monitoring wells, if at least three (3) wells were not installed during the initial site investigation under section 5.1 of this rule. Additional monitoring wells may be required to fully define the extent of contamination.
- (2) Take a ground water sample from each of the monitoring wells and report the analytical results to the agency.
- (3) Provide a description of the method for collecting the ground water samples.
- (4) Monitoring wells must be screened across water table fluctuation and not placed in a straight line.
- (5) Monitoring wells must be installed as per the requirement of the rule of the natural resources commission at 312 IAC 13-8-3.

(c) The owner and operator shall submit the information collected under subsection (b) as soon as practicable or in accordance with a schedule established by the commissioner in the format described in section 5.1(b)(2) and 5.1(b)(3) or 5.1(c) of this rule as well as a title page that identifies the consultant performing the work, the date the report was prepared, and the following information:

- (1) Hydraulic conductivity.
- (2) Transmissivity.
- (3) Storativity.
- (4) Confined or unconfined condition.
- (5) Porosity of the aquifer or aquifers involved.
- (6) The average linear velocity of the ground water in the aquifer or aquifers involved.
- (d) Provide a complete discussion of effective remediation alternatives, including the following for each alternative:
 - (1) Overall effectiveness of technology.
 - (2) Ability to achieve cleanup criteria.
 - (3) Expected treatment duration.
 - (4) Treatment reliability.
 - (5) Permits that will be required.

(e) The approval of a further site investigation or initial site characterization under section 5.1 of this rule is not a determination that the actual costs incurred performing these site characterization activities are reimbursable costs under the rules

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of the underground storage tank financial assurance board at 328 IAC 1. (*Solid Waste Management Division; 329 IAC 9-5-6; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1072; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3712; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 164; errata filed May 31, 2018, 9:57 a.m.: 20180620-IR-329180246ACA*)

329 IAC 9-5-7 Corrective action plan

Authority: IC 13-14-8; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-12-3-2; IC 13-23-9-1.5; IC 13-2-39-2.2; IC 25-17.6; IC 25-31-1; IC 25-31.5-4

Sec. 7. (a) At any point after reviewing the information submitted in compliance with sections 1, 2, 3.2, and 5.1 of this rule, the commissioner may require the owner and operator to:

- (1) submit additional information; or
- (2) develop and submit a corrective action plan for responding to contaminated soils and ground water.

If a plan is required, the owner and operator shall submit the plan according to a schedule established by the commissioner and the format designated under subsection (f). Alternatively, the owner and operator may, after fulfilling the requirements of sections 2, 3.2, and 5.1 of this rule, choose to submit a corrective action plan for responding to contaminated soil and ground water. In either case, the owner and operator are responsible for submitting a plan that provides for adequate protection of human health and the environment, as determined by the commissioner, and shall modify their plan as necessary to meet this standard.

(b) The commissioner will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the commissioner shall consider the following factors, as appropriate:

- (1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration.
- (2) The hydrogeologic characteristics of the facility and the surrounding area.
- (3) The proximity, quality, and current and future uses of nearby surface water and ground water.
- (4) The potential effects of a residual contaminant on nearby surface water and ground water.
- (5) The proximity of potential contaminant receptors, including:
 - (A) adjacent residences;
 - (B) wells;
 - (C) well fields; or
 - (D) wellhead protection areas delineated at 327 IAC 8-4.1.
- (6) An exposure assessment.
- (7) Any information assembled in compliance with this rule.
- (8) The suitability of the chosen remediation method for site conditions.

(c) Upon approval of the corrective action plan or as directed by the commissioner, the owner and operator shall implement the plan, including modifications to the plan made by the commissioner. The owner and operator shall monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the commissioner. During implementation of the corrective action plan the commissioner may find that the approved corrective action plan will not achieve or is not achieving the cleanup objectives. Upon making this finding:

- (1) the commissioner will notify the owner and operator that approval of the corrective action plan is suspended pending modification;
- (2) the basis of the finding shall also be provided to the owner or operator;
- (3) the owner or operator shall submit a modified plan to the commissioner for approval under subsection (b) before corrective action plan approval is reinstated;
- (4) a reinstated corrective action plan approval is subject to all the provisions of this subsection; and
- (5) the approval of a corrective action plan under this subsection is not a determination that the actual costs incurred performing the corrective action plan are reimbursable costs under the rules of the underground storage tank financial assurance board at 328 IAC 1.

(d) The owner and operator may, in the interest of minimizing the effect of a contaminant and promoting more effective cleanup, begin cleanup of soil and ground water before the corrective action plan is approved provided that the owner and operator:

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- (1) notify the agency of their intention to begin cleanup;
- (2) comply with any conditions imposed by the commissioner, including halting cleanup or mitigating adverse consequences from cleanup activities; and
- (3) incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the commissioner for approval.

(e) During corrective action, the owner and operator and their designees shall adhere to a written health and safety plan that meets all applicable requirements of the occupational safety standards commission and the rules of the fire prevention and building safety commission at 675 IAC 22.

(f) The owner and operator shall conduct corrective action that meets the following requirements:

(1) The corrective action plan must be presented in a format prescribed by the commissioner and contain the following information:

- (A) A title page that identifies the consultant performing the work and the date the report was prepared.
- (B) An executive summary, including the following:
 - (i) A briefing about the site in narrative form, highlighting events leading to the need for corrective action.
 - (ii) Other information regarding the need for corrective action.
- (C) A narrative concerning contaminant and site conditions, including the following:
 - (i) Contaminant identification including chemical and physical properties.
 - (ii) Determination of chemical reference doses (RfDs), cancer slope factors (Sfs or CPFs), reference ingestion factors, and maximum contaminant levels.
 - (iii) Potential effects of residual contaminants.
 - (iv) Site-specific soil and hydrogeologic characteristics.
 - (v) Proximity of local surface waters and ground water and associated water quality data.
 - (vi) Current and potential future uses of local water sources.
 - (vii) A summary of site-specific water quality data generated during previously completed site investigations.
 - (viii) Other information necessary to describe site conditions.
- (D) Health and safety plan for corrective action activities, including the following:
 - (i) Known hazards and risk evaluation associated with site activities.
 - (ii) A list of personnel, alternates to personnel, and areas of responsibilities of personnel.
 - (iii) Levels of personal protection for personnel.
 - (iv) Decontamination equipment and procedures.
 - (v) Site access control measures.
 - (vi) Site emergency procedures, medical care availability, and a route by roadway to at least one (1) health care facility.
 - (vii) A list of emergency phone numbers that includes:
 - (AA) the fire department;
 - (BB) the police department;
 - (CC) a local ambulance; and
 - (DD) the local hospital or medical facility.
 - (viii) A list of personnel training, qualifications, and certifications.
 - (ix) A description of how the plan will meet health and safety requirements of the Indiana occupational health and safety standards and the rules of the fire prevention and building safety commission at 675 IAC 22.
- (E) An appropriately scaled regional map that can be reproduced from previously submitted and approved site investigation reports but that must include the following:
 - (i) Illustrated legends, scales, and compass directions.
 - (ii) A legible, topographic base with ten (10) foot contour intervals.
 - (iii) The location and depth of any wells that have a capacity:
 - (AA) greater than seventy (70) gallons per minute within a two (2) mile radius of the site; or
 - (BB) less than seventy (70) gallons per minute within a one (1) mile radius of the site.
 - (iv) Identification of facilities and land for:

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- (AA) agricultural;
 - (BB) residential;
 - (CC) commercial; and
 - (DD) industrial;
- use within a one (1) mile radius of the site.
- (v) Locations of surface water features within a one (1) mile radius of the site.
 - (vi) Site location.
- (F) Appropriately scaled site maps that can be reproduced from previously submitted and approved site investigation reports that must include the following:
- (i) Illustrated legends, scales, and compass directions.
 - (ii) Topographic base with appropriate contour intervals to accurately describe the site.
 - (iii) Identified aboveground features, including:
 - (AA) buildings;
 - (BB) roadways;
 - (CC) manways;
 - (DD) pump islands; and
 - (EE) property lines.
 - (iv) Identified subsurface features, including tanks, piping, and utility conduits.
 - (v) Soil boring and monitoring well locations surveyed with a horizontal closure of less than one (1) foot error.
 - (vi) Sampling locations, depth of sample taken, and the contaminant concentration results.
 - (vii) Soil and ground water contaminant plume delineation.
 - (viii) Ground water elevation contours and ground water flow direction.
 - (ix) The location of remediation equipment shown to scale.
- (G) Geologic and hydrogeologic maps that describe subsurface features, identify the contaminant plume, and include the following:
- (i) Cross sections.
 - (ii) Fence diagrams.
 - (iii) Geophysical profile or geophysical maps, or both, if available.
- (H) A narrative on selected remediation technology that includes the following:
- (i) Feasibility studies showing the effectiveness of the selected remediated technology.
 - (ii) A detailed description of the selected technology, design explanations, and illustrations.
 - (iii) Projected contaminant removal or treatment rates, or both.
 - (iv) Technical specifications of equipment and the process.
 - (v) Discussion of disposal or fate of treated air, soil, and ground water, and permit or discharge requirements.
- (I) Sampling and analysis plan to evaluate the performance of the remediation technology that includes the following:
- (i) A minimum of quarterly samples taken and reported.
 - (ii) The following as applicable:
 - (AA) Field investigation procedures.
 - (BB) Documentation, in a format prescribed by the commissioner, of the sampling, quality assurance measures, and analysis.
 - (CC) Field screen samples.
 - (DD) Sampling methods and laboratory procedures conducted in a manner that will generate scientifically valid data.
 - (EE) Provisions for retention of laboratory quality assurance and quality control information.
 - (FF) Provisions for submission of reports that must include a signed laboratory certificate of analysis that lists analysis method, method preparation, date of sample receipt, date of analysis, a statement that the method quality assurance and quality control procedures were followed, the chain of custody documentation, including laboratory receipts, and laboratory decontamination procedures.
- (J) A timetable that includes the following shown on a bar chart:

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- (i) Installation and implementation dates.
 - (ii) Sampling events.
 - (iii) Progress milestones.
 - (iv) Completion dates.
- (K) The corrective action plan must be signed by an environmental professional that is one (1) of the following:
- (i) A registered professional engineer under IC 25-31-1.
 - (ii) A licensed professional geologist under IC 25-17.6.
 - (iii) A certified hazardous materials manager (CHMM) as certified by the Institute of Hazardous Material Management.
 - (iv) A professional soil scientist registered under IC 25-31.5-4.
- (L) Provisions for progress reports to be submitted quarterly in a format prescribed by the commissioner that include the following:
- (i) A brief narrative of the remediation process.
 - (ii) Documentation and data graphically demonstrating remediation effectiveness.
 - (iii) Quarterly sampling results presented in a tabular format as prescribed by the commissioner with all previous sample data, if previous samples were taken.
 - (iv) Quarterly ground water elevation gauging results presented in a tabular format, as prescribed by the commissioner, showing the following:
 - (AA) Wellhead or measuring point elevation.
 - (BB) Depth to ground water.
 - (CC) Ground water elevation.
 - (v) Updated site maps showing the following:
 - (AA) Soil and ground water contaminant plume delineations.
 - (BB) Ground water elevation contours.
 - (CC) Ground water flow directions.
 - (vi) Signed by an environmental professional that is one (1) of the following:
 - (AA) A registered professional engineer under IC 25-31-1.
 - (BB) A licensed professional geologist under IC 25-17.6.
 - (CC) A certified hazardous materials manager (CHMM) as certified by the Institute of Hazardous Material Management.
 - (DD) A professional soil scientist registered under IC 25-31.5-4.
 - (vii) Discussion of remediation system function, days of operation, and explanation for any time periods remediation system does not operate, and repairs or maintenance performed or needed by the remediation system. This discussion must include volumes of air, soil, or ground water extracted and treated by the remediation system, and effluent stream sample results.
- (M) Provisions for a final report that includes the following:
- (i) Documentation that the cleanup goals and objectives have been achieved.
 - (ii) A signature by an environmental professional that is one (1) of the following:
 - (AA) A registered professional engineer under IC 25-31-1.
 - (BB) A licensed professional geologist under IC 25-17.6.
 - (CC) A certified hazardous materials manager (CHMM) as certified by the Institute of Hazardous Material Management.
 - (DD) A professional soil scientist registered under IC 25-31.5-4.
- (2) The soil cleanup objectives must be determined and met by complying with IC 13-12-3-2.
- (3) The ground water cleanup objectives must be determined and met by complying with IC 13-12-3-2.
- (Solid Waste Management Division; 329 IAC 9-5-7; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1072; errata, 16 IR 1955; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3713; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 165; errata filed May 31, 2018, 9:57 a.m.: 20180620-IR-329180246ACA)*

329 IAC 9-5-8 Public participation

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 8. (a) For each confirmed release that requires a corrective action plan, the commissioner shall provide notice to the public in a manner designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include any of the following:

- (1) Public notice in local newspapers.
- (2) Block advertisements.
- (3) Public service announcements.
- (4) Publication in the Indiana Register.
- (5) Letters to individual households.
- (6) Personal contacts by field staff.

(b) The commissioner shall ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.

(c) Before approving a corrective action plan, the commissioner may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.

(d) The commissioner shall give public notice that complies with subsection (a) if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of the plan is under consideration by the commissioner. (*Solid Waste Management Division; 329 IAC 9-5-8; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1073; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3713; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 6. Closure

329 IAC 9-6-1 Applicability (Repealed)

Sec. 1. (*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-6-2 Assessing the site at closure or change-in-service (Repealed)

Sec. 2. (*Repealed by Solid Waste Management Division; filed Aug 30, 2004, 9:35 a.m.: 28 IR 177*)

329 IAC 9-6-2.1 Permanent closure and change-in-service

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-12-3-2; IC 13-23

Sec. 2.1. (a) At least thirty (30) days before beginning permanent closure or a change-in-service, the owner or operator shall notify the department and the office of the state fire marshal of the permanent closure or change-in-service using the notification form required in 329 IAC 9-2-2. If the permanent closure or change-in-service is a part of the response to corrective action, then the notification requirements of 329 IAC 9-5 apply.

(b) All tanks permanently closed must be removed from the ground or closed in place and the owner or operator must conduct a site assessment in accordance with section 2.5 of this rule.

(c) Continued use of a UST to store a nonregulated substance is considered a change-in-service. Before a change-in-service, the owner and operator must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with section 2.5 of this rule. (*Solid Waste Management Division; 329 IAC 9-6-2.1; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA; errata filed May 31, 2018, 9:55 a.m.: 20180627-IR-329160204ACA*)

329 IAC 9-6-2.5 Site assessment for permanent closure or change-in-service

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-12-3-2; IC 13-23

Sec. 2.5. (a) A site assessment for a UST system undergoing permanent closure or a change-in-service must be provided by the UST owner or operator to the department not later than thirty (30) days after completion of permanent closure or change-in-service. The site assessment must include the following information and be conducted as follows:

(1) Sampling and laboratory analysis, with the associated detection limits, for soil samples and ground water samples are required for the chemical of concern in the UST system. The quantity and location of soil and ground water samples must be taken as follows:

(A) Quantity and location of soil samples for permanent closure and change-in-service as follows:

(i) In-place closure soil samples must be taken as described in section 2.6(a) of this rule.

(ii) Removal closure soil samples must be taken as described in section 2.6(b) of this rule.

(iii) Change-in-service soil samples must be taken as described in section 2.6(c) of this rule.

(B) Quantity and location of ground water samples for each permanent closure and change-in-service must be taken as described in section 2.6(d) of this rule.

(2) The owner or operator of the UST system shall supply the following information:

(A) The UST system facility owner or operator name, agency's owner identification number, address, and phone number.

(B) The name of the UST system facility contact person, owner or operator affiliation, and phone number.

(C) Owners or operators during the last twenty-five (25) years.

(3) For the UST contractor, the following information:

(A) UST closure contractor, company name, and address.

(B) The name of the person on-site during closure that is certified by the office of the state fire marshal to perform UST closure and that person's certification number.

(4) For the UST site, information regarding the following:

(A) Facility name, agency's facility identification number, address, and phone number.

(B) Type of facility, past and current operation.

(C) Coverage, stating if coverage is turf, concrete, asphalt, or other.

(D) History of any spill reports listed by incident number.

(E) Site proximity to both human and environmentally sensitive areas, such as residences, schools, wells, well fields, or wellhead protection areas described in 327 IAC 8-4.1.

(F) Backfill and site natural soil texture.

(5) A site-specific map or maps with illustrated legends and compass directions and at appropriate scale to show site details described as follows:

(A) Drainage features, surface slope, or surface water run-off direction.

(B) Identified aboveground features, such as buildings, roadways, manways, pump islands, and utility and property lines.

(C) Identified subsurface features, such as tanks and excavation pit, piping, and utility conduits.

(D) Locations where samples were taken, soil borings made, and monitoring wells drilled.

(E) Location of active and previously closed tanks, as applicable.

(F) Site surroundings, such as adjacent buildings, businesses, or human and environmentally sensitive areas, such as residences, schools, wells, well fields, or wellhead protection areas delineated in 327 IAC 8-4.1.

(6) Information for the UST being closed as follows:

(A) The number and volume of tanks.

(B) Past and present contents of the tank.

(C) Construction material of tank.

(D) Construction and material of piping.

(E) Age and installation date of tank.

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- (F) Leak detection methods used.
 - (G) Records of the most current tank tightness test results.
 - (H) Records of any other current leak detection method results including the inventory records, ground water, or vapor monitoring results.
 - (I) Information on any previously closed UST system, such as the date closed and the number, size, and product stored.
- (7) Physical and chemical results of the samples taken under subdivision (1) as follows:
- (A) Data from analysis of soil samples presented in a tabular format.
 - (B) Data from analysis of water samples presented in a tabular format.
 - (C) A signed laboratory certificate of analysis listing analysis method, preparation method, date of sample receipt, and date of analysis.
 - (D) Proper sample identification numbers for cross-reference to UST site maps.
 - (E) Chain of custody documentation.
 - (F) Description of the sampling procedures, sampling equipment, and decontamination procedures.
 - (G) Data from analyses of used oil sampling, as applicable.
- (8) Miscellaneous closure documentation as follows:
- (A) Contaminated soil and contaminated water disposal documentation.
 - (B) Remaining product and sludge disposal documentation.
 - (C) Tank and piping disposal documentation.
- (b) If one (1) or more additional tanks are discovered during a closure, the owner and operator shall:
- (1) close each additional tank under this rule; and
 - (2) supply all known information on each additional tank in the site assessment.
- (c) If, at any time during the site assessment, a release is either suspected or confirmed in the backfill, native soil, or ground water, the owner or operator shall contact the agency to report the suspected or confirmed release within twenty-four (24) hours after the release is suspected or confirmed and proceed with corrective action under 329 IAC 9-5.
- (d) The permanent closure or change-in-service is not considered complete until all permanent closure or change-in-service requirements and site assessment requirements are met.
- (e) If the site assessment is incomplete, the owner or operator shall be notified by the commissioner and shall have forty-five (45) days from receipt of the notice to complete the site assessment.
- (f) If the UST contains hazardous substances, the owner and operator shall perform sampling and analyses as required for the chemical of concern. (*Solid Waste Management Division; 329 IAC 9-6-2.5; filed Aug 30, 2004, 9:35 a.m.: 28 IR 168; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-6-2.6 Site assessment sampling requirements

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-12-3

Sec. 2.6. (a) Soil sampling for an in-place closure must be conducted as follows:

- (1) To request conditional approval for in-place closure, the owner and operator shall submit a site plan with an accompanying map showing proposed boring locations to the department and to the office of the state fire marshal, using the notification form under 329 IAC 9-2-2 including the following:
 - (A) The map must be to scale and include the entire site.
 - (B) An additional map showing only the underground storage area must be included for sites larger than one (1) acre.
 - (C) The proposed boring locations must be as follows:
 - (i) One (1) boring every twenty (20) feet around the tank area, with a minimum of four (4) borings.
 - (ii) Each boring must be within three (3) feet adjacent to the UST.
- (2) The commissioner may grant conditional approval to proceed with in-place closure of the UST system based on the following:
 - (A) The location of the borings as required under subdivision (1).
 - (B) Approval from the office of the state fire marshal.

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- (3) After approval is received under subdivision (2), the owner and operator may proceed with soil borings that must meet the following requirements:
- (A) Soil sampling must be performed continuously using a sampling device relevant to the drilling technology used.
 - (B) Borings must extend two (2) feet or greater below the elevation of the base of the UST.
 - (C) If the boring depth is fifteen (15) feet or less, a minimum of two (2) soil samples are required at the point where a contaminant is detected, one (1) each from the:
 - (i) midpoint of the boring; and
 - (ii) bottom of the boring.
 - (D) If the boring depth is greater than fifteen (15) feet, a minimum of three (3) soil samples are required. The most shallow soil sample must be taken one (1) foot or greater below grade. Samples must be taken where the release is suspected or detected.
- (b) Soil sampling for removal closure must be conducted in compliance with the following:
- (1) Native soil samples must be taken from the following areas:
 - (A) Tank cavity excavation.
 - (B) Piping trenches.
 - (C) Dispensing unit areas.
 - (D) Remote fill pipe trenches.
 - (2) Each UST excavation must be sampled separately. Composite samples are not acceptable for removal closure. The samples must meet the following requirements:
 - (A) All samples must be discrete grab samples taken directly from the undisturbed native soil from the base and sidewalls of the excavation. The following requirements apply to samples:
 - (i) Bottom samples must meet the following requirements:
 - (AA) Soil sampling must consist of a minimum of two (2) soil samples taken within two (2) feet below both ends of each UST.
 - (BB) If the UST capacity is greater than ten thousand (10,000) gallons, one (1) additional sample must be taken within two (2) feet below the middle of the UST.
 - (ii) Sidewall samples must meet the following requirements:
 - (AA) The sidewalls must be sampled and analyzed at a rate of one (1) sample every twenty (20) feet of perimeter distance around the excavation zone.
 - (BB) If the perimeter dimension measures less than eighty (80) feet, a minimum of one (1) sample for each sidewall must be taken.
 - (CC) Sidewall samples must be taken at a point half the distance from the surface to the bottom of the UST excavation.
 - (B) Excavated materials must be staged in a separate area. Samples must be discrete grab samples taken directly from the excavated materials. Sampling of the excavated soil must occur for every fifty (50) cubic yards of material.
 - (3) Native soil under piping and dispenser islands, which routinely contains regulated substances, must be sampled. All samples must be discrete grab samples. The following requirements apply to the number and location of sampling for piping and dispensers:
 - (A) Soil sampling from under the piping must be completed as follows:
 - (i) The soil must be sampled every twenty (20) feet, or fraction thereof, along the piping run. If the piping run is less than twenty (20) feet in length, one (1) sample must be taken at half the distance between the UST excavation and the pump or dispenser island.
 - (ii) Soil must be sampled from under the piping elbows and connectors.
 - (B) Soils under the dispenser islands must be sampled and analyzed at a rate of one (1) soil sample per dispenser.
 - (C) If the UST system has a remote fill line, the following soil samples must be collected:
 - (i) Soils under the remote fill line must be sampled and analyzed at the origin or fill area and every twenty (20) feet, or fraction thereof, from the fill area to the UST connection.
 - (ii) If the remote fill line is less than twenty (20) feet, one (1) soil sample must be taken half the distance between the fill area and the UST.

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- (D) Composite samples are not acceptable for permanent closure.
- (4) Soil sampling under the piping and product dispenser islands is not required if all dispensers and piping that routinely contain product are located directly above the UST system that is being permanently closed by removal and the location is documented.
- (5) During removal closure, native soil and backfill that is to be returned to the UST excavation must be sampled. The sampling must meet the following requirements:
 - (A) The exposure criteria in accordance with IC 13-12-3-2.
 - (B) One (1) discrete grab sample must be taken for every fifty (50) cubic yards of native soil or backfill.
- (c) Soil samples for a change-in-service must be taken as follows:
 - (1) Soil sampling must be performed continuously using a sampling device relevant to the drilling technology and used every twenty (20) feet around the tank area, with a minimum of four (4) borings as follows:
 - (A) Each soil boring must:
 - (i) be within three (3) feet of the UST; and
 - (ii) extend two (2) feet or greater below the elevation of the base of the UST.
 - (B) If the soil boring depth is fifteen (15) feet or less:
 - (i) two (2) soil samples must be taken where a contaminant is detected;
 - (ii) one (1) soil sample must be taken at the midpoint of the soil boring; and
 - (iii) one (1) soil sample must be taken at the bottom of the soil boring.
 - (C) If the soil boring depth is greater than fifteen (15) feet, three (3) soil samples are required as follows:
 - (i) Samples must be collected where the release is suspected or detected.
 - (ii) One (1) soil sample must be taken one (1) foot or greater below grade and must be the most shallow sample taken.
 - (2) Piping and dispenser sampling and analysis must be completed under subsection (b)(3) and (b)(4).
 - (d) Water samples for any permanent closure or change-in-service must be collected as follows:
 - (1) For any permanent closure or change-in-service, a ground water sample must be collected within any area where a suspected contaminant release has occurred, or where a chemical of concern release has been substantiated through one (1) of the following:
 - (A) Visual staining of the soil or water.
 - (B) Field screening with the following:
 - (i) Flame ionization detector.
 - (ii) Photo ionization detector.
 - (iii) Field gas chromatograph.
 - (C) Petroleum odors.
 - (D) Laboratory analytical results.
 - (2) For an in-place closure or change in service, borings are to be made as follows:
 - (A) One (1) boring must be placed in each of the four (4) principal directions within ten (10) feet of the area most likely to have contaminated ground water.
 - (B) Each boring must extend to the first saturated ground water zone or to a total depth of thirty (30) feet below grade at the area of suspected or confirmed release. A water sample must be collected from each boring if ground water is present within a depth of thirty (30) feet or less.
 - (C) If ground water is not encountered within a depth of thirty (30) feet, an additional soil sample must be obtained at the base of the boring or a minimum depth of thirty (30) feet.
 - (3) For removal closure, water sampling must be conducted as follows:
 - (A) If any water is encountered in any excavation, a minimum of one (1) water sample must be collected from the water encountered.
 - (B) The ground water sample collected in subdivision (1) must be collected from a continuously sampled boring that extends to the first saturated ground water zone or to a total depth of thirty (30) feet below grade at the area of suspected or confirmed release.
 - (C) If ground water is not encountered within a depth of thirty (30) feet, a soil sample must be obtained at the base

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of the boring.

(4) If bedrock is encountered in a boring before a depth of thirty (30) feet is reached, and a saturated ground water zone is not encountered in the boring, an owner or operator may contact the department for approval of alternative sampling or waiver of ground water sampling requirements. The department may approve a waiver of ground water sampling within the bedrock if the owner or operator can demonstrate the following:

(A) A soil zone at least ten (10) feet thick existing immediately above the bedrock does not have a contaminant.

(B) A soil sample collected immediately above the bedrock does not have a contaminant.

(e) The following conditions apply to any waiver of sampling:

(1) The commissioner may waive sampling under any of the following conditions:

(A) A leaking underground storage tank incident number is assigned and the following requirements are completed:

(i) Permanent closure is conducted in response to a confirmed release at the site.

(ii) The confirmed release occurred before the request for permanent closure.

(B) The initial site characterization meets the requirements of 329 IAC 9-5-5.1.

(C) The corrective action plan meets the requirements of 329 IAC 9-5-7.

(D) Bedrock was encountered during the boring as described in subsection (d)(4).

(2) Sites that have previous releases and are not under remediation at the time of permanent closure are not eligible for a sampling waiver.

(3) In-place closure sampling requirements may not be waived.

(Solid Waste Management Division; 329 IAC 9-6-2.6; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)

329 IAC 9-6-3 Applicability to previously closed UST systems

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23

Sec. 3. When directed by the commissioner, the owner and operator of an UST system permanently closed before December 22, 1988, shall assess the excavation zone and close the UST system in accordance with this rule, and the closure must be performed by a person certified under the rules of the fire prevention and building safety commission at 675 IAC 12-12, if releases from the underground storage tank may, in the judgment of the commissioner, pose a current or potential threat to human health and the environment. *(Solid Waste Management Division; 329 IAC 9-6-3; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1074; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3722; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 172)*

329 IAC 9-6-4 Closure records

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-23

Sec. 4. The owner and operator shall maintain records in accordance with 40 CFR 280.34* and this article that are capable of demonstrating compliance with closure requirements under this rule. The results of the site assessment required in section 2.5 of this rule must be submitted to the department within thirty (30) days after completion of closure or change-in-service of the UST system. Results of the site assessment must be maintained for at least three (3) years after completion of closure or change-in-service in one (1) of the following ways:

(1) By the owner and operator who took the UST system out of service.

(2) By the current owner and operator of the UST system site.

(3) By mailing these records to the department, if the records cannot be maintained at the closed facility.

*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204. *(Solid Waste Management Division; 329 IAC 9-6-4; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1074; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3722; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 173; errata filed Dec 2, 2004, 2:50 p.m.: 28 IR 1184; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-6-5 Temporary closure

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-23

Sec. 5. (a) When a UST system is temporarily closed, the owner and operator shall comply with the following:

- (1) Continue operation and maintenance of corrosion protection under 40 CFR 280.31*.
- (2) Continue operation and maintenance of any release detection required by 40 CFR 280, Subpart D* and this article, except release detection and release detection operation and maintenance testing and inspections under 40 CFR 280, Subparts C and D are not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than:

- (A) two and five-tenths (2.5) centimeters or one (1) inch of residue remains in the system; or
- (B) three-tenths percent (0.3%) by weight of the total capacity of the UST system remains in the system.

- (3) Comply with the following requirements if a release is suspected or confirmed:

- (A) 40 CFR 280.50* through 40 CFR 280.52*.
- (B) 329 IAC 9-4-4.
- (C) 329 IAC 9-5.

- (4) Spill and overfill operation and maintenance testing and inspections in 40 CFR 280, Subpart C are not required if the UST system is empty.

(b) When a UST system is temporarily closed for three (3) months or longer, the owner and operator shall comply with the following requirements:

- (1) Leave vent lines open and functioning.
- (2) Cap and secure the following:
 - (A) All other lines.
 - (B) Pumps.
 - (C) Manways.
 - (D) Ancillary equipment.

(c) When a UST system is temporarily closed for twelve (12) months, the following requirements must be completed:

- (1) The owner and operator shall permanently close the UST system if it does not meet the:
 - (A) performance standards in 40 CFR 280.20* for new UST systems; or
 - (B) upgrading requirements in 40 CFR 280.21*;

except that the spill and overfill equipment requirements do not have to be met.

- (2) The owner and operator shall permanently close the UST system if at the end of the temporary twelve (12) month period under sections 2.5 through 4 of this rule it does not meet performance standards or upgrade requirements.

(3) The commissioner may grant an extension of the twelve (12) month temporary closure period based on the following:

- (A) The owner and operator shall complete a site assessment under section 2.5 of this rule before the owner and operator may apply for an extension.
- (B) The length of the extension is based on the following:
 - (i) The results of the site assessment under clause (A).
 - (ii) The owner and operator shall submit written proof that explains why permanent closure cannot take place within the twelve (12) month period of temporary closure.
 - (iii) The owner and operator shall submit information that explains when permanent closure will take place.

(d) The owner and operator shall demonstrate compliance with this section by providing a certification of compliance on the notification form under 329 IAC 9-2-2. The certification must demonstrate that the person that performs the work has been certified by the office of the state fire marshal under 675 IAC 12-12.

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204. (*Solid Waste Management Division; 329 IAC 9-6-5; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3722; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 173; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA; errata filed May 31, 2018, 9:55*

a.m.: 20180627-IR-329160204ACA)

Rule 7. Release Detection

329 IAC 9-7-1 General requirements for all UST systems (Repealed)

Sec. 1. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-7-2 Requirements for petroleum UST systems (Repealed)

Sec. 2. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-7-3 Requirements for hazardous substance UST systems (Repealed)

Sec. 3. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-7-4 Methods of release detection for tanks (Repealed)

Sec. 4. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-7-5 Methods of release detection for piping (Repealed)

Sec. 5. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

329 IAC 9-7-6 Release detection record keeping (Repealed)

Sec. 6. *(Repealed by Solid Waste Management Division; filed Aug 30, 2004, 9:35 a.m.: 28 IR 177)*

329 IAC 9-7-7 Release detection certification of compliance (Repealed)

Sec. 7. *(Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA)*

Rule 8. Financial Responsibility

329 IAC 9-8-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 1. (a) This rule applies to owners and operators of all petroleum UST systems except as otherwise provided in this section.

(b) Owners and operators of petroleum UST systems shall comply with the requirements of this rule.

(c) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this rule.

(d) The requirements of this rule do not apply to an owner and operator of any UST system described in 40 CFR 280.10(b), (c)(1), (c)(3), or (c)(4).

(e) If the owner and operator of a petroleum underground storage tank are separate persons, only one (1) person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.

(f) Owners and operators of previously deferred UST systems shall comply with the requirements of this rule according to the schedule in 40 CFR 280.251(a)*.

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*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204. (*Solid Waste Management Division; 329 IAC 9-8-1; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3728; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 31, 2018, 9:57 a.m.: 20180620-IR-329180246ACA; filed Mar 18, 2019, 2:41 p.m.: 20190417-IR-329180281FRA*)

329 IAC 9-8-2 Compliance dates (Repealed)

Sec. 2. (*Repealed by Solid Waste Management Division; filed Mar 18, 2019, 2:41 p.m.: 20190417-IR-329180281FRA*)

329 IAC 9-8-3 Definitions

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-13-1-1; IC 13-23-4-1; IC 13-23-4-2

Sec. 3. (a) The definitions in this section apply throughout this rule.

(b) "Accidental release" means any:

- (1) sudden; or
- (2) nonsudden;

release of petroleum from an underground storage tank that results in a need for corrective action or compensation or both for bodily injury or property damage neither expected nor intended by the tank owner or operator.

(c) "Bodily injury" has the meaning given to this term by applicable state law; however, this term must not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

(d) "Chief financial officer", in the case of a local government owner and operator, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

(e) "Commissioner" means the commissioner of the department of environmental management as created under IC 13-13-1-1.

(f) "Controlling interest" means direct ownership of at least fifty percent (50%) of the voting stock of another entity.

(g) "Financial reporting year" means the latest consecutive twelve (12) month fiscal or calendar year period for which any of the following reports used to support a financial test is prepared:

- (1) A 10-K report submitted to the U.S. Securities and Exchange Commission (SEC).
- (2) An annual report of tangible net worth submitted to Dun and Bradstreet.
- (3) Annual reports submitted to the Energy Information Administration or the Rural Utilities Service of the United States Department of Agriculture (formerly the Rural Electrification Administration).

(h) "Legal defense cost" means any expense that an owner or operator, or provider of financial assurance incurs in defending against claims or actions brought by any of the following:

- (1) By the United States Environmental Protection Agency (U.S. EPA) or Indiana to require corrective action or recover the costs of corrective action.
- (2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release.
- (3) By any person to enforce the terms of a financial assurance mechanism.

(i) "Local government" includes any of the following:

- (1) City.
- (2) County.
- (3) County solid waste management district.
- (4) Joint solid waste management district.
- (5) Municipal corporation.
- (6) Municipality.
- (7) School corporation.
- (8) Special district.

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(9) Special taxing district.

(10) Town.

(11) Township.

(12) Unit.

(13) Indian tribe.

(14) Any other legal entity given this term by applicable state law.

(j) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from an underground storage tank. The definition of this term is intended to assist in the understanding of this rule 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.

(k) "Owner or operator", when the owner or operator are separate parties, means the party that is obtaining or has obtained financial assurance.

(l) "Petroleum marketing facilities" means all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(m) "Petroleum marketing firms" means all firms owning petroleum marketing facilities. Firms owning other types of facilities with underground storage tanks as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(n) "Property damage" has the meaning given this term by applicable state law. This term must not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage must not include corrective action associated with releases from tanks covered by the policy.

(o) "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one (1) of the mechanisms listed in sections 6 through 13 of this rule, including any of the following:

(1) Guarantor.

(2) Insurer.

(3) Risk retention group.

(4) Surety.

(5) Issuer of a letter of credit.

(6) Issuer of a state-required mechanism.

(7) State.

(p) "Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued incident to that relationship if it arises from a clear commonality of interest in the event of an underground storage tank release, including any of the following:

(1) Coterminous boundaries.

(2) Overlapping constituencies.

(3) Common ground water aquifer.

(4) Other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

(q) "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. As used in this subsection, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

(r) "Termination", under section 8(b) of this rule, means only those changes that could result in a gap in coverage as where the insured has:

(1) not obtained substitute coverage; or

(2) obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

(Solid Waste Management Division; 329 IAC 9-8-3; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3728; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 31, 2018, 9:57 a.m.: 20180620-IR-329180246ACA)

329 IAC 9-8-4 Amount and scope of required financial responsibility

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 4. (a) An owner or operator of a petroleum underground storage tank shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum underground storage tank in a per occurrence amount of at least one million dollars (\$1,000,000).

(b) An owner or operator of a petroleum underground storage tank shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum underground storage tank in at least the following annual aggregate amounts:

(1) For an owner or operator of one (1) to one hundred (100) petroleum underground storage tanks, one million dollars (\$1,000,000).

(2) For an owner or operator of one hundred one (101) or more petroleum underground storage tanks, two million dollars (\$2,000,000).

(c) As used in subsections (b) and (f), "petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in subsection (e), if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(1) taking corrective action;

(2) compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

(3) compensating third parties for bodily injury and property damage caused by nonsudden accidental releases;

the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsections (a) and (b).

(e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required must be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(f) The owner or operator shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. The owner or operator shall complete the following:

(1) If the number of petroleum underground storage tanks for which assurance must be provided exceeds one hundred (100), the owner or operator shall demonstrate financial responsibility in the amount of at least two million dollars (\$2,000,000) of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility has become effective.

(2) If assurance is demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least two million dollars (\$2,000,000) of annual aggregate assurance by the first occurring effective date anniversary of any one (1) of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

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

(h) The required per occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator. (*Solid Waste Management Division; 329 IAC 9-8-4; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3730; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-5 Allowable mechanisms and combinations of mechanisms

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 5. (a) Subject to the limitations of subsections (b) and (c), an owner or operator may use the following to demonstrate financial responsibility:

(1) An owner or operator, including a local government owner or operator, may use any one (1) or combination of the

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mechanisms listed in sections 6 through 13 of this rule to demonstrate financial responsibility under this rule for one (1) or more underground storage tanks.

(2) A local government owner or operator may use any one (1) or combination of the mechanisms listed in sections 14 through 17 of this rule to demonstrate financial responsibility under this rule for one (1) or more underground storage tanks.

(b) An owner or operator may use a:

(1) guarantee under section 7 or 11(c)(7) of this rule; or

(2) surety bond under section 9 of this rule;

to establish financial responsibility only if the attorney general of Indiana has submitted a written statement to the commissioner that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in Indiana.

(c) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor. (*Solid Waste Management Division; 329 IAC 9-8-5; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3730; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 31, 2018, 9:57 a.m.: 20180620-IR-329180246ACA*)

329 IAC 9-8-6 Financial test of self-insurance

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 6. (a) An:

(1) owner or operator and guarantor;

(2) owner or operator; or

(3) guarantor;

may satisfy the requirements of section 4 of this rule by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator and guarantor, the owner or operator, or the guarantor shall meet the criteria of subsection (b) or (c) based on year end financial statements for the latest completed fiscal year.

(b) The owner or operator and guarantor, the owner or operator, or the guarantor shall complete the following:

(1) The owner or operator and guarantor, the owner or operator, or the guarantor shall have a tangible net worth of at least ten (10) times:

(A) the total of the applicable aggregate amount required by:

(i) section 4 of this rule, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the commissioner under this rule; or

(ii) the U.S. EPA under 40 CFR 280.93 and 40 CFR 280.95;

(B) the sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to:

(i) the commissioner under 329 IAC 3.1-9, 329 IAC 3.1-14, and 329 IAC 3.1-15; or

(ii) the U.S. EPA under:

(AA) 40 CFR 264.101;

(BB) 40 CFR 264.143;

(CC) 40 CFR 264.145;

(DD) 40 CFR 264.147;

(EE) 40 CFR 265.143;

(FF) 40 CFR 265.145; and

(GG) 40 CFR 265.147; and

(C) the sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility:

(i) under a state program authorized by the U.S. EPA under 40 CFR 145; or

(ii) to the U.S. EPA under 40 CFR 144.63.

(2) The owner or operator and guarantor, the owner or operator, or the guarantor shall have a tangible net worth of at least ten million dollars (\$10,000,000).

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- (3) The owner or operator and guarantor, the owner or operator, or the guarantor shall have a letter signed by the chief financial officer worded as specified in subsection (d).
- (4) The owner or operator and guarantor, the owner or operator, or the guarantor shall complete either of the following:
 - (A) File financial statements annually with the U.S. Securities and Exchange Commission (SEC), the Energy Information Administration, or the Rural Utilities Service of the United States Department Of Agriculture (formerly the Rural Electrification Administration).
 - (B) Report annually the firm's tangible net worth to Dun and Bradstreet. Dun and Bradstreet shall have assigned the firm a financial strength rating of 4A or 5A.
- (5) The firm's year end financial statements, if independently audited, cannot include:
 - (A) an adverse auditor's opinion;
 - (B) a disclaimer of opinion; or
 - (C) a going concern qualification.
- (c) The owner or operator and guarantor, the owner or operator, or the guarantor shall complete the following:
 - (1) The owner or operator and guarantor, the owner or operator, or the guarantor shall meet the financial test requirements of 40 CFR 265.147(f)(1), substituting the appropriate amounts specified in section 4(b) of this rule for the amount of liability coverage each time specified in that section. 40 CFR 265.147(f)(1), revised as of July 1, 1997, is incorporated by reference. The Code of Federal Regulations is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
 - (2) The fiscal year end financial statements of the owner or operator and guarantor, the owner or operator, or the guarantor must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.
 - (3) The firm's year end financial statements cannot include:
 - (A) an adverse auditor's opinion;
 - (B) a disclaimer of opinion; or
 - (C) a going concern qualification.
 - (4) The owner or operator and guarantor, the owner or operator, or the guarantor shall have a letter signed by the chief financial officer, worded as specified in subsection (d).
 - (5) If the financial statements of the owner or operator and guarantor, the owner or operator, or the guarantor are not submitted annually to the U.S. Securities and Exchange Commission (SEC), the Energy Information Administration, or the Rural Utilities Service of the United States Department of Agriculture (formerly the Rural Electrification Administration), the owner or operator and guarantor, the owner or operator, or the guarantor shall obtain a special report by an independent certified public accountant stating that:
 - (A) the independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year end financial statements of the owner or operator and guarantor, the owner or operator, or the guarantor with the amounts in such financial statements; and
 - (B) in connection with that comparison, no matters came to the attention that caused the certified public accountant to believe that the specified data should be adjusted.
- (d) To demonstrate that it meets the financial test under subsection (b) or (c), the chief financial officer of the owner or operator or guarantor shall sign, within one hundred twenty (120) days of the close of each financial reporting year as defined by the twelve (12) month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert name and address of the owner or operator or guarantor]. This letter is in support of the use of [insert "the financial test of self-insurance" or "guarantee" or both of those phrases] to demonstrate financial responsibility for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage" or both of those phrases] caused by [insert "sudden accidental releases" or "nonsudden accidental releases" or both of those phrases] in the amount of at least [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test, a financial test under an authorized state

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program, or a financial test under the United States Environmental Protection Agency (U.S. EPA) regulations by this [insert "owner or operator" or "guarantor" or both of those phrases]: [List for each facility the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test, a financial test under a state program approved under 40 CFR 281, or a financial test under U.S. EPA under 40 CFR 280.95. 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, a financial test under a state program authorized under 40 CFR 281, or a financial test under U.S. EPA under 40 CFR 280.95 by the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2, the applicable regulation of a state program authorized under 40 CFR 281, or U.S. EPA under 40 CFR 280.22.]

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

	Amount
Indiana Rules	
Closure (329 IAC 3.1-14-4 through 329 IAC 3.1-14-12 and 329 IAC 3.1-15-4)	\$ _____
Post-Closure Care (329 IAC 3.1-14-14 through 329 IAC 3.1-14-22 and 329 IAC 3.1-15-6)	\$ _____
Liability Coverage (329 IAC 3.1-14-24 and 329 IAC 3.1-15-8)	\$ _____
Corrective Action (329 IAC 3.1-9-1)	\$ _____
Authorized State Rules under 40 CFR 145	
Plugging and Abandonment	\$ _____
U.S. EPA Regulations	
Closure (40 CFR 264.143 and 40 CFR 265.143)	\$ _____
Post-Closure Care (40 CFR 264.145 and 40 CFR 265.145)	\$ _____
Liability Coverage (40 CFR 264.147 and 40 CFR 265.147)	\$ _____
Corrective Action (40 CFR 264.101(b))	\$ _____
Plugging and Abandonment (40 CFR 144.63)	\$ _____
Total	\$ _____

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

[Fill in the information for Alternative I if the criteria of 329 IAC 9-8-6(b) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of 329 IAC 9-8-6(c) are being used to demonstrate compliance with the financial test requirements.]

Alternative I

- | | |
|--|----------|
| 1. Amount of annual UST aggregate coverage being assured by a financial test or guarantee or both | \$ _____ |
| 2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test or guarantee or both | \$ _____ |
| 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 and add that amount to line 6) | \$ _____ |
| 6. Tangible net worth (subtract line 5 from line 4) | \$ _____ |
| | Yes No |
| 7. Is line 6 at least \$10 million? | ___ ___ |
| 8. Is line 6 at least 10 times line 3? | ___ ___ |
| 9. Have financial statements for the latest fiscal year been filed with the U.S. Securities and Exchange Commission (SEC)? | ___ |
| 10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? | ___ |

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11. Have financial statements for the latest fiscal year been filed with the Rural Utilities Service of the United States Department Of Agriculture (formerly the Rural Electrification Administration)? _____

12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? _____

(Answer "Yes" only if both criteria have been met.)

Alternative II

1. Amount of annual UST aggregate coverage being assured by a financial test or guarantee or both \$_____

2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test or guarantee or both \$_____

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 and add that amount to line 6) \$_____

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 \$10 million? _____

9. Is line 6 at least 6 times line 3? _____

10. Are at least 90 percent of assets located in the U.S.? (If "No," complete line 11.) _____

11. Is line 7 at least 6 times line 3? _____

[Fill in either lines 12-15 or lines 16-18]

12. Current assets \$_____

13. Current liabilities \$_____

14. Net working capital (subtract line 13 from line 12) \$_____

Yes No

15. Is line 14 at least 6 times line 3? _____

16. Current bond rating of most recent bond issue _____

17. Name of rating service _____

18. Date of maturity of bond _____

19. Have financial statements for the latest fiscal year been filed with the U.S. Securities and Exchange Commission (SEC), the Energy Information Administration, or the Rural Utilities Service of the United States Department of Agriculture (formerly the Rural Electrification Administration)? _____

[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 4-18 above and the financial statements for the latest fiscal year.]

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

I hereby certify that the wording of this letter is identical to the wording specified in 329 IAC 9-8-6(d) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(e) If an owner or operator using the test to provide financial assurance finds that the owner no longer meets the requirements of the financial test based on the year end financial statements, the owner or operator shall obtain alternative coverage within one hundred fifty (150) days of the end of the year for which financial statements have been prepared.

(f) The commissioner may require reports of financial condition at any time from the owner or operator and guarantor, the owner or operator, or the guarantor. If the commissioner finds, on the basis of such reports or other information, that the owner or operator and guarantor, the owner or operator, or the guarantor no longer meets the financial test requirements of subsections (b) or (c) and (d), the owner or operator shall obtain alternate coverage within thirty (30) days after notification of such a finding.

(g) If the owner or operator fails to obtain alternate assurance within:

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(1) one hundred fifty (150) days of finding that the owner no longer meets the requirements of the financial test based on the year end financial statements; or

(2) thirty (30) days of notification by the commissioner that the owner no longer meets the requirements of the financial test; the owner or operator shall notify the commissioner of such failure within ten (10) days. (*Solid Waste Management Division; 329 IAC 9-8-6; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3731; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 31, 2018, 9:57 a.m.: 20180620-IR-329180246ACA*)

329 IAC 9-8-7 Guarantee

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 7. (a) An owner or operator may satisfy the requirements of section 4 of this rule by obtaining a guarantee that conforms to this section. The guarantor shall be a firm that:

(1) possesses a controlling interest in the owner or operator;

(2) possesses a controlling interest in a firm described under subdivision (1); or

(3) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator.

(b) The guarantor shall complete the following:

(1) Within one hundred twenty (120) days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of section 6 of this rule based on year end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in section 6(d) of this rule and shall deliver the letter to the owner or operator.

(2) If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within one hundred twenty (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 owner or operator.

(3) If the commissioner notifies the guarantor that the guarantor no longer meets the requirements of the financial test of section 6(b) or 6(c) and 6(d) of this rule, the guarantor shall notify the owner or operator within ten (10) days of receiving such notification from the commissioner.

As used in subdivisions (2) and (3), the guarantee terminates no less than one hundred twenty (120) days after the date the owner or operator receives the notification as evidenced by the return receipt. The owner or operator shall obtain alternative coverage as specified in section 20(c) of this rule.

(c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee

Guarantee made this [date] by [insert 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 Indiana Department of Environmental Management (IDEM) and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals

1. Guarantor meets or exceeds the financial test criteria of 329 IAC 9-8-6(b) or 329 IAC 9-8-6(c) and 329 IAC 9-8-6(d) and agrees to comply with the requirements for guarantors as specified in 329 IAC 9-8-7(b).

2. [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2, and the name and address of the facility.] This guarantee satisfies 329 IAC 9-8 requirements for assuring funding for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; 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 underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual

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aggregate.

3. [Insert appropriate phrase "On behalf of our subsidiary" (if guarantor is a corporate parent of the owner or operator) or "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator)] [owner or operator], guarantor guarantees to IDEM and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the IDEM commissioner has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the IDEM commissioner, shall fund a standby trust fund in accordance with the provisions of 329 IAC 9-8-22 in an amount not to exceed the coverage limits specified above.

In the event that the IDEM commissioner determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 329 IAC 9-5, the guarantor, upon written instructions from the IDEM commissioner, shall fund a standby trust in accordance with the provisions of 329 IAC 9-8-22 in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [insert "sudden" or "nonsudden" or both of those phrases] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the IDEM commissioner, shall fund a standby trust in accordance with the provisions of 329 IAC 9-8-22 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

4. Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 329 IAC 9-8-6(b) or 329 IAC 9-8-6(c) and 329 IAC 9-8-6(d), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator] as evidenced by the return receipt.

5. Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the bankruptcy laws of the United States (11 U.S.C. 101 et seq.), naming 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 [owner or operator] pursuant to 329 IAC 9.

7. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of 329 IAC 9-8 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator] as evidenced by the return receipt.

8. The guarantor's obligation does not apply to any of the following:

- (a) Any obligation of [owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law.
- (b) Bodily injury to an employee of [owner or operator] arising from, and in the course of, employment by [owner or 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 [owner or operator] that is not the direct result of a release from a petroleum underground storage tank.
- (e) Bodily injury or property damage for which [owner or 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 329 IAC 9-8-4.

9. Guarantor expressly waives notice of acceptance of this guarantee by IDEM, by any or all third parties, or by [owner or operator]. I hereby certify that the wording of this guarantee is identical to the wording specified in 329 IAC 9-8-7(c) as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

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[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(d) An owner or operator who uses a guarantee to satisfy section 4 of this rule shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts that are paid by the guarantor under the guarantee must be deposited directly into the standby trust fund in accordance with instructions from the commissioner under section 22 of this rule. This standby trust fund must meet the requirements specified in section 13 of this rule. *(Solid Waste Management Division; 329 IAC 9-8-7; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3734; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-8-8 Insurance and risk retention group coverage

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 8. (a) An owner or operator may satisfy the requirements of section 4 of this rule by obtaining liability insurance that conforms to this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in subdivision (1) or evidenced by a certificate of insurance worded as specified in subdivision (2), except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) Endorsement

Name: [insert name of each covered location]

Address: [insert address of each covered location]

Policy Number:

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2, and the name and address of the facility.]

For [insert "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; 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 underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "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 underground storage tanks or locations, indicate the amount of coverage for each type of coverage, or for each underground storage tank or location, or for each type of coverage and for each underground storage tank 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 (e) 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 "Group"] of its obligations under the policy to which this endorsement is attached.

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b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, 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 329 IAC 9-8-6 through 329 IAC 9-8-12.

c. Whenever requested by the Indiana Department of Environmental Management (IDEM) commissioner, the ["Insurer" or "Group"] agrees to furnish to the IDEM commissioner a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for nonpayment of premium or misrepresentation by the Insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Insured. Cancellation for nonpayment of premium or misrepresentation by the Insured will be effective only upon written notice and only after expiration of a minimum of ten (10) 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 "Group"] within six (6) 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 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 329 IAC 9-8-8(b)(1) and that the ["Insurer" or "Group"] is [insert "licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of representative]

(2) Certificate of Insurance

Name: [insert name of each covered location]

Address: [insert address of each covered location]

Policy Number:

Endorsement (if applicable):

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Certification

1. [Insert name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2, and the name and address of the facility.]

For [insert "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; 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 underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "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 underground storage tanks

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or locations, indicate the amount of coverage for each type of coverage, or for each underground storage tank or location, or for each type of coverage and for each underground storage tank 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 "Group"] 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 "Group"] of its obligations under the policy to which this certificate applies.
 - b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, 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 329 IAC 9-8-6 through 329 IAC 9-8-12.
 - c. Whenever requested by the Indiana Department of Environmental Management (IDEM) commissioner, the ["Insurer" or "Group"] agrees to furnish to the IDEM commissioner a signed duplicate original of the policy and all endorsements.
 - d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for nonpayment of premium or misrepresentation by the Insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Insured. Cancellation for nonpayment of premium or misrepresentation by the Insured will be effective only upon written notice and only after expiration of a minimum of ten (10) 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 "Group"] within six (6) 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 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 329 IAC 9-8-8(b)(2) and that the ["Insurer" or "Group"] is [insert "licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of representative]

(c) Each insurance policy must be issued by an Insurer or a Risk Retention Group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one (1) or more states. (*Solid Waste Management Division; 329 IAC 9-8-8; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3736; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-9 Surety bond

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 9. (a) An owner or operator may satisfy the requirements of section 4 of this rule by obtaining a surety bond that conforms to this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds by the United States department of the treasury in the most current edition of Circular 570.

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

Performance Bond

Date bond executed:

Period of coverage:

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Principal: [insert legal name and business address of owner or operator]

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation (if applicable):

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

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one (1) instrument is used to assure different tanks at any one (1) facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" arising from operating the underground storage tank.]

Penal sums of bond:

Per occurrence \$ _____

Annual aggregate \$ _____

Surety's bond number:

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Indiana Department of Environmental Management (IDEM), in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set 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 Subtitle I of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984 and the Superfund Amendments and Reauthorization Act (SARA) of 1986, to provide financial assurance for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks 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 [insert "take corrective action, in accordance with 329 IAC 9-5 and the IDEM commissioner's instructions, caused by" or "compensate injured third parties for bodily injury and property damage caused by" or "take corrective action, in accordance with 329 IAC 9-5 and the IDEM commissioner's instructions, and compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 329 IAC 9-8, within one hundred twenty (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 [owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law.
- (b) Bodily injury to an employee of [owner or operator] arising from, and in the course of, employment by [owner or 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 [owner or operator] that is not the direct result of a release from a petroleum underground storage tank.
- (e) Bodily injury or property damage for which [owner or operator] is obligated to pay damages by reason of the assumption

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of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 329 IAC 9-8-4.

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 IDEM commissioner that the Principal has failed to [insert "take corrective action, in accordance with 329 IAC 9-5 and the IDEM commissioner's instructions," or "compensate injured third parties" or "take corrective action, in accordance with 329 IAC 9-5 and the IDEM commissioner's instructions, and compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform [insert "corrective action, in accordance with 329 IAC 9-5 and the IDEM commissioner's instructions," or "third party liability compensation" or "corrective action, in accordance with 329 IAC 9-5 and the IDEM commissioner's instructions, and third party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the IDEM commissioner under 329 IAC 9-8-22.

Upon notification by the IDEM commissioner that the Principal has failed to provide alternate financial assurance within sixty (60) days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the IDEM commissioner has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the IDEM commissioner under 329 IAC 9-8-22.

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 one hundred twenty (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 Whereof, 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 329 IAC 9-8-9(b) as such regulations were constituted on the date this bond was executed.

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: \$_____

(Note: The corporate seal is not required by Indiana law.)

(c) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or 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 owner or operator who uses a surety bond to satisfy the requirements of section 4 of this rule 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 must be deposited directly into the standby trust fund in accordance with instructions from the commissioner under section 22 of this rule.

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This standby trust fund must meet the requirements specified in section 13 of this rule. (*Solid Waste Management Division; 329 IAC 9-8-9; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3738; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-10 Letter of credit

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 10. (a) An owner or operator may satisfy the requirements of section 4 of this rule by obtaining an irrevocable standby letter of credit that conforms to this section. The issuing institution must be an entity:

- (1) that has the authority to issue letters of credit in each state where used; and
- (2) whose letter of credit operations are regulated and examined by a federal or state agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

[Insert name and address of issuing institution]

[Insert name and business address of the commissioner of the Indiana Department of Environmental Management (IDEM)]

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 [insert name of owner or operator] of [address] up to the aggregate amount of [insert in words] U.S. dollars (\$ [insert dollar amount]), available upon presentation [insert, if more than one (1) director of a state implementing agency is a beneficiary, "by any one of you"] 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 Subtitle I of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984 and the Superfund Amendments and Reauthorization Act (SARA) of 1986."

This letter of credit may be drawn on to cover [insert "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [insert in words] (\$ [insert dollar amount]) per occurrence and [insert in words] (\$ [insert dollar amount]) annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one (1) instrument is used to assure different tanks at any one (1) facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2, and the name and address of the facility.]

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

- a. Any obligation of [owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law.
- b. Bodily injury to an employee of [owner or operator] arising from, and in the course of, employment by [owner or 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 [owner or operator] that is not the direct result of a release from a petroleum underground storage tank.
- e. Bodily injury or property damage for which [owner or 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 329 IAC 9-8-4.

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 one hundred twenty (120) days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused

portion of the credit shall be available upon presentation of your sight draft for one hundred twenty (120) days after the date of receipt by [owner or 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 [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 329 IAC 9-8-10(b) 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 and copyrighted by the International Chamber of Commerce" or "the Uniform Commercial Code, as adopted under state law governing the issuance and use of this letter of credit"].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of section 4 of this rule also shall establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts that are paid pursuant to a draft by the commissioner must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the commissioner under section 22 of this rule. This standby trust fund must meet the requirements specified in section 13 of this rule.

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty (120) days begins on the date when the owner or operator receives the notice as evidenced by the return receipt. (*Solid Waste Management Division; 329 IAC 9-8-10; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3740; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-11 Excess liability trust fund

Authority: IC 13-14-8; IC 13-23-1

Affected: IC 13-23-4-1; IC 13-23-4-2; IC 13-23-9-1.3

Sec. 11. (a) An owner or operator may satisfy the financial responsibility requirements of section 4 of this rule by participation in the excess liability trust fund under 328 IAC 1. Reimbursement from the fund is determined by compliance with 328 IAC 1.

(b) An owner or operator of:

(1) twelve (12) or fewer USTs shall demonstrate the ability to pay the applicable deductible amount under IC 13-23-9-1.3; or

(2) more than twelve (12) USTs shall demonstrate the ability to pay two (2) times the applicable deductible amount under IC 13-23-9-1.3.

(c) The owner or operator shall use any one (1) or a combination of the following mechanisms to demonstrate the ability to pay the applicable amount under subsection (b):

(1) A letter signed by an officer of a federally insured financial institution that verifies the financial institution's commitment to issue a loan to the owner or operator, if necessary, to pay the applicable amount under subsection (b). This letter must be reviewed and updated annually by the financial institution.

(2) A certificate of deposit from a federally insured financial institution.

(3) Liability insurance from an insurer or risk retention group.

(4) A surety bond.

(5) Irrevocable standby letter of credit issued by a federally insured financial institution.

(6) Establish a trust fund.

(7) Written guarantee from a person other than the owner or operator that verifies the guarantor's ability to pay the applicable amount under subsection (b). The written guarantee must disclose the relationship between the guarantor, and the owner or operator. The guarantor shall use one (1) or more of the mechanisms under this subsection.

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(d) In addition to subsection (c), local government owners or operators may use any one (1) or a combination of the following mechanisms to satisfy the requirements of subsection (b):

(1) A local government owner or operator may meet a bond rating test under section 14 of this rule. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the letter from the chief financial officer.

(2) A local government owner or operator may pass the financial test specified in section 15 of this rule. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the letter from the chief financial officer.

(3) A local government owner or operator may obtain a guarantee that conforms to section 16 of this rule. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the local government guarantee with standby trust made by a local government. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the local government guarantee without standby trust made by a local government.

(4) A local government owner or operator may establish a dedicated fund account that conforms to section 17 of this rule. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the letter from the chief financial officer.

(e) In accordance with 40 CFR 280.101*, the department shall issue a certificate of financial assurance to each eligible tank owner or operator describing the nature of the state's assumption of responsibility. The certificate of financial assurance must contain the following information:

(1) Facility name and address.

(2) Facility identification number issued by the department.

(3) Amount of funds for corrective action and compensating third parties that is assured by the fund.

(f) The owner or operator must maintain the certificate of financial assurance described in subsection (e) on file as proof of financial responsibility in accordance with section 21 of this rule.

*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204. (*Solid Waste Management Division; 329 IAC 9-8-11; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3741; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed Feb 19, 2018, 10:06 a.m.: 20180228-IR-329180109ACA; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

329 IAC 9-8-12 Trust fund

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 12. (a) An owner or operator may satisfy the requirements of section 4 of this rule by establishing a trust fund that conforms to this section. The trustee must be an entity:

(1) that has the authority to act as a trustee; and

(2) whose trust operations are regulated and examined by:

(A) a federal agency; or

(B) an agency of the state in which the fund is established.

(b) The wording of the trust agreement must be:

(1) identical to the wording specified in section 13(b) of this rule; or

(2) accompanied by a formal certification of acknowledgment as specified in section 13(c) and 13(d) of this rule.

(c) The trust fund, when established, must be funded for:

(1) the full required amount of coverage; or

(2) part of the required amount of coverage and used in combination with another mechanism that provides the remaining required coverage.

(d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written

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request to the commissioner for release of the excess.

(e) If other financial assurance as specified in this rule is substituted for all or part of the trust fund, the owner or operator may submit a written request to the commissioner for release of the excess.

(f) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in subsection (d) or (e), the commissioner shall instruct the trustee to release to the owner or operator such funds as the commissioner specifies in writing. (*Solid Waste Management Division; 329 IAC 9-8-12; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3742; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-13 Standby trust fund

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 13. (a) An owner or operator that uses any one (1) of the mechanisms authorized by section 7, 9, 10, 11(c)(2), or 11(c)(7) of this rule shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity:

- (1) that has the authority to act as a trustee; and
- (2) whose trust operations are regulated and examined by:
 - (A) a federal agency; or
 - (B) an agency of the state in which the fund is established.

(b) The standby trust agreement, or trust agreement, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

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

Whereas, the Indiana Department of Environmental Management (IDEM), an agency of Indiana, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the Agreement.

[Whereas, the Grantor has elected to establish a [insert either "guarantee" or "surety bond" or "letter of credit" or "certificate of deposit"] to provide all or part of such financial assurance for the underground storage tanks 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 owner or 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, letter of credit, or certificate of deposit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund

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The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of IDEM. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [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 IDEM commissioner's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits therein, 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 IDEM.

Section 4. Payment for [insert "Corrective Action" or
"Third Party Liability Claims" or "Corrective
Action and Third Party Liability Claims"]

The Trustee shall make payments from the Fund as the IDEM commissioner shall direct, in writing, to provide for the payment of the costs of [insert "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks 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 [owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law.
- b. Bodily injury to an employee of [owner or operator] arising from, and in the course of, employment by [owner or 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 [owner or operator] that is not the direct result of a release from a petroleum underground storage tank.
- e. Bodily injury or property damage for which [owner or 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 329 IAC 9-8-4.

The Trustee shall reimburse the Grantor, or other persons as specified by the IDEM commissioner, from the Fund for corrective action expenditures or third party liability claims or both in such amounts as the IDEM commissioner shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the IDEM commissioner 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

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 or her 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:

- a. securities or other obligations of the Grantor, or any other owner or 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;
- b. 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
- c. the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest therein.

Section 7. Commingling and Investment

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The Trustee is expressly authorized in its discretion:

- 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 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 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 Trustee by certified mail ten (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

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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 IDEM commissioner to the Trustee shall be in writing, signed by the IDEM commissioner, 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 IDEM commissioner hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor or the IDEM commissioner or both, 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 IDEM commissioner if the Grantor ceases to exist.

Section 15. Irrevocability and Termination

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 IDEM commissioner 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 IDEM commissioner 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 state of [insert name of state], or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation

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 329 IAC 9-8-13(b)(1) 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 the Witness]

[Title]

[Seal]

(Note: Corporate seal is not required by Indiana law.)

(c) The standby trust agreement, or trust agreement, must be accompanied by a formal certification of acknowledgment similar to the following:

Certification of Acknowledgment

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State of _____
County of _____

On this [date], before me personally came [owner or operator] 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]

(d) The following is an example of the Indiana form of acknowledgment. (Standby trust agreements, or trust agreements, notarized in Indiana must use this form of acknowledgment.):

Form of Indiana certification of acknowledgment.

ACKNOWLEDGMENT

State of _____
County of _____

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared [owner or operator] to be known by me to be the person who [(only for corporate party)], as [insert title] of _____, Inc., the corporation that executed the foregoing instrument, signed the same and acknowledged to me that he/she did so sign the same [in the name and on behalf of the said corporation as such officer], and the same is his free act and deed [and the free corporate act and deed of said corporation, and that he/she was duly authorized by the Board of Directors of said corporation] and the statements made in the foregoing instrument are true.

IN WITNESS WHEREOF, I have set my hand and official seal this _____ day of _____, 199_.

State of: _____
County of residence: _____

Notary Public
Commission Expires: _____

(e) The commissioner shall instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the commissioner determines that no additional:

- (1) corrective action costs; or
- (2) third party liability claims;

will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund has been established. If the balance of the standby trust fund includes funds received from a certificate of deposit, the commissioner shall instruct the trustee to refund the balance received from the certificate of deposit to the owner or operator under section 11(c)(7)(I) of this rule.

(f) An owner or operator may establish one (1) trust fund as the depository mechanism for all funds assured in compliance with this rule. (*Solid Waste Management Division; 329 IAC 9-8-13; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3743; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed Mar 17, 2005, 3:00 p.m.: 28 IR 2391*)

329 IAC 9-8-14 Local government bond rating test

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 14. (a) A:

- (1) general purpose local government owner or operator and general purpose local government serving as a guarantor;
- (2) general purpose local government owner or operator; or
- (3) general purpose local government serving as a guarantor;

may satisfy the requirements of section 4 of this rule by having a currently outstanding issue or issues of general obligation bonds of one million dollars (\$1,000,000) or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local

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government's bonds are rated by both Moody's and Standard & Poor's, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement, other than municipal bond insurance, must not be considered in determining the amount of applicable bonds outstanding.

- (b) A local government owner or operator or local government serving as a guarantor that:
 - (1) is not a general purpose local government; and
 - (2) does not have the legal authority to issue general obligation bonds;

may satisfy the requirements of section 4 of this rule by having a currently outstanding issue or issues of revenue bonds of one million dollars (\$1,000,000) or more, excluding refunded issues, and having a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement must not be considered in determining the amount of applicable bonds outstanding.

- (c) The:
 - (1) local government owner or operator and local government guarantor;
 - (2) local government owner or operator; or
 - (3) local government guarantor;

shall maintain a copy of its bond rating published within the last twelve (12) months by Moody's or Standard & Poor's.

- (d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a:
 - (1) general purpose local government owner or operator and general purpose local government serving as a guarantor;
 - (2) general purpose local government owner or operator; or
 - (3) general purpose local government serving as a guarantor;

shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert name and address of local government owner or operator or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage" or both of those phrases] caused by [insert "sudden accidental releases" or "nonsudden accidental releases" or both of those phrases] in the amount of at least [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility the name and address of the facility where tanks are assured by the bond rating test.]

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [insert name of local government owner or operator or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency [Moody's or Standard & Poor's]
The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of one million dollars (\$1,000,000). All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve (12) months. Neither rating service has provided notification within the last twelve (12) months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.				

I hereby certify that the wording of this letter is identical to the wording specified in 329 IAC 9-8-14(d) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

- (e) To demonstrate that it meets the local government bond rating test, the chief financial officer of a:
 - (1) local government owner or operator other than a general purpose government and guarantor other than a general purpose government;

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- (2) local government owner or operator other than a general purpose government; or
- (3) guarantor other than a general purpose government;

shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert name and address of local government owner or operator or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage" or both of those phrases] caused by [insert "sudden accidental releases" or "nonsudden accidental releases" or both of those phrases] in the amount of at least [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility the name and address of the facility where tanks are assured by the bond rating test.]

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [insert name of local government owner or operator or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency [Moody's or Standard & Poor's]
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The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of one million dollars (\$1,000,000). All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last twelve (12) months. The revenue bonds listed are not backed by third party credit enhancement or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last twelve (12) months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in 329 IAC 9-8-14(e) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

- (f) The commissioner may require reports of financial condition at any time from the:
 - (1) local government owner or operator and local government guarantor;
 - (2) local government owner or operator; or
 - (3) local government guarantor.

If the commissioner finds, on the basis of such reports or other information, that the local government owner or operator and local government guarantor, the local government owner or operator, or the local government guarantor no longer meets the local government bond rating test requirements of this section, the local government owner or operator shall obtain alternative coverage within thirty (30) days after notification of such a finding.

(g) If a local government owner or operator that uses the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator shall obtain alternative coverage within one hundred fifty (150) days of the change in status. (*Solid Waste Management Division; 329 IAC 9-8-14; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3747; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-15 Local government financial test

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 15. (a) A local government owner or operator may satisfy the requirements of section 4 of this rule by passing the

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financial test specified in this section. To be eligible to use the financial test, the local government owner or operator shall have the ability and authority to:

- (1) assess and levy taxes; or
- (2) freely establish fees and charges.

To pass the local government financial test, the owner or operator shall meet the criteria of subsection (b)(2) and (b)(3) based on year end financial statements for the latest completed fiscal year.

(b) The local government owner or operator shall complete the following:

(1) The local government owner or operator shall have the following information available, as shown in the year end financial statements, for the latest completed fiscal year:

(A) Total revenues that consist of the sum of general fund operating and nonoperating revenues, including the following:

- (i) Net local taxes.
- (ii) Licenses and permits.
- (iii) Fines and forfeitures.
- (iv) Revenues from the use of money and property.
- (v) Charges for services.
- (vi) Investment earnings.
- (vii) Sales, that may include any of the following:
 - (AA) Property.
 - (BB) Publications.
- (viii) Intergovernmental revenues (restricted and unrestricted).
- (ix) Total revenues from all other governmental funds, including:
 - (AA) enterprise;
 - (BB) debt service;
 - (CC) capital projects; and
 - (DD) special revenues;

but excluding revenues to funds held in a trust or agency capacity.

For purposes of this test, the calculation of total revenues must exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

(B) Total expenditures that consist of the sum of general fund operating and nonoperating expenditures, including the following:

- (i) Public safety.
- (ii) Public utilities.
- (iii) Transportation.
- (iv) Public works.
- (v) Environmental protection.
- (vi) Cultural and recreational.
- (vii) Community development.
- (viii) Revenue sharing.
- (ix) Employee benefits and compensation.
- (x) Office management.
- (xi) Planning and zoning.
- (xii) Capital projects.
- (xiii) Interest payments on debt.
- (xiv) Payments for retirement of debt principal.
- (xv) Total expenditures from all other governmental funds, including the following:
 - (AA) Enterprise.
 - (BB) Debt service.

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(CC) Capital projects.

(DD) Special revenues.

For purposes of this test, the calculation of total expenditures must exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

(C) Local revenues that consist of total revenues, as defined in clause (A), minus the sum of all transfers from other governmental entities, including all monies received from any of the following:

- (i) Federal sources.
- (ii) State sources.
- (iii) Local government sources.

(D) Debt service that consists of the sum of all interest and principal payments on all long term credit obligations and all interest bearing short term credit obligations, including interest and principal payments on the following:

- (i) General obligation bonds.
- (ii) Revenue bonds.
- (iii) Notes.
- (iv) Mortgages.
- (v) Judgments.
- (vi) Interest bearing warrants.

Debt service excludes payments on noninterest bearing short term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

(E) Total funds that consist of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Total funds include the following:

- (i) Federal securities.
- (ii) Federal agency securities.
- (iii) State and local government securities.
- (iv) Other securities such as bonds, notes, and mortgages.

For purposes of this test, the calculation of total funds must exclude agency funds, private trust funds, accounts receivable, value of real property, and other nonsecurity assets.

(F) Population that consists of the number of people in the area served by the local government.

(2) The local government's year end financial statements, if independently audited, must not include an adverse auditor's opinion or a disclaimer of opinion. The local government shall not have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

(3) The local government owner or operator shall have a letter signed by the chief financial officer worded as specified in subsection (c).

(c) To demonstrate that it meets the financial test under subsection (b), the chief financial officer of the local government owner or operator shall sign, within one hundred twenty (120) days of the close of each financial reporting year, as defined by the twelve (12) month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage" or both of those phrases] caused by [insert "sudden accidental releases" or "nonsudden accidental releases" or both of those phrases] in the amount of at least [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test: [List for each facility the name and address of the facility where tanks assured by this financial test are located. 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 by the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2.]

This owner or operator has not received an adverse opinion or a disclaimer of opinion from an independent auditor on its financial

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statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard & Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A, or Baa and a Standard & Poor's rating of AAA, AA, A, or BBB.

Worksheet for Municipal Financial Test

Part I: Basic Information

1. Total revenues

a. Revenues (dollars) _____

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and nonoperating revenues, as well as all revenues from all other governmental funds, including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

b. Subtract interfund transfers (dollars) _____

c. Total revenues (dollars) _____

2. Total expenditures

a. Expenditures (dollars) _____

Value consists of the sum of general fund operating and nonoperating expenditures, including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds, including enterprise, debt service, capital projects, and special revenues.

b. Subtract interfund transfers (dollars) _____

c. Total expenditures (dollars) _____

3. Local revenues

a. Total revenues (from 1c) (dollars) _____

b. Subtract total intergovernmental transfers (dollars) _____

c. Local revenues (dollars) _____

4. Debt service

a. Interest and fiscal charges (dollars) _____

b. Add debt retirement (dollars) _____

c. Total debt service (dollars) _____

5. Total funds (dollars) _____

(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds.)

6. Population (persons) _____

Part II: Application of Test

7. Total revenues to population

a. Total revenues (from 1c) _____

b. Population (from 6) _____

c. Divide 7a by 7b _____

d. Subtract 417 _____

e. Divide by 5,212 _____

f. Multiply by 4.095 _____

8. Total expenses to population

a. Total expenses (from 2c) _____

b. Population (from 6) _____

c. Divide 8a by 8b _____

d. Subtract 524 _____

e. Divide by 5,401 _____

f. Multiply by 4.095 _____

9. Local revenues to total revenues

a. Local revenues (from 3c) _____

b. Total revenues (from 1c) _____

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- c. Divide 9a by 9b _____
 - d. Subtract .695 _____
 - e. Divide by .205 _____
 - f. Multiply by 2.840 _____
10. Debt service to population
- a. Debt service (from 4c) _____
 - b. Population (from 6) _____
 - c. Divide 10a by 10b _____
 - d. Subtract 51 _____
 - e. Divide by 1,038 _____
 - f. Multiply by -1.866 _____
11. Debt service to total revenues
- a. Debt service (from 4c) _____
 - b. Total revenues (from 1c) _____
 - c. Divide 11a by 11b _____
 - d. Subtract .068 _____
 - e. Divide by .259 _____
 - f. Multiply by -3.533 _____
12. Total revenues to total expenses
- a. Total revenues (from 1c) _____
 - b. Total expenses (from 2c) _____
 - c. Divide 12a by 12b _____
 - d. Subtract .910 _____
 - e. Divide by .899 _____
 - f. Multiply by 3.458 _____
13. Funds balance to total revenues
- a. Total funds (from 5) _____
 - b. Total revenues (from 1c) _____
 - c. Divide 13a by 13b _____
 - d. Subtract .891 _____
 - e. Divide by 9.156 _____
 - f. Multiply by 3.270 _____
14. Funds balance to total expenses
- a. Total funds (from 5) _____
 - b. Total expenses (from 2c) _____
 - c. Divide 14a by 14b _____
 - d. Subtract .866 _____
 - e. Divide by 6.409 _____
 - f. Multiply by 3.270 _____
15. Total funds to population
- a. Total funds (from 5) _____
 - b. Population (from 6) _____
 - c. Divide 15a by 15b _____
 - d. Subtract 270 _____
 - e. Divide by 4,548 _____
 - f. Multiply by 1.866 _____
16. Add 7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937 _____

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in 329 IAC 9-8-15(c) as such regulations were constituted on the date shown immediately

below.

[Date]

[Signature]

[Name]

[Title]

(d) If a local government owner or operator that uses the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year end financial statements, the owner or operator shall obtain alternative coverage within one hundred fifty (150) days of the end of the year for which financial statements have been prepared.

(e) The commissioner may require reports of financial condition at any time from the local government owner or operator. If the commissioner finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of subsections (b) and (c), the owner or operator shall obtain alternate coverage within thirty (30) days after notification of such a finding.

(f) If the local government owner or operator fails to obtain alternate assurance within:

(1) one hundred fifty (150) days of finding that it no longer meets the requirements of the financial test based on the year end financial statements; or

(2) thirty (30) days of notification by the commissioner that it no longer meets the requirements of the financial test;

the owner or operator shall notify the commissioner of such failure within ten (10) days. (*Solid Waste Management Division; 329 IAC 9-8-15; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3749; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-16 Local government guarantee

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 16. (a) A local government owner or operator may satisfy the requirements of section 4 of this rule by obtaining a guarantee that conforms to this section. The guarantor must be a local government that has a substantial governmental relationship with the owner and operator and issues the guarantee as an act incident to that relationship. A local government that acts as the guarantor shall complete any of the following:

(1) Demonstrate that it meets the bond rating test requirement of section 14 of this rule and deliver a copy of the chief financial officer's letter as contained in section 14(d) of this rule to the local government owner or operator.

(2) Demonstrate that it meets the worksheet test requirements of section 15 of this rule and deliver a copy of the chief financial officer's letter as contained in section 15(c) of this rule to the local government owner or operator.

(3) Demonstrate that it meets the local government fund requirements of section 17(a)(1), 17(a)(2), or 17(a)(3) of this rule and deliver a copy of the chief financial officer's letter as contained in section 17 of this rule to the local government owner or operator.

(b) If the local government guarantor is unable to demonstrate financial assurance under section 14, 15, 17(a)(1), 17(a)(2), or 17(a)(3) of this rule, at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. The guarantee must terminate no less than one hundred twenty (120) days after the date the owner or operator receives the notification as evidenced by the return receipt. The owner or operator shall obtain alternative coverage as specified in section 20(c) of this rule.

(c) The guarantee agreement must be worded as specified in subsection (d) or (e), depending on which of the following alternative guarantee arrangements is selected:

(1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the commissioner, the guarantee must be worded as specified in subsection (d).

(2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the commissioner for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee must be worded as specified in subsection (e).

(d) If the guarantor is a local government, the local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee with Standby

UNDERGROUND STORAGE TANKS

Trust Made by a Local Government

Guarantee made this [date] by [insert name of guaranteeing entity], a local government organized under the laws of [insert name of state], herein referred to as guarantor, to the Indiana Department of Environmental Management (IDEM) and to any and all third parties, and obligees, on behalf of [local government owner or operator].

Recitals

1. Guarantor meets or exceeds [select one: the local government bond rating test requirements of 329 IAC 9-8-14, the local government financial test requirements of 329 IAC 9-8-15, or the local government fund under 329 IAC 9-8-17(a)(1), 329 IAC 9-8-17(a)(2), or 329 IAC 9-8-17(a)(3)].

2. [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2, and the name and address of the facility.] This guarantee satisfies 329 IAC 9-8 requirements for assuring funding for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; 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 underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

3. Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to IDEM and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the IDEM commissioner has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the IDEM commissioner, shall fund a standby trust fund in accordance with the provisions of 329 IAC 9-8-22 in an amount not to exceed the coverage limits specified above.

In the event that the IDEM commissioner determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 329 IAC 9-5, the guarantor, upon written instructions from the IDEM commissioner, shall fund a standby trust fund in accordance with the provisions of 329 IAC 9-8-22 in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [insert "sudden" or "nonsudden" or both] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the IDEM commissioner, shall fund a standby trust in accordance with the provisions of 329 IAC 9-8-22 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

4. Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within one hundred twenty (120) days of such failure, by certified mail, notice to [local government owner or operator] as evidenced by the return receipt.

5. Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the bankruptcy laws of the United States (11 U.S.C. 101 et seq.), naming guarantor as debtor within ten (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 [owner or operator] pursuant to 329 IAC 9.

7. Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 329 IAC 9-8 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty (120) days after receipt of such notice by [owner or operator] as evidenced by the return receipt.

8. The guarantor's obligation does not apply to any of the following:

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- a. Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law.
- b. Bodily injury to an employee of [local government owner or operator] arising from, and in the course of, employment by [local government owner or 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 [local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank.
- e. Bodily injury or property damage for which [owner or 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 329 IAC 9-8-4.

9. Guarantor expressly waives notice of acceptance of this guarantee by IDEM, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 329 IAC 9-8-16(d) 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:

(e) If the guarantor is a local government, the local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee without Standby
Trust Made by a Local Government

Guarantee made this [date] by [insert name of guaranteeing entity], a local government organized under the laws of [insert name of state], herein referred to as guarantor, to the Indiana Department of Environmental Management (IDEM) and to any and all third parties, and obligees, on behalf of [local government owner or operator].

Recitals

1. Guarantor meets or exceeds [select one (1): the local government bond rating test requirements of 329 IAC 9-8-14, the local government financial test requirements of 329 IAC 9-8-15, or the local government fund under 329 IAC 9-8-17(a)(1), 329 IAC 9-8-17(a)(2), or 329 IAC 9-8-17(a)(3)].

2. [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one (1) instrument is used to assure different tanks at any one (1) facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 329 IAC 9-2-2, and the name and address of the facility.] This guarantee satisfies 329 IAC 9-8 requirements for assuring funding for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; 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 underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

3. Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to IDEM and to any and all third parties and obligees that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the IDEM commissioner has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the IDEM commissioner, shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

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In the event that the IDEM commissioner determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 329 IAC 9-5, the guarantor, upon written instructions from the IDEM commissioner, shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [insert "sudden" or "nonsudden" or both] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the IDEM commissioner, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

4. Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within one hundred twenty (120) days of such failure, by certified mail, notice to [local government owner or operator] as evidenced by the return receipt.

5. Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the bankruptcy laws of the United States (11 U.S.C. 101 et seq.), naming guarantor as debtor within ten (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 [owner or operator] pursuant to 329 IAC 9.

7. Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of 329 IAC 9-8 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty (120) days after receipt of such notice by [owner or operator] as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

8. The guarantor's obligation does not apply to any of the following:

- a. Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law.
- b. Bodily injury to an employee of [local government owner or operator] arising from, and in the course of, employment by [local government owner or 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 [local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank.
- e. Bodily injury or property damage for which [owner or 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 329 IAC 9-8-4.

9. Guarantor expressly waives notice of acceptance of this guarantee by IDEM, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 329 IAC 9-8-16(e) 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:

(Solid Waste Management Division; 329 IAC 9-8-16; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3752; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-8-17 Local government fund

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 17. (a) A local government owner or operator may satisfy the requirements of section 4 of this rule by establishing a dedicated fund account that conforms to this section. Except as specified in subdivision (2), a dedicated fund must not be commingled with other funds or otherwise used in normal operations. A dedicated fund is considered eligible if it meets one (1) of the following requirements:

(1) The fund is:

(A) dedicated by:

(i) state constitutional provision; or

(ii) local government:

(AA) statute;

(BB) charter;

(CC) ordinance; or

(DD) order;

(B) established to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; and

(C) funded for:

(i) the full amount of coverage required under section 4 of this rule; or

(ii) part of the required amount of coverage and used in combination with another mechanism that provides the remaining coverage.

(2) The fund is:

(A) dedicated by:

(i) state constitutional provision; or

(ii) local government:

(AA) statute;

(BB) charter;

(CC) ordinance; or

(DD) order;

(B) established as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; and

(C) funded for either of the following:

(i) Five (5) times the full amount of coverage required under section 4 of this rule.

(ii) Part of the required amount of coverage and used in combination with another mechanism that provides the remaining coverage. If the fund is funded for less than five (5) times the amount of coverage required under section 4 of this rule, the amount of financial responsibility demonstrated by the fund must not exceed one-fifth ($1/5$) the amount in the fund.

(3) The following requirements must be completed:

(A) The fund is dedicated by:

(i) state constitutional provision; or

(ii) local government:

(AA) statute;

(BB) charter;

(CC) ordinance; or

(DD) order.

(B) The fund is established to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks.

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(C) A payment is made to the fund once every year for seven (7) years until the fund is fully funded. This seven (7) year period is hereafter referred to as the "pay-in-period". The amount of each payment must be determined by the following formula:

$$\frac{TF - CF}{Y}$$

Where: TF = Total required financial assurance for the owner or operator.

CF = Current amount in the fund.

Y = Number of years remaining in the pay-in-period.

(D) The local government owner or operator shall meet one (1) of the following requirements:

(i) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), that meets the following requirements:

(AA) The bonding authority is for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund.

(BB) The bonding authority must be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks.

(ii) The local government owner or operator has a letter signed by the appropriate state attorney general that states the following:

(AA) The use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws.

(BB) Prior voter approval is not necessary before use of the bonding authority.

(b) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the:

(1) local government owner or operator and local government guarantor;

(2) local government owner or operator; or

(3) local government guarantor;

shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert name and address of local government owner or operator or guarantor]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert "taking corrective action" or "compensating third parties for bodily injury and property damage" or both of those phrases] caused by [insert "sudden accidental releases" or "nonsudden accidental releases" or both of those phrases] in the amount of at least [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this local government fund mechanism: [List for each facility the name and address of the facility where tanks are assured by the local government fund.]

[Insert "The local government fund is funded for the full amount of coverage required under 329 IAC 9-8-4, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage" or "The local government fund is funded for ten (10) times the full amount of coverage required under 329 IAC 9-8-4, or funded for part of the required amount of coverage and used in combination with other mechanisms(s) that provide the remaining coverage" or "A payment is made to the fund once every year for seven (7) years until the fund is fully funded and [insert name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven (7) years until the fund is fully funded and I have attached a letter signed by the state attorney general stating that:

1. the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws; and

2. prior voter approval is not necessary before use of the bonding authority".]

The details of the local government fund are as follows:

Amount in fund (market value of fund at close of last fiscal year):

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[If fund balance is incrementally funded as specified in 329 IAC 9-8-17(a)(3), insert:

Amount added to fund in the most recently completed fiscal year:

Number of years remaining in the pay-in-period: ____.]

A copy of the state constitutional provision, or local government statute, charter, ordinance, or order dedicating the fund is attached. I hereby certify that the wording of this letter is identical to the wording specified in 329 IAC 9-8-17(b) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

(Solid Waste Management Division; 329 IAC 9-8-17; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3755; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-8-18 Substitution of financial assurance mechanisms by owner or operator

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 18. (a) An owner or operator may substitute any alternate financial assurance mechanism under this rule, provided that at all times the owner maintains an effective financial assurance mechanism or combination of mechanisms that satisfies section 4 of this rule.

(b) After obtaining alternate financial assurance under this rule, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance. *(Solid Waste Management Division; 329 IAC 9-8-18; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3756; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-8-19 Cancellation or nonrenewal by a provider of financial assurance

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 19. (a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator. The following requirements must be completed:

(1) Termination of a:

- (A) local government guarantee;
- (B) guarantee;
- (C) surety bond; or
- (D) letter of credit;

must not occur until one hundred twenty (120) days after the date on which the owner or operator receives the notice of termination as evidenced by the return receipt.

(2) Termination of:

- (A) insurance, except for nonpayment or misrepresentation by the insured;
- (B) risk retention coverage, except for nonpayment or misrepresentation by the insured; or
- (C) the excess liability trust fund under section 11 of this rule;

must not occur until sixty (60) days after the date on which the owner or operator receives the notice of termination as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured must not occur until a minimum of ten (10) days after the date on which the owner or 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 section 24 of this rule, the owner or operator shall obtain alternate coverage as specified in this section within sixty (60) days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within sixty (60) days

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after receipt of the notice of termination, the owner or operator shall notify the commissioner of such failure and submit the following:

- (1) The name and address of the provider of financial assurance.
- (2) The effective date of termination.
- (3) The evidence of the financial assistance mechanism subject to the termination maintained in accordance with section 21(b) of this rule.

(Solid Waste Management Division; 329 IAC 9-8-19; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3757; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

329 IAC 9-8-20 Reporting by owner or operator

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 20. (a) An owner or operator shall submit the appropriate forms listed in section 21(b) of this rule documenting current evidence of financial responsibility to the commissioner when any of the following occur:

- (1) Within thirty (30) days after the owner or operator identifies a release from an underground storage tank required to be reported under 329 IAC 9-4-4 or 329 IAC 9-5-2.
- (2) If the owner or operator fails to obtain alternate coverage as required by this rule, within thirty (30) days after the owner or operator receives notice of any of the following:
 - (A) Commencement of a voluntary or involuntary proceeding under the bankruptcy laws of the United States (11 U.S.C. 101 et seq.) naming a provider of financial assurance as a debtor.
 - (B) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism.
 - (C) Failure of a guarantor to meet the requirements of the financial test.
 - (D) Other incapacity of a provider of financial assurance.

(3) As required by sections 6(g) and 19(b) of this rule.

(b) An owner or operator shall certify compliance with the financial responsibility requirements of this article as specified in the new tank notification form when notifying the Indiana department of environmental management, underground storage tank branch of the installation of a new underground storage tank under 329 IAC 9-2-2.

(c) The commissioner may require an owner or operator to submit:

- (1) evidence of financial assurance as described in section 21(b) of this rule; or
- (2) other information relevant to compliance with this rule;

at any time. *(Solid Waste Management Division; 329 IAC 9-8-20; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3757; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

329 IAC 9-8-21 Record keeping

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 21. (a) An owner or operator shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this rule for an underground storage tank until released from the requirements of this rule under section 23 of this rule. An owner or operator shall maintain such evidence at the underground storage tank site or the owner's or operator's place of work. Records maintained off site must be made available upon request of the Indiana department of environmental management, underground storage tank branch.

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

- (1) An owner or operator using an assurance mechanism specified in:
 - (A) sections 6 through 10 of this rule;
 - (B) section 11(c) of this rule;
 - (C) section 12 of this rule; or

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(D) sections 14 through 17 of this rule;
shall maintain a copy of the instrument worded as specified.

(2) An owner or operator using a:

(A) financial test or guarantee; or

(B) local government financial test or local government guarantee supported by the local government financial test;
shall maintain a copy of the chief financial officer's letter based on year end financial statements for the most recent, completed financial reporting year. Such evidence must be on file no later than one hundred twenty (120) days after the close of the financial reporting year.

(3) An owner or operator using a guarantee, surety bond, letter of credit, or certificate of deposit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(4) A local government owner or operator using a local government guarantee under section 16(d) of this rule shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

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

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

(7) An owner or operator using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(8) An owner or operator covered by the excess liability trust fund under section 11 of this rule shall maintain on file a copy of any evidence of coverage supplied by or required by Indiana under 40 CFR 280.101(d). If a certificate of deposit is used under section 11(c)(2) of this rule, the following must be maintained on file:

(A) The updated copy of the certification and agreement.

(B) Designation of the current location of the certificate of deposit.

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

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

(B) Year end financial statements for the most recent, completed financial reporting year showing the amount in the fund. If the fund is established under section 17(a)(3) of this rule using incremental funding backed by bonding authority, the financial statements must show the following:

(i) The previous year's balance.

(ii) The amount of funding during the year.

(iii) The closing balance in the fund.

(C) If the fund is established under section 17(a)(3) of this rule using incremental funding backed by bonding authority, the owner or operator also shall maintain documentation of the required bonding authority, including either:

(i) the results of a voter referendum as specified under section 17(a)(3)(A) of this rule; or

(ii) attestation by the state attorney general as specified under section 17(a)(3)(B) of this rule.

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

(c) An owner or operator that uses an assurance mechanism specified in sections 6 through 17 of this rule shall maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Financial Responsibility

[Owner or operator] hereby certifies that it is in compliance with the requirements of 329 IAC 9-8.

The financial assurance mechanism(s) used to demonstrate financial responsibility under 329 IAC 9-8 is (are) as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage, and whether the mechanism covers "taking corrective action" or "compensating third parties for bodily injury

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and property damage caused by" or "taking corrective action and compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases".]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

(d) The owner or operator shall update the certification of financial responsibility whenever the financial assurance mechanism used to demonstrate financial responsibility changes. (*Solid Waste Management Division; 329 IAC 9-8-21; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3757; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-22 Drawing on financial assurance mechanisms

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 22. (a) Except as specified in subsection (d), the commissioner shall require the guarantor, surety, institution that issues a letter of credit, or owner or operator that obtains a certificate of deposit to place the amount of funds stipulated by the commissioner, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if either of the following occur:

(1) The conditions of clauses (A) and (B) are completed as follows:

(A) The owner or operator fails to establish alternate financial assurance within sixty (60) days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism.

(B) Either of the following occur:

(i) The commissioner determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator.

(ii) The owner or operator has notified the commissioner under 40 CFR 280.50, 329 IAC 9-4-4, or 329 IAC 9-5 of a release from an underground storage tank covered by the mechanism.

(2) The conditions of subsection (b)(1), (b)(2)(A), or (b)(2)(B) are satisfied.

(b) The commissioner may draw on a standby trust fund when either of the following occur:

(1) The commissioner makes a final determination that a release has occurred and immediate or long term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply under 40 CFR 280.50 through 40 CFR 280.52, 329 IAC 9-4-4, and 329 IAC 9-5, has not conducted corrective action as required under 329 IAC 9-5.

(2) The commissioner has received either of the following:

(A) Certification from the:

(i) owner or operator;

(ii) third party liability claimant;

(iii) attorney representing the owner or operator; and

(iv) attorney representing the third party liability claimant;

that a third party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as principals and as legal representatives of [owner or operator] and [insert name and address of third party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[_____].

[Signatures]

Owner or Operator

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Attorney for Owner or Operator

(Notary)

Date

[Signatures]

Claimant(s)

Attorney(s) for Claimant(s)

(Notary)

Date

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

(c) If the commissioner determines that the amount of corrective action costs and third party liability claims eligible for payment under subsection (b) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment must be corrective action costs necessary to protect human health and the environment. The commissioner shall direct payment of third party liability claims in the order in which the commissioner receives:

(1) certifications under subsection (b)(2)(A); and

(2) valid court orders under subsection (b)(2)(B).

(d) A governmental entity that acts as guarantor under section 16(e) of this rule, the local government guarantee without standby trust, shall make payments as directed by the commissioner under the circumstances described in this section. (*Solid Waste Management Division; 329 IAC 9-8-22; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3759; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 31, 2018, 9:57 a.m.: 20180620-IR-329180246ACA*)

329 IAC 9-8-23 Release from the requirements

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 23. An owner or operator is no longer required to maintain financial responsibility under this rule for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by 329 IAC 9-6. (*Solid Waste Management Division; 329 IAC 9-8-23; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3760; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-24 Bankruptcy or other incapacity of owner or operator or provider of financial assurance

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2

Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 24. (a) Within ten (10) days after commencement of a voluntary or involuntary proceeding under the bankruptcy laws of the United States (11 U.S.C. 101 et seq.) naming an owner or operator as debtor, the owner or operator shall:

(1) notify the commissioner by certified mail of such commencement; and

(2) submit the appropriate forms listed in section 21(b) of this rule documenting current financial responsibility.

(b) Within ten (10) days after commencement of a voluntary or involuntary proceeding under the bankruptcy laws of the United States (11 U.S.C. 101 et seq.) naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 7 or 11(c)(7) of this rule.

(c) Within ten (10) days after commencement of a voluntary or involuntary proceeding under the bankruptcy laws of the United States (11 U.S.C. 101 et seq.) naming a local government owner or operator as debtor, the local government owner or operator shall:

(1) notify the commissioner by certified mail of such commencement; and

(2) submit the appropriate forms listed in section 21(b) of this rule documenting current financial responsibility.

(d) Within ten (10) days after commencement of a voluntary or involuntary proceeding under the bankruptcy laws of the

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United States (11 U.S.C. 101 et seq.) naming a guarantor providing a local government financial assurance as debtor, such guarantor shall notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 16 of this rule.

(e) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance shall be deemed to be without the required financial assurance in the event of a:

- (1) bankruptcy or incapacity of its provider of financial assurance; or
- (2) suspension or revocation of the authority of the provider of financial assurance to issue a:
 - (A) guarantee;
 - (B) insurance policy;
 - (C) risk retention group coverage policy;
 - (D) surety bond;
 - (E) letter of credit; or
 - (F) certificate of deposit.

The owner or operator shall obtain alternate financial assurance as specified in this rule within thirty (30) days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within thirty (30) days after such notification, the owner shall notify the commissioner.

(f) Within thirty (30) days after receipt of notification that the excess liability trust fund under section 11 of this rule has become incapable of paying for assured corrective action or third party compensation costs, the owner or operator shall obtain alternate financial assurance. (*Solid Waste Management Division; 329 IAC 9-8-24; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3760; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

329 IAC 9-8-25 Replenishment of guarantees, letters of credit, surety bonds, or certificates of deposit

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-23-4-1; IC 13-23-4-2

Sec. 25. (a) If at any time after a standby trust is funded, upon the instruction of the commissioner, with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, surety bond, or certificate of deposit, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall, by the anniversary date of the financial mechanism from which the funds were drawn or within one hundred twenty (120) days after the reduction has occurred, whichever is sooner:

- (1) replenish the value of financial assurance to equal the full amount of coverage required; or
- (2) acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) As used in this section, "full amount of coverage required" means the amount of coverage to be provided by section 4 of this rule. If a combination of mechanisms is used to provide the assurance funds that are drawn upon, replenishment must occur by the earliest anniversary date among the mechanisms or within one hundred twenty (120) days after the reduction has occurred, whichever is sooner. (*Solid Waste Management Division; 329 IAC 9-8-25; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3760; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535*)

Rule 9. Underground Storage Tank Operator Training and Certification (Repealed)

(*Repealed by Solid Waste Management Division; filed May 29, 2018, 3:35 p.m.: 20180627-IR-329160204FRA*)

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