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Title 33
ENVIRONMENTAL QUALITY
Part XI. Underground Storage Tanks

Chapter 1. Program Applicability and Definitions

§101. Applicability

A. General. The requirements of these regulations apply to *underground storage tank (UST) systems* as defined in LAC 33:XI.103, except as otherwise provided in Subsections B and C of this Section.

B. Exclusions. The following UST systems are excluded from the requirements of these regulations. The owner or operator must provide documentation upon request for any exclusion claimed.

1. Any UST system holding hazardous wastes listed or identified in the Louisiana Department of Environmental Quality's Hazardous Waste Regulations or a mixture of such hazardous waste and other regulated substances is excluded from the requirements of these regulations.

2. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act is excluded from the requirements of these regulations.

3. Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks is excluded from the requirements of these regulations.

4. Any UST system whose capacity is 110 gallons or less is excluded from the requirements of these regulations.

5. Any UST system that has never contained more than a *de minimis* concentration of regulated substances is excluded from the requirements of these regulations.

6. Any emergency spill or overflow containment UST system that is expeditiously emptied after use is excluded from the requirements of these regulations.

C. Deferrals

1. All of the deferred UST systems listed in this Subsection must meet the requirements of LAC 33:XI.305.

2. The following categories of deferred tanks are exempted from the specified Chapters and Sections of these regulations.

a. LAC 33:XI.Chapters 3 (except for LAC 33:XI.305, which applies to all deferred UST systems) and 5, LAC 33:XI.701-713, and LAC 33:XI.Chapters 9 and 11 do not apply to any of the following types of UST systems:

i. wastewater treatment tank systems;

ii. any UST systems containing radioactive materials that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

iii. any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50, Appendix A;

iv. airport hydrant fuel distribution systems; and

v. UST systems with field-constructed tanks.

b. LAC 33:XI.701-705 does not apply to any UST system that stores fuel solely for use by emergency power generator UST systems installed prior to August 20, 2009. Emergency power generator UST systems installed or replaced on or after August 20, 2009, are subject to all requirements of LAC 33:XI, including the interstitial monitoring release detection requirements of LAC 33:XI.701-705.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:1467 (August 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:1492 (August 2009).

§103. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless specifically defined otherwise in LAC 33:XI.1105 or 1303.

Aboveground Release—any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

Act—the Louisiana Environmental Quality Act, R.S. 30:2001 et seq.

Administrative Authority—the Secretary of the Department of Environmental Quality or his designee or the appropriate assistant secretary or his designee.

Ancillary Equipment—any devices used to distribute, meter, or control the flow of regulated substances to and from a UST, including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps.

Belowground Release—any release to the subsurface of the land or to groundwater, including, but not limited to, releases from the belowground portions of a UST system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

Beneath the Surface of the Ground—beneath the ground surface or otherwise covered with earthen materials.

Cathodic Protection—a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

Cathodic Protection Tester—a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such a person must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

CERCLA—the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

Compatible—the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the UST system under conditions likely to be encountered by the UST system.

Connected Piping—all underground piping, including valves, elbows, joints, flanges, and flexible connectors, attached to a UST system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

Consumptive Use—with respect to heating oil, consumption that occurs on the premises.

Corrosion Expert—a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired through a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has provided evidence to the satisfaction of the administrative authority documenting certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

De Minimis Concentration—the concentration of a regulated substance below which no significant impact to human health or the environment would result if a release occurred, as determined by LAC 33:I.1307.

Department—the Department of Environmental Quality as created by R.S. 30:2001 et seq.

Dielectric Material—a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

Electrical Equipment—underground equipment that contains dielectric fluid necessary for the operation of equipment such as transformers and buried electrical cable.

Empty UST System—a UST system from which all materials have been removed using commonly employed practices so that no more than either 2.5 centimeters (1 inch) of residue or 0.3 percent by weight of the total capacity of the UST system, whichever is less, remains in the system.

Excavation Zone—the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is installed.

Existing UST System—an underground storage tank system used to contain an accumulation of regulated substances on or before December 22, 1988, or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

a. the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the UST system; and

b. either a continuous on-site physical construction or installation program has begun or the owner or operator has entered into contractual obligations, that cannot be cancelled or modified without substantial loss, or physical construction at the site or installation of the UST system to be completed within a reasonable time.

Farm Tank—a tank located on a tract of land devoted to the production of crops or raising of animals, including fish, and the associated residences and improvements. A *farm tank* must be located on the farm property. *Farm* includes fish hatcheries, rangelands, and nurseries with growing operations.

Flow-Through Process Tank—a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

Free Product—a regulated substance present as a nonaqueous phase liquid (e.g., a liquid not dissolved in water).

Gathering Lines—any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

Geologist—a person who is a graduate of an accredited institution of higher education who has successfully completed a minimum of 30 semester hours or 45 quarter hours of course work in the science of geology and has in his/her possession a minimum of a baccalaureate degree.

Hazardous Substance UST System—an underground storage tank system that contains a hazardous substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under the department's Hazardous Waste Regulations) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

Heating Oil—petroleum that is Number 1, Number 2, Number 4-light, Number 4-heavy, Number 5-light, Number 5-heavy, and Number 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

Hydraulic Lift Tank—a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

Install or *Installation*—the process of placing a UST system in the ground and preparing it to be put into service.

Liquid Trap—sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants) to collect oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

Maintenance—the normal operational upkeep undertaken to prevent a UST system from releasing product.

Motor Fuels—all grades of gasoline including but not limited to gasohol, Number 1 diesel, Number 2 diesel, kerosene, and all aviation fuels. Liquid petroleum (LP) gas shall not be included in this definition of motor fuels. This term shall include new and used motor oil that is used for lubricating engines of motor vehicles. If, however, used oil is determined to be a hazardous waste by the United States Environmental Protection Agency, used oil shall no longer be included in this term.

New UST System—an underground storage tank system that will be used to contain an accumulation of regulated substances and for which installation commenced after December 22, 1988 (see also *Existing UST System*).

Noncommercial Purposes—with respect to motor fuel, refers to purposes other than for resale.

On Staff—performing services while employed by a response action contractor, for an average of 20 or more hours per week. *On staff* does not refer to an independent contractor, but to an employee of the response action contractor.

On the Premises Where Stored—with respect to heating oil, refers to UST systems located on the same property where the stored heating oil is used.

Operational Life—the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under LAC 33:XI.Chapter 9.

Operator—any person in control of, or having responsibility for, the daily operation of the UST system.

Overfill Release—a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance into the environment.

Owner—

a. the *owner* of a UST is, for purposes of these regulations:

i. the current owner of the land under which the tank is or was buried;

ii. any legal owner of the tank;

iii. any known operator of the tank;

iv. any lessee;

v. any lessor;

b. if one person defined as an owner complies, it shall be deemed compliance by all persons defined as owners.

Permanent Closure—the process of removing and disposing of a UST system no longer in service, including the process of abandoning such a system in place through the use of prescribed techniques for the purging of vapors and the filling of the vessel with an inert material, the process of properly labeling a tank, and the process of collecting subsurface samples.

Person—an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. *Person* also includes a consortium, a joint venture, a commercial entity, and the United States government.

Petroleum UST System—an underground storage tank system that contains petroleum or a mixture of petroleum with *de minimis* quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

Pipe or *Piping*—a hollow cylinder or tubular conduit that is constructed of non-earthen materials and that routinely contains and conveys regulated substances from a UST to a dispenser or other end-use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the UST to the dispenser. This definition does not include vent, vapor recovery, or fill lines.

Pipeline Facilities (including gathering lines)—new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

Registered Tank—a UST for which an owner/operator has filed the required UST registration forms (UST-REG-01 and 02) with the department.

Regulated Substance—

a. any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under the department's Hazardous Waste Regulations); and

b. petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60° Fahrenheit and 14.7 pounds per square inch absolute). The term *regulated substance* includes, but is not limited to, petroleum and petroleum-based substances comprising a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

Release—any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a UST system. Releases into the air will be governed by LAC 33:Part III and LAC 33.I.Chapter 39.

Release Detection—determining whether a release of a regulated substance has occurred from a UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

Repair—to restore a tank or component of a UST system that has caused or threatens to cause a release of product from the UST system.

Replace or *Replacement*—to remove an existing UST and install a new UST in substantially the same location as the removed tank, or to remove and replace 25 percent or more of piping associated with a single UST.

Residential Tank—a tank located on property used primarily for dwelling purposes.

Response Action—any technical services activity or specialized services activity, including but not limited to, assessment, planning, design, engineering, construction, operation of a recovery system, or ancillary services, that is carried out in response to any discharge or release or threatened release of motor fuels into the groundwater, surface waters, or subsurface soils.

Response Action Contractor—a person who has been approved by the department and is carrying out any response action, excluding a person retained or hired by such person to provide specialized services relating to a response action. When emergency conditions exist as a result of a release from a motor fuels underground storage tank, this term shall include any person performing department-approved emergency response actions during the first 72 hours following the release.

SARA—the Superfund Amendments and Reauthorization Act of 1986.

Secondary Containment—a containment system that utilizes an outer or secondary container or impervious liner designed to prevent releases of regulated substances from the primary container from reaching the surrounding environment for a time sufficient to allow for detection and control of the released product. Such systems include, but are not limited to, double-wall tanks and piping, jacketed tanks and piping that have an interstitial space that allows for interstitial monitoring, and any other such system approved by the department prior to installation.

Septic Tank—a covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such a receptacle is distributed for disposal through the soil, and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

Specialized Services—response action activities associated with the preparation of a reimbursement application, laboratory analyses, or any construction activity, construction of trenches, excavations, installing monitoring wells, conducting borings, heavy equipment work, surveying, plumbing, and electrical work that are carried out by a subcontractor hired or retained by a response action contractor in response to a discharge or release or threatened release of motor fuels into the groundwater or subsurface soils.

Storm-Water or *Wastewater Collection System*—piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water runoff resulting from precipitation or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm-water and wastewater does not include treatment, except where incidental to conveyance.

Surface Impoundment—a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with synthetic materials) that is not an injection well.

Tank—a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

Technical Services—activities performed by a *response action contractor*, including but not limited to, oversight of all assessment field activities; all reporting, planning, and development of corrective action plans and designing of remedial activities; performance of groundwater monitoring and discharge monitoring; performance of operation and maintenance of remedial systems; and oversight of specialized services performed by a subcontractor.

Temporary Closure—the temporary removal from service of a UST.

Under-Dispenser Containment—a containment system beneath a dispenser designed to prevent releases of regulated substances from the dispenser or contained piping from reaching the surrounding environment for a time sufficient to allow for detection and control of the released product. Such containment must be liquid-tight on its sides, bottom, and at any penetrations, and must allow for visual inspection and access to the components in the containment system or be regularly monitored.

Underground Area—an underground room, such as a basement, cellar, shaft, or vault, providing enough space for physical inspection of the exterior of a tank situated on or above the surface of the floor.

Underground Release—any belowground release.

Underground Storage Tank or *UST*—any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. *Underground storage tank* or *UST* does not refer to any of the tanks listed in Paragraphs a-j of this definition, nor does it refer to any pipes connected to any of these tanks:

a. farm or residential tanks that have a capacity of 1,100 gallons or less and that are used for storing motor fuel for noncommercial purposes;

b. tanks used for storing heating oil except heating oils blended with hazardous waste for consumptive use on the premises where stored;

c. septic tanks;

d. pipeline facilities (including gathering lines) regulated under:

i. the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.); or

ii. the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.);

e. intrastate pipeline facilities regulated under state laws comparable to the provisions of the laws referred to in Clauses d.i and ii of this definition;

f. surface impoundments, pits, ponds, or lagoons;

g. storm-water or wastewater collection systems;

h. flow-through process tanks;

i. liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or

j. storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

Underground Storage Tank System or *UST System* or *Tank System*—an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

Upgrade—the addition or retrofit of some systems, such as cathodic protection, lining, or spill and overfill controls, to improve the ability of an underground storage tank system to prevent the release of product.

Wastewater Treatment Tank—a tank designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 27:520 (April 2001), amended by the Office of Environmental Assessment, LR 31:1065 (May 2005), LR 31:1577 (July 2005), repromulgated LR 31:2002 (August 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2115 (October 2008).

Chapter 3. Registration Requirements, Standards, and Fee Schedule

§301. Registration Requirements

A. Existing UST Systems

1. All owners of *existing UST systems* (as defined in LAC 33:XI.103) were required to register such systems by May 8, 1986, (USTs installed after that date were required to be registered within 30 days of bringing such tanks into use) on a form approved by the department. Tanks filled with a solid, inert material before January 1, 1974, are not required to be registered with the department.

2. Owners of underground storage tanks taken out of service on or after January 1, 1974, unless the owner or operator knows the tank was subsequently removed from the ground, were required to notify the department of the existence of such tanks on or before May 8, 1986, on a form approved by the department. Owners and operators who have not complied with this requirement shall use the department's approved registration form, specifying at a minimum, to the extent known by the owner or operator, the date the tank was taken out of operation, the location of the tank, the capacity, type of construction, age of the UST system, the type of regulated substance stored in the tank, and the quantity of regulated substances left stored in the tank on the date the tank was taken out of operation, as well as other pertinent information required on the form.

3. All existing UST systems previously registered with the department shall be considered to be in compliance with this requirement if the information on file with the department is current and accurate. Maintaining current and accurate information with the department includes notifying

the Office of Environmental Assessment of changes in ownership, or of changes in UST system descriptions resulting from upgrading, by filing an amended registration form within 30 days of the change in ownership or in description of the UST system.

B. New UST Systems. Upon the effective date of these regulations, all owners of new *UST systems* (as defined in LAC 33:XI.103) must, at least 30 days before bringing such tanks into use, register them on an *Underground Storage Tank Registration Form* (UST-REG-01). Registration forms shall be filed with the Office of Environmental Assessment. The following registration requirements apply to new UST systems.

1. All owners of new UST systems must certify, in the space provided on the department's approved registration form, compliance with the following requirements:

a. tank and piping installation in accordance with LAC 33:XI.303.D.6, including secondary containment of new and replacement tanks and/or piping, under-dispenser containment, and submersible pump containment;

b. cathodic protection of steel tanks and piping in accordance with LAC 33:XI.303.D.1-2;

c. financial responsibility requirements under LAC 33:XI.Chapter 11; and

d. release detection requirements under LAC 33:XI.703.A-C.

2. All owners of new UST systems must ensure that the installer certifies on the registration form that the methods used to install the tanks and piping comply with the requirements of LAC 33:XI.303.D.6.a. Beginning January 20, 1992, registration forms shall include the name and department-issued certificate number of the individual exercising supervisory control over *installation-critical junctures* (as defined in LAC 33:XI.1303) of a UST system.

C. All UST system owners or operators shall comply with the following requirements.

1. Any person who sells a UST system shall so notify the Office of Environmental Assessment in writing within 30 days after the date of the transaction. A person selling a UST must also notify the person acquiring a regulated UST system of the owner's registration obligations under this Section.

2. Any person who acquires a UST system shall submit to the Office of Environmental Assessment an amended registration form within 30 days after the date of acquisition.

3. A current copy of the registration form must be kept on-site or at the nearest staffed facility.

4. No owner or operator shall allow a regulated substance to be placed into a new UST system that has not been registered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:727 (July 1992), LR 20:294 (March 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002), amended by the Office of Environmental Assessment, LR 31:1066 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), repromulgated LR 32:393 (March 2006), amended LR 32:1852 (October 2006), LR 33:2171 (October 2007), LR 34:2116 (October 2008).

§303. Standards for UST Systems

A. LAC 33:XI.599.Appendix A lists codes of practice developed by nationally-recognized associations or independent testing laboratories that shall be used to comply with these regulations.

B. New UST Systems Near Active or Abandoned Water Wells. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all new UST systems installed within 50 feet of an active or abandoned water well must meet the requirements of LAC 33:XI.703.C.2.

C. Standards for UST Systems Installed After December 20, 2008. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all UST systems installed after December 20, 2008, located more than 50 feet from an active or abandoned water well shall have secondary containment in accordance with Subsection D of this Section.

1. If a single-walled UST is placed in the ground at the location where it is to be put into service prior to December 20, 2008, the UST owner is allowed 90 days (until March 20, 2009) to complete the UST system installation without having to comply with the secondary containment requirements in Subsection D of this Section.

2. The department may grant an extension to these dates only in the event that the UST or UST system installation is delayed due to adverse weather conditions or other unforeseen, unavoidable circumstances. A written contract alone does not qualify as an unforeseen, unavoidable circumstance. In order to obtain an extension, the UST owner must submit a written request to the Office of Environmental Assessment, describing the circumstances that have caused the installation delay.

D. All new UST systems shall comply with the following standards.

1. Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion in accordance with Subsection A of this Section and as described below:

a. the tank is constructed of fiberglass-reinforced plastic; or

b. the tank is constructed of metal and cathodically protected in the following manner:

i. the tank is coated with a suitable dielectric material;

ii. field-installed cathodic protection systems are designed by a corrosion expert;

iii. impressed current systems are designed to allow determination of current operating status as required in LAC 33:XI.503.A.3; and

iv. cathodic protection systems are operated and maintained in accordance with LAC 33:XI.503 or according to guidelines established by the department; or

c. the tank is constructed of a metal-fiberglass-reinforced-plastic composite; or

d. the tank is constructed of metal without additional corrosion protection measures, provided that:

i. the tank is installed at a site that a corrosion expert determines will not be corrosive enough to cause the tank to have a release due to corrosion during its operating life; and

ii. owners and operators maintain records that demonstrate compliance with the requirements of Clause D.1.d.i of this Section for the remaining life of the tank; or

e. the tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the constructions listed in Subparagraphs D.1.a-d and f of this Section; and

f. for any UST system that is installed or replaced after December 20, 2008, along with meeting the requirements of Subparagraphs D.1.a-e of this Section, the tank employs *secondary containment*, as defined in LAC 33:XI.103, as follows:

i. it is an accepted UST design as described in Subparagraphs D.1.a-e of this Section, is of double-walled or jacketed construction in accordance with Subsection A of this Section, is capable of containing a release from the inner wall of the tank, and is designed with release detection in accordance with LAC 33:XI.701.A.6.a; or

ii. it is some other secondarily-contained tank system approved by the department prior to installation.

2. Piping. Piping on new UST systems that routinely contains regulated substances and is in contact with the ground or water must be properly designed, constructed, and protected from corrosion in accordance with Subsection A of this Section and as described below:

a. the piping is constructed of fiberglass-reinforced plastic; or

b. the piping is constructed of metal and cathodically protected in the following manner:

i. the piping is coated with a suitable dielectric material;

ii. field-installed cathodic protection systems are designed by a corrosion expert;

iii. impressed current systems are designed to allow determination of current operating status as required in LAC 33:XI.503.A.3; and

iv. cathodic protection systems are operated and maintained in accordance with LAC 33:XI.503 or guidelines established by the department; or

c. the piping is constructed of metal without additional corrosion protection measures, provided that:

i. the piping is installed at a site that a corrosion expert determines is not corrosive enough to cause the piping to have a release due to corrosion during its operating life; and

ii. owners and operators maintain records that demonstrate compliance with the requirements of Clause D.2.c.i of this Section for the remaining life of the piping; or

d. the piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in Subparagraphs D.2.a-c, e, and f of this Section; or

e. the piping is of double-walled non-metallic flexible or semi-rigid construction;

f. if piping connected to a UST is installed or replaced after December 20, 2008, along with meeting the requirements of Subparagraphs D.2.a-e of this Section, the piping employs *secondary containment*, as defined in LAC 33:XI.103, as follows:

i. any of the accepted piping designs listed in Subparagraphs D.2.a-e of this Section shall be fabricated with double-walled or jacketed construction in accordance with Subsection A of this Section, shall be capable of containing a release from the inner wall of the piping, and shall be designed with release detection in accordance with LAC 33:XI.701.B.4; or

ii. the piping system shall have some other form of secondary containment system approved by the department prior to installation; and

g. if 25 percent or more of the piping to any one UST is replaced after December 20, 2008, it shall comply with Clause D.2.f.i or ii of this Section. If a new motor fuel dispenser is installed at an existing UST facility and new piping is added to the UST system to connect the new dispenser to the existing system, then the new piping shall comply with Clause D.2.f.i or ii of this Section. Suction piping that meets the requirements of LAC 33:XI.703.B.2.b.i-v and suction piping that manifolds two or more tanks together are not required to meet the secondary containment requirements outlined in this Paragraph.

3. Spill and Overfill Prevention Equipment

a. Except as provided in Subparagraph D.3.b of this Section, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use:

i. spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket). Spill buckets shall have liquid-tight sides and bottoms and be maintained free of regulated substances. Regulated substances spilled into any spill bucket shall be immediately removed by the UST owner and/or operator or the bulk fuel distributor. The presence of greater than one inch of regulated substances in a spill bucket is a violation of this Section and may result in issuance of an enforcement action to the UST owner and/or operator and the bulk fuel distributor, common carrier, or transporter; and

ii. overfill prevention equipment that will:

(a). automatically shut off flow into the tank when the tank is no more than 95 percent full;

(b). alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

(c). restrict flow 30 minutes prior to overfilling, or alert the operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings on top of the tank are exposed to product because of overfilling.

b. Owners and operators are not required to use the spill and overfill prevention equipment specified in Subparagraph D.3.a of this Section if:

i. alternative equipment is used that the department determines is no less protective of human health and the environment than the equipment specified in Clause D.3.a.i or ii of this Section; or

ii. the UST system is filled by transfers of no more than 25 gallons at one time.

4. Under-Dispenser Secondary Containment. After December 20, 2008, under-dispenser containment sumps:

a. are required under the following conditions:

i. in any installation of a new dispenser at a new facility;

ii. in any installation of a new dispenser at an existing facility where new piping is added to the UST system to connect the new dispenser to the existing system;

iii. in any installation of a replacement dispenser at an existing facility where the piping that connects the dispenser to the existing piping is replaced, including replacing the metal flexible connector, riser, or other transitional components that are beneath the dispenser and the impact shear valve and that connect the dispenser to the piping. Replacing an existing dispenser where no piping and none of the piping that connects the dispenser to the existing piping are replaced does not require the addition of an under-dispenser containment sump; and

b. shall have liquid-tight sides and bottoms and be maintained free of storm water and debris. Regulated substances spilled into any under-dispenser containment sump shall be immediately removed upon discovery to the maximum extent practicable.

5. Submersible Turbine Pump (STP) Secondary Containment. After December 20, 2008, secondary containment for submersible pumps:

a. is required under the following conditions:

i. in any installation of a new STP at a new facility;

ii. in any installation of an STP (the entire STP, STP housing, and riser pipe) at an existing facility where new piping is added to the UST system to connect the new STP to the existing system;

iii. in any installation of a replacement STP (the entire STP, STP housing, and riser pipe) at an existing facility where the piping that connects the STP to the existing piping is replaced. Replacing the metal flexible connector with a single-walled flexible connector requires the addition of a containment sump. Replacing the metal flexible connector with a double-walled flexible connector does not require the addition of a containment sump as long as the newly-installed STP is secondarily contained, and replacing an existing STP where no piping is replaced does not require the addition of STP secondary containment; and

b. can consist of either a built-in secondary containment system or a STP containment sump. STP containment sumps installed after December 20, 2008, shall have liquid-tight sides and bottoms and be maintained free of storm water and debris. Regulated substances spilled into any STP containment sump shall be immediately removed upon discovery to the maximum extent practicable.

6. Installation Procedures

a. Installation. All tanks and piping must be installed in accordance with Subsection A of this Section and in accordance with the manufacturer's instructions.

b. Certification of Installation and Verification of Installer Certification

i. From the date of promulgation of these regulations until January 20, 1992, owners and operators must certify installations as follows. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with Subparagraph D.6.a of this Section by providing a certification of compliance on the UST registration form (UST-REG-02) in accordance with LAC 33:XI.301:

(a). the installer has been certified by the tank and piping manufacturers; or

(b). the installation has been inspected and certified by a professional engineer with education and experience in UST system installation; or

(c). the installation has been inspected and approved by the department; or

(d). all work listed in the manufacturer's installation checklists has been completed; or

(e). the owner and operator have complied with another method for ensuring compliance with Subparagraph D.6.a of this Section that is determined by the department to be no less protective of human health and the environment.

ii. Beginning January 20, 1992, all owners and operators must ensure that the individual exercising supervisory control over *installation critical-junctures* (as defined in LAC 33:XI.1303) of a UST system is certified in accordance with LAC 33:XI.Chapter 13. To demonstrate compliance with Subparagraph D.6.a of this Section, all owners and operators must provide a certification of compliance on the UST Registration of Technical Requirements Form (UST-REG-02) within 60 days of the introduction of any regulated substance. Forms shall be filed with the Office of Environmental Assessment.

c. Notification of Installation. The owner and operator must notify the Office of Environmental Assessment in writing at least 30 days before beginning installation of a UST system by:

i. completing the Installation, Renovation and Upgrade Notification Form (UST-ENF-04);

ii. notifying the appropriate regional office of the Office of Environmental Assessment by mail or fax seven days prior to commencing the installation and before commencing any *installation-critical juncture* (as defined in LAC 33:XI:1303);

iii. including in the notification a statement of the number of active or abandoned water wells within 50 feet of the UST system and the type of system to be installed; and

iv. including in the notification the methods to be used to comply with LAC 33:XI.Chapter 7.

E. Upgrading Existing UST Systems to New System Standards

1. Not later than December 22, 1998, all existing UST systems must comply with one of the following sets of requirements:

a. new UST system performance standards under Subsection D of this Section; or

b. the upgrading requirements in Paragraphs E.3-6 of this Section.

2. After December 22, 1998, all existing UST systems not meeting the requirements of Paragraph E.1 of this Section must comply with closure requirements under LAC 33:XI.Chapter 9, including applicable requirements for corrective action under LAC 33:XI.715.

3. Tank Upgrading Requirements. Metal tanks must be upgraded in accordance with Subsection A of this Section and meet one of the following requirements.

a. Internal Lining. A tank may be upgraded by internal lining if:

i. the lining is installed in accordance with the requirements of LAC 33:XI.507; and

ii. within 10 years after lining, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

b. Cathodic Protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of Clauses D.1.b.ii, iii, and iv of this Section, and the integrity of the tank is ensured using one of the following methods.

i. The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes before the cathodic protection system is installed.

ii. The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with LAC 33:XI.701.A.4-8.

iii. The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of LAC 33:XI.701.A.3. The first tightness test must be conducted before the cathodic protection system is installed. The second tightness test must be conducted between three and six months after the first operation of the cathodic protection system.

iv. The tank is assessed for corrosion holes by a method that is determined by the department to prevent releases in a manner that is no less protective of human health and the environment than the methods specified in Clauses E.3.b.i-iii of this Section.

v. All procedures used to upgrade existing UST systems by cathodic protection shall be conducted in accordance with applicable requirements of the Louisiana Department of Transportation and Development, or its successor agency.

c. Internal Lining Combined with Cathodic Protection. A tank may be upgraded by both internal lining and cathodic protection if:

i. the lining is installed in accordance with the requirements of LAC 33:XI.507; and

ii. the cathodic protection system meets the requirements of Clauses D.1.b.ii, iii, and iv of this Section.

4. Piping Upgrading Requirements. Metal piping that routinely contains regulated substances and is in contact with the ground or water must be cathodically protected and

must meet the requirements of Clauses D.2.b.ii, iii, and iv of this Section.

5. Spill and Overfill Prevention Equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with the requirements for spill and overfill prevention equipment for new UST systems specified in Paragraph D.3 of this Section.

6. Reporting Requirements

a. The owner and operator must notify the Office of Environmental Assessment in writing at least 30 days before beginning a UST system upgrade.

b. An amended registration form (UST-REG-02) must be submitted to the Office of Environmental Assessment within 30 days after the UST system is upgraded. The owner and operator must certify compliance with Subsection C of this Section on the amended registration form (UST-REG-02). Beginning January 20, 1992, the amended registration forms (UST-REG-01 and 02) shall include the name and department-issued certificate number of the individual exercising supervisory control over those steps in the upgrade that involve repair-critical junctures or installation-critical junctures (as defined in LAC 33:XI.1303) of a UST system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:728 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002), amended by the Office of Environmental Assessment, LR 31:1066 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), LR 33:2171 (October 2007), LR 34:2116 (October 2008), LR 35:1493 (August 2009).

§305. Interim Prohibitions for Deferred UST Systems

A. The requirements in this Section apply to all UST systems deferred under LAC 33:XI.101.C.

B. No person may install a UST system listed in LAC 33:XI.101.C for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction) meets the following requirements.

1. The UST system will prevent releases due to corrosion or structural failure for the operational life of the UST system.

2. The UST system is cathodically protected against corrosion, is constructed of noncorrodible material or of metal clad with a noncorrodible material, or is designed in a manner to prevent the release or threatened release of any stored substance.

3. The UST system is constructed or lined with material that is compatible with the stored substance.

C. Notwithstanding Subsection B of this Section, a UST system without corrosion protection may be installed at a site that a corrosion expert determines is not corrosive enough to cause the UST system to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this Subsection for the remaining life of the tank.

D. LAC 33:XI.599.Appendix A lists codes of practice developed by nationally-recognized associations or independent testing laboratories that shall be used to comply with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1069 (May 2005).

§307. Fee Schedule

A. Applicability. These regulations apply to registered UST systems, regardless of their operational status.

B. Annual Fees

1. Fees are assessed according to the following schedule.

Fee Number	Annual Registration Fee	Amount
001	All registered UST systems	$54
	Annual Maintenance and Monitoring Fees	
002	UST systems containing any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under the department's Hazardous Waste Regulations, LAC 33:V.Subpart 1)	$660
003	UST systems at federal facilities (all categories except USTs defined in Fee Number 002, which shall be assessed the higher fee)	$158
004	UST systems containing petroleum products not meeting the definition of motor fuels	$158
005	UST systems containing new or used motor oil (except USTs identified in LAC 33:XI.1101.C and D)	$275

2. Fee payment shall be made by check, draft, or money order payable to the Department of Environmental Quality and mailed to the department at the address provided on the invoice.

3. Fees shall be assessed for the state of Louisiana fiscal year (July 1 through June 30).

4. Any UST system shall be assessed the entire annual monitoring and maintenance fee for the fiscal year in which it is installed or permanently closed, regardless of the date during that year on which such action occurs.

5. The owner of record of the UST system on the date of invoicing by the department is responsible for payment of the annual monitoring and maintenance fees.

C. Late Payment Fee. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a 5 percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee.

D. Failure to Pay. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, shall constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001, 2014, 2195, and 2195.3 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), LR 25:427 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2400 (December 1999), LR 29:690 (May 2003), LR 29:2052 (October 2003).

Chapter 4. 2005 Federal Underground Storage Tank Compliance Act Mandated Requirements

§401. Purpose

A. This Chapter implements requirements mandated by the Underground Storage Tank Compliance Act, 42 U.S.C. 6991.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1867 (September 2007).

§403. Delivery Prohibition of Regulated Substances to Underground Storage Tank Systems

A. Underground storage tank (UST) systems, except for those systems deferred or exempted from specified Chapters and Sections of these regulations in accordance with LAC 33:XI.101.C, that do not meet any one of the following requirements, upon discovery by the department, shall be subject to the status of red tag/delivery prohibition of regulated substances:

1. installation of spill prevention equipment in accordance with LAC 33:XI.Chapter 3;

2. installation of overfill protection equipment in accordance with LAC 33:XI.Chapter 3;

3. establishment of release detection methods or installation of release detection equipment in accordance with LAC 33:XI.Chapter 7;

4. installation of corrosion protection equipment in accordance with LAC 33:XI.Chapter 3;

5. compliance with LAC 33:XI.301.C.4; or

6. upon evidence of a below-surface release from an UST system, initiation by the owner/operator of release investigation and confirmation steps in accordance with LAC 33:XI.711, or compliance with the release response and corrective action requirements in LAC 33:XI.715.

B. Noncompliance with these regulations as listed in this Subsection shall result in a red tag/delivery prohibition of regulated substances if response action is not taken by the owner/operator within 30 days of receipt of written notification by the department to the owner/operator. Response action will be considered as taken if the owner/operator has contracted and scheduled the action to take place within those 30 days and the response action has been initiated within 60 days of receipt of the written notification. The forms of noncompliance are:

1. failure to properly operate and/or maintain release detection equipment in accordance with LAC 33:XI.Chapter 7. Failure to provide records, within 10 days of request by the department, showing proper operation and/or maintenance of release detection equipment shall be considered a failure to properly operate and/or maintain the release detection equipment;

2. failure to properly operate and/or maintain spill, overfill, or corrosion protection equipment in accordance with LAC 33:XI.Chapter 5. Failure to provide records, within 10 days of request by the department, showing the type of spill, overfill, or corrosion protection equipment installed and the proper operation and/or maintenance of spill, overfill, or corrosion protection equipment shall be considered a failure to properly operate and/or maintain the spill, overfill, or corrosion protection equipment;

3. failure to maintain financial responsibility in accordance with LAC 33:XI.Chapter 11;

4. failure to protect from corrosion buried metal piping and/or components that routinely contain regulated substances in accordance with LAC 33:XI.303.D.2 and E.4. Failure to produce records, within 10 days of request by the department, showing procedures and/or practices designed to protect from corrosion buried metal piping and/or components that routinely contain regulated substances shall be considered a failure to protect from corrosion buried

metal piping and/or components that routinely contain regulated substances.

C. It shall be unlawful for any person to place, or allow the placement of, a regulated substance into an UST that the department has red tagged/prohibited from delivery of regulated substances under Subsection A or B of this Section. The department may use its discretion in determining whether a non-delivery due to a red tag/delivery prohibition of regulated substances may jeopardize the availability of, or access to, motor fuel in remote areas of the state or in cases where an emergency declaration is in effect. When the department determines that red tagging/delivery prohibition will jeopardize the availability of, or access, to regulated substances, specifically motor fuels, in remote areas or in cases of an emergency declaration, it may allow for continued delivery of regulated substances, for up to 180 days, to an UST that has failed to have equipment required under Subsection A of this Section installed or that has been deemed noncompliant by the department under Subsection B of this Section.

D. The department shall provide adequate notice to UST system owners/operators and regulated substance deliverers that an UST has been determined to be ineligible for delivery, deposit, or acceptance of a regulated substance. Placing or allowing placement of a regulated substance into an UST determined ineligible for delivery, deposit, or acceptance of a regulated substance constitutes a violation of this Section.

E. The owner/operator of an UST that has been determined to be ineligible for delivery, deposit, or acceptance of a regulated substance must make the necessary system repairs or upgrades, or remedy any form of noncompliance, and must be cleared of the red tag/delivery prohibition in writing by the department, or a person authorized by the department, in order to be removed from the red tag listing and be deemed eligible for delivery of regulated substances. The department, or a person authorized by the department, shall remove the red tag/delivery prohibition status for an UST system within two working days after compliance and/or upgrade or repair has been demonstrated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1867 (September 2007), amended LR 34:2119 (October 2008).

Chapter 5. General Operating Requirements

§501. Spill and Overfill Control

A. LAC 33:XI.599.Appendix A lists codes of practice developed by nationally-recognized associations or independent testing laboratories that shall be used to comply with these regulations.

B. Owners and operators must ensure that releases due to spilling or overfilling do not occur. Before a transfer is made, the owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank and that the transfer operation is monitored constantly to prevent overfilling and spilling. Spill and overfill controls shall be conducted in accordance with Subsection A of this Section.

C. Owners and operators must report, investigate, and clean up any spills and overfills, in accordance with LAC 33:XI.713.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1069 (May 2005).

§503. Operation and Maintenance of Corrosion Protection

A. All owners and operators of metal UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances.

1. All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of external portions of the tank and piping that routinely contain regulated substances and are in contact with the ground or water.

2. All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements.

a. Frequency. All cathodic protection systems must be tested within six months after installation and at least every three years thereafter.

b. Inspection Criteria. The criteria used to determine whether cathodic protection is adequate as required by this Section must be in accordance with LAC 33:XI.501.A.

3. UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure that the equipment is running properly.

B. For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained (in accordance with LAC 33:XI.509) to demonstrate compliance with the performance standards in this Section. These records must provide the following:

1. the results of the last three years of inspections required in Paragraph A.3 of this Section; and

2. the results of testing from the last two inspections required in Paragraph A.2 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1069 (May 2005).

§505. Compatibility

A. Owners and operators must use a UST system made of or lined with materials that are compatible with the substance stored in the UST system.

B. Owners and operators storing alcohol blends shall do so in accordance with LAC 33:XI.501.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1070 (May 2005).

§507. Repairs Allowed

A. Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements.

1. Except in emergencies, the owner and operator shall notify the Office of Environmental Assessment in advance of the necessity for conducting a repair to a UST system.

2. Repairs to UST systems must be properly conducted in accordance with LAC 33:XI.501.A. Beginning January 20, 1992, all owners and operators must ensure that the individual exercising supervisory control over *repair-critical junctures* (as defined in LAC 33:XI.1303) is certified in accordance with LAC 33:XI.Chapter 13.

3. Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with LAC 33:XI.501.A.

4. Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings must be repaired or replaced in accordance with the manufacturer's specifications.

5. Repaired tanks and piping must be tightness tested in accordance with LAC 33:XI.701.A.3 and B.2 within 30 days after the date that the repair is completed, except under the following circumstances:

a. the repaired tank is internally inspected in accordance with LAC 33:XI.501.A; or

b. the repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in LAC 33:XI.701.A.4-8; or

c. another test method is used that has been given prior approval by the department after it determined the method to be no less protective of human health and the environment than those listed above.

6. Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with LAC 33:XI.503.A.2 and 3 to ensure that it is operating properly.

7. After December 20, 2008, if any piping repair or replacement impacts 25 percent or more of the UST piping in the repaired piping run, that entire piping run shall be upgraded with secondary containment and meet the requirements of LAC 33:XI.303.D.2 and 701.B.4.

B. Owners and operators of UST systems must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), amended by the Office of Environmental Assessment, LR 31:1070 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007), LR 34:2119 (October 2008).

§509. Reporting and Recordkeeping

A. Reporting. Owners and operators must submit the following information to the department:

1. registration forms (UST-REG-01 and 02) for all UST systems (LAC 33:XI.301), including certification of installation and verification of installer certification for new UST systems, in accordance with LAC 33:XI.303.D.6.b;

2. reports of all releases, including suspected releases (LAC 33:XI.707), spills and overfills (LAC 33:XI.713), and confirmed releases (LAC 33:XI.715.B);

3. descriptions of corrective actions planned or taken, including initial abatement measures (LAC 33:XI.715.C), initial site characterization (LAC 33:XI.715.D), free product removal (LAC 33:XI.715.E), investigation of soil and groundwater cleanup (LAC 33:XI.715.F), and corrective action plan (LAC 33:XI.715.G);

4. notification before permanent closure or change-in-service (LAC 33:XI.905); and

5. results of the site investigation conducted at permanent closure (LAC 33:XI.907).

B. Recordkeeping. Owners and operators must maintain the following information:

1. a corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (LAC 33:XI.303.D.1.d and D.2.c);

2. documentation of operation of corrosion protection equipment (LAC 33:XI.503.B);

3. documentation of UST system repairs (LAC 33:XI.507.B);

4. documentation of recent compliance with release detection requirements (LAC 33:XI.705);

5. copies of the most current registration forms (UST-REG-01 and 02) filed with the department;

6. documentation of the type and construction of the tank, piping, leak detection equipment, corrosion protection equipment, and spill and overfill protection equipment currently in use at the site; and

7. documentation of permanent closure, where applicable.

C. Availability and Maintenance of Records. Owners and operators must either keep the records required at the UST site and immediately available for the department's inspection, or keep them at a readily available alternative site and provide them to the department for inspection upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 18:728 (July 1992), amended by the Office of Environmental Assessment, LR 31:1070 (May 2005), repromulgated by the Office of the Secretary, Legal Affairs Division, LR 32:393 (March 2006), amended LR 34:2119 (October 2008).

§599. Appendix A—Industry Codes and Standards

Appendix A—Industry Codes and Standards*	
Publication Company	**Codes and Standards**
API Standards	
API—American Petroleum Institute, 1220 L Street, N.W., Washington, DC 20005	API Recommended Practice 1007, "Loading and Unloading of MC306/DOT 406 Cargo Tank Motor Vehicles"
	API Recommended Practice 1604, "Closure of Underground Petroleum Storage Tanks"
	API Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems"
	API Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets"
	API Recommended Practice 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"
	API Recommended Practice 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations"
	API Publication 1628, "A Guide to the Assessment and Remediation of Underground Petroleum Releases"
	API Publication 1629, "Guide for Assessing and Remediating Petroleum Hydrocarbons in Soils"
	API Recommended Practice 1631, "Interior Lining of Underground Storage Tanks"
	API Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"
	"API Recommended Practice 1635, Management of Underground Petroleum Storage Systems at Marketing and Distribution Facilities" [*final edition, now out of print*]
	API Recommended Practice 2003, "Protection Against Ignitions Arising Out of Static, Lightning, and Stray Currents"
	API Publication 2005, "Service Station Safety"
	API Standard 2610, "Design, Construction, Operation, Maintenance, and Inspection of Terminal & Tank Facilities"
ASTM Standards	
ASTM (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West, Conshohocken, PA 19428-2959	ASTM E 1430, "Standard Guide for Using Release Detection Devices with Underground Storage Tanks"
	ASTM E 1526, "Standard Practice for Evaluating the Performance of Release Detection Systems for Underground Storage Tank Systems"
	ASTM E 1599, "Standard Guide for Corrective Action for Petroleum Releases"
	ASTM E 1739, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites"
	ASTM E 1912, "Standard Guide for Accelerated Site Characterization for Confirmed or Suspected Petroleum Releases"
	ASTM E 1943, "Standard Guide for Remediation of Ground Water by Natural Attenuation at Petroleum Release Sites"
	ASTM E 1990, "Standard Guide for Performing Evaluations of Underground Storage Tank Systems for Operational Conformance with 40 CFR, Part 280 Regulations"
FTPI Standards	
FTPI—Fiberglass Tank and Pipe Institute, 11150 S. Wilcrest Drive, Suite 101, Houston, TX 77099-4343	FPTPI Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Underground Storage Tanks"
KWA Standards	
KWA—Ken Wilcox Associates, Inc., 1125 Valley Ridge Drive, Grain Valley, MO 64029	KWA, "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera"
NACE Standards	
NACE International (formerly the National Association of Corrosion Engineers), Box 218340, Houston, TX 77218-8340	NACE Standard RP 0169, "Recommended Practice: Control of External Corrosion on Underground or Submerged Metallic Piping Systems"
	NACE Standard RP 0177, "Recommended Practice: Mitigation of Alternating Current and Lightning Effects on Metallic Structures and Corrosion Control Systems"
	NACE Standard RP 0178, "Recommended Practice: Design, Fabrication, and Surface Finish of Metal Tanks and Vessels to be Lined for Chemical Immersion Service"
	NACE Standard RP-0184, "Recommended Practice: Repair of Lining Systems"
	NACE Standard RP 0285, "Recommended Practice: Corrosion Control of Underground Storage Tank Systems by

Appendix A—Industry Codes and Standards*	
Publication Company	**Codes and Standards**
	Cathodic Protection"
	NACE Standard RP0288, "Recommended Practice: Inspection of Linings on Steel and Concrete"
	NACE Test Method TM 0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems"
NFPA Standards	
NFPA—National Fire Protection Association, 1 Batterymarch Park, Box 9101, Quincy, MA 02269-9101	NFPA 30, "Flammable and Combustible Liquids Code"
	NFPA 30A, "Automotive and Marine Service Station Code"
	NFPA 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"
	NFPA 329, "Recommended Practice for Handling Releases of Flammable and Combustible Liquids and Gases"
	NFPA 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids"
NLPA Standards	
NLPA—National Leak Prevention Association, Box 1643, Boise, ID 83701	NLPA Standard 631, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks"
PEI Standards	
PEI—Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380	PEI RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"
STI Standards	
STI—Steel Tank Institute, 570 Oakwood Road, Lake Zurich, IL 60047	STI R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems"
	STI-R922, "Specification for Permatank"
	STI-R-972, "Recommended Practice for the Installation of Supplemental Anodes for STI-P3 USTs"
	STI-P3, "STI-P3 Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks"
	STI-F894, "ACT-100 Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks"
	STI-F961, "ACT-100-U Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks"
UL Standards	
UL—Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, IL 60062-2096	UL 58, "Standard for Safety: Steel Underground Tanks for Flammable and Combustible Liquids"
	UL 971, "Standard for Safety: Non-Metallic Underground Piping for Flammable Liquids"
	UL 1316, "Standard for Safety: Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"
	UL 1746, "Standard for Safety: External Corrosion Protection Systems for Steel Underground Storage Tanks"
* Industry codes and standards are copyrighted and are available only from the developing organizations. These codes and standards must be purchased directly from the developing organizations.	

AUTHORITY NOTE: Promulgated in accordance with R.S. 30: 2001 et seq., 2194, and 2194.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:1070 (May 2005).

Chapter 7. Methods of Release Detection and Release Reporting, Investigation, Confirmation, and Response

§701. Methods of Release Detection

A. Tanks. Each method of release detection for tanks used to meet the requirements of LAC 33:XI.703.B must be conducted in accordance with the following.

1. Inventory Control. Product inventory control (or another test of equivalent performance) must be conducted monthly in a manner to ensure the detection of any release as small as 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner.

a. Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank must be recorded each operating day.

b. The equipment used must be capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 of an inch.

c. Inputs of regulated substances must be reconciled with delivery receipts measuring the tank inventory volume before and after delivery.

d. Deliveries must be made through a drop tube that extends to within 1 foot of the tank bottom.

e. Product dispensing must be metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

f. Measurements of any water level in the bottom of the tank must be made to the nearest 1/8 of an inch at least once a month.

g. Practices described in the American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of Paragraph A.1 of this Section.

2. Manual Tank Gauging. Only tanks having a nominal capacity of 550 gallons or less may use manual tank gauging as the sole method of release detection. Tanks of 551-2,000 gallons nominal capacity may use this method in place of the manual inventory control described in LAC 33:XI.701.A.1. Tanks having a nominal capacity of greater than 2,000 gallons may not use this method to meet the requirements of this Subsection. Manual tank gauging must meet the following requirements.

a. Tank liquid levels must be measured at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank. For

the purposes of LAC 33:XI.701.A.2.d, this constitutes one test.

b. Liquid level measurements must be based on an average of two consecutive stick readings at both the beginning and ending of the period.

c. The equipment used must be capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 of an inch.

d. A leak shall be suspected and subject to the requirements of LAC 33:XI.707-713 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table.

Nominal Tank Capacity	Weekly Standard (One Test)	Monthly Standard (Average of 4 Tests)
550 gallons or less	10 gallons	5 gallons
551 - 1000 gallons	13 gallons	7 gallons
1001 - 2000 gallons	26 gallons	13 gallons

3. Tank Tightness Testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1-gallon-per-hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

4. Automatic Tank Gauging (ATG)

a. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

i. the automatic product level monitor test must be capable of detecting a 0.2-gallon-per-hour leak rate from any portion of the tank that routinely contains product; and

ii. inventory control (or another test of equivalent performance) must be conducted in accordance with the requirements of LAC 33:XI.701.A.1.

b. For ATG to be used as the sole method of release detection, the ATG equipment shall test the tank at least once per month in a manner that can detect a release of 0.2 gallon per hour from any portion of the UST system that routinely contains product with a probability of detection of at least 0.95 and a probability of false alarm of no greater than 0.05. The ATG system shall generate a hard copy of all monthly release detection data to include, at a minimum:

i. the time and the date of the test;

ii. the tank identification;

iii. the fuel volume in the tank at the time of the test; and

iv. a qualitative result either of "pass" or "fail."

5. External Release Detection Devices

a. General. External release detection devices (RDDs) consist of slotted (screened) piping installed within the excavation zone to permit either the testing or monitoring of vapors or the testing or monitoring for liquids on the water table. All RDDs must meet the following requirements.

i. All RDDs must have a 4-inch inside diameter and be constructed of either polyvinyl chloride (PVC), polytetrafluoroethylene (PTFE), or stainless steel, and must be chemically compatible with the stored product. The screened interval must be commercially fabricated, slotted, or continuously wound. Screen size must be 0.01 inches. No solvents, glues, epoxies, thermal processes, or rivets shall be used.

ii. The screened interval must extend from 1 foot beneath the ground surface through the entire excavation zone.

iii. Each RDD must be sealed from the ground surface to a depth of 1 foot and provided with a locking cap. Each RDD must be installed in such a fashion as to preclude the introduction of surface contaminants into the RDD.

iv. No RDD shall be installed within or penetrate native soils unless the hydraulic conductivity of the native soil is no less than 0.01 centimeters per second.

v. If only one UST system is located within the excavation zone, at least two RDDs must be installed. For excavation zones containing between two and four UST systems, at least four RDDs must be installed. If more than four UST systems are situated within a common excavation zone, additional RDDs shall be installed as appropriate to ensure adequate coverage for release detection. If, prior to the implementation of these regulations, fewer RDDs than required in this Clause were installed at a specific location, the owner or operator may request a variance by demonstrating to the satisfaction of the administrative authority that the excavation zone in question can be adequately monitored.

b. Vapor Monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements.

i. The materials used as backfill must be sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area.

ii. The stored regulated substance, or a tracer compound placed in the tank system, must be sufficiently volatile (e.g., gasoline) to result in a vapor level detectable by the monitoring devices located in the excavation zone in the event of a release from the tank.

iii. The measurement of vapors by the monitoring devices must not be rendered inoperative by the groundwater, rainfall, or soil moisture, or other known interferences, so that a release could go undetected for more than 30 days.

iv. The level of background contamination in the excavation zone must not interfere with the method used to detect releases from the tank.

v. The vapor monitors must be designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system.

vi. In the UST excavation zone, the site must be assessed to ensure compliance with the requirements in Clauses A.5.b.i-iv of this Section and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product.

vii. Monitoring wells must be clearly marked and secured to avoid unauthorized access and tampering.

c. Liquid Monitoring. Testing or monitoring for liquids on the water table must meet the following requirements.

i. The regulated substance stored must be immiscible in water and have a specific gravity of less than one.

ii. Distance to the water table must never be more than 20 feet from the ground surface, and the hydraulic conductivity of the soil(s) between the UST system and the RDDs must not be less than 0.01 centimeters per second (e.g., the soil should consist of gravels, coarse-to-medium sands, coarse silts, or other permeable materials).

iii. The slotted portion of the RDD must be designed to prevent migration of soils or the filter pack into the RDD and to allow entry of the regulated substance on the water table into the RDD under both high and low groundwater conditions.

iv. The continuous monitoring devices or manual methods used must be capable of detecting the presence of at least 1/8 of an inch of free product on top of the water within the RDD.

v. Within and immediately below the excavation zone of the UST system, the site must be assessed to ensure compliance with the requirements in Clauses A.5.c.i-iii of this Section and to establish the number and positioning of devices that will detect releases from any portion of the tank that routinely contains product.

vi. RDDs must be clearly marked and secured to avoid unauthorized access and tampering.

6. Interstitial Monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed, and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements.

a. For double-walled UST systems, the sampling or testing method used must be capable of detecting a release through the inner wall in any portion of the tank that routinely contains product. Interstitial monitoring of double-walled or jacketed tanks shall be conducted either continuously by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space, or manually every 30 days by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space.

b. For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used must be capable of detecting a release between the UST system and the secondary barrier, and the following criteria must be met.

i. The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} centimeters per second for the regulated substance stored) to direct a release to the monitoring point and permit its detection.

ii. The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause deterioration of the barrier that would allow a release to pass through undetected.

iii. For cathodically protected tanks, the secondary barrier is installed so that it does not interfere with the proper operation of the cathodic protection system.

iv. The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days.

v. The site is assessed to ensure that the secondary barrier is always above the water table and not in a 25-year floodplain, unless the barrier and monitoring designs are for use under such conditions.

vi. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

c. Tanks with internally fitted liners must be equipped with an automated device that can detect a release between the inner wall of the tank and the liner, and the liner must be compatible with the substance stored.

7. Statistical Inventory Reconciliation (SIR)

a. The SIR method used must analyze inventory control records in a manner that can detect a release of 0.2 gallons per hour from any portion of the UST system that routinely contains product with a probability of detection of at least 0.95 and a probability of false alarm of no greater than 0.05.

b. The UST system owner or operator must receive a monthly report from the SIR provider/vendor that actually performs the SIR analysis within 15 days following the last day of the calendar month for which the analysis was performed. The SIR analysis report must include, at a minimum:

i. the name of the SIR provider/vender and the name and version of the SIR method used for analysis;

ii. the name of the company and individual who performed the analysis;

iii. the name and address of the facility at which the analysis was performed and a description of the UST system for which the analysis was performed;

iv. a quantitative statement, in gallons per hour, for each UST system monitored for the month analyzed, of the leak threshold, the minimum detectable leak rate, and the indicated leak rate; and

v. a quantitative statement of "pass," "fail," or "inconclusive" for each UST system monitored.

8. Other Methods. Any other type of release detection method, or combination of methods, can be used if it meets the following requirements.

a. The release detection method can detect a 0.2-gallon-per-hour leak rate or a release of 150 gallons within a month with a probability of detection of at least 0.95 and a probability of false alarm of no greater than 0.05.

b. The release-detection method has been approved by the Office of Environmental Assessment on the basis of a demonstration by the owner and operator that the method can detect a release as effectively as any of the methods allowed in Paragraphs A.3-8 of this Section. In comparing methods, the Office of Environmental Assessment shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed on its use by the Office of Environmental Assessment.

B. Piping. Each method of release detection for piping used to meet the requirements of LAC 33:XI.703.B must be used in accordance with the following.

1. Automatic Line Leak Detectors. Methods that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or by triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10-pounds-per-square-inch line pressure within one hour. A test of the operation of the leak detector shall be conducted every 12 months in accordance with the manufacturer's requirements and also by simulating a release in order to determine if the system is fully operational.

2. Line Tightness Testing. Periodic testing of piping is acceptable only if such testing can detect a 0.1-gallon-per-hour leak rate at 1.5 times normal operating pressure.

3. Applicable Tank Methods. Any of the methods in Paragraphs A.4-8 of this Section may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

4. Interstitial Monitoring. Interstitial monitoring of double-walled or jacketed piping shall be conducted either continuously by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space or sump, or manually every 30 days by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space or sump.

a. The interstitial space or sump shall be maintained free of water, debris, or anything that could interfere with leak detection capabilities.

b. Subparagraph D.4.a of this Section does not apply to containment sumps that were installed prior to December 20, 2008, and that do not utilize interstitial monitoring as a piping release detection method.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1072 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33: 2172 (October 2007), LR 34:2120 (October 2008).

§703. Requirements for Use of Release Detection Methods

A. Requirements for All UST Systems

1. Owners and operators of all new and existing UST systems must use a method or combination of the methods of release detection described in LAC 33:XI.701.

2. The method of release detection used must also meet the following requirements.

a. The release detection method used must be capable of detecting a release from any portion of the tank and the connected underground piping that routinely contains product.

b. The release detection system must be installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.

c. The release detection system must meet the performance requirements in LAC 33:XI.701.A or B, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after the date shown in the following table corresponding with the specified method, except for methods permanently installed before that date and in compliance with LAC 33:XI.701, must be capable of detecting the leak rate or quantity specified for that method in LAC 33:XI.701.A.2, 3, and 4 or B.1 and 2 (as shown in the table below) with a probability of detection (Pd) of at least 0.95 and a probability of false alarm (Pfa) of no greater than 0.05.

Method	Section	Date after Which Pd/Pfa Must Be Demonstrated
Manual Tank Gauging	LAC 33:XI.701.A.2	December 22, 1990
Tank Tightness Testing	LAC 33:XI.701.A.3	December 22, 1990
Automatic Tank Gauging	LAC 33:XI.701.A.4	December 22, 1990
Automatic Line Leak Detectors	LAC 33:XI.701.B.1	September 22, 1991
Line Tightness Testing	LAC 33:XI.701.B.2	December 22, 1990

3. When a release detection method operated in accordance with the performance standards in LAC 33:XI.701.A and B indicates that a release may have occurred, owners and operators must notify the Office of Environmental Compliance in accordance with LAC 33:XI.707-713.

4. Owners and operators of all UST systems must comply with the release detection requirements of LAC 33:XI.701-705 by December 22 of the year listed in the following table.

Schedule for Phase-In of Release Detection					
Year System Was Installed	Year When Release Detection Is Required (By December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown	RD	P			
1965-69		P/RD			
1970-74		P	RD		
1975-79		P		RD	
1980-88		P			RD
New Tanks	Immediately upon installation.				
P = Must begin release detection for all pressurized piping in accordance with LAC 33:XI.703.B.2.a.					
RD = Must begin release detection for tanks and suction piping in accordance with LAC 33:XI.703.B.1, 2.b, and C.					

5. Any existing UST system that cannot apply a method of release detection that complies with the requirements of LAC 33:XI.701-705 must complete the closure procedures in LAC 33:XI.Chapter 9 by the date on which release detection is required for that UST system under Paragraph A.4 of this Section.

B. Additional Requirements for Petroleum UST Systems. In addition to the requirements specified in LAC 33:XI.703.A, owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows.

1. Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in LAC 33:XI.701.A.4-8, except for the following.

a. UST systems that meet the performance standards in LAC 33:XI.303.D or E, and the monthly inventory control requirements in LAC 33:XI.701.A.1 or 2, may use tank tightness testing (conducted in accordance with LAC 33:XI.701.A.3) at least every five years until December 22, 1998, or until 10 years after the tank is installed or upgraded in accordance with LAC 33:XI.303.E.3, whichever is later.

b. UST systems that do not meet the performance standards in LAC 33:XI.303.D or E may use monthly inventory controls (conducted in accordance with LAC 33:XI.701.A.1 or 2), and tank tightness testing every 12 months (conducted in accordance with LAC 33:XI.701.A.3) until December 22, 1998, when the tank must be upgraded in accordance with LAC 33:XI.303.E or permanently closed in accordance with LAC 33:XI.905.

c. Tanks with a capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with LAC 33:XI.701.A.2).

2. Piping. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements.

a. Pressurized Piping. Underground piping that conveys regulated substances under pressure must:

i. be equipped with an automatic line leak detector in accordance with LAC 33:XI.701.B.1; and

ii. have a line tightness test conducted every 12 months in accordance with LAC 33:XI.701.B.2, or have monthly monitoring conducted in accordance with LAC 33:XI.701.B.3.

b. Suction Piping. Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three years and in accordance with LAC 33:XI.701.B.2, or use a monthly monitoring method conducted in accordance with LAC 33:XI.701.B.3. No release detection is required for suction piping designed and constructed to meet the following standards:

i. the below-grade piping operates at less than atmospheric pressure;

ii. the below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

iii. only one check valve is included in each suction line;

iv. the check valve is located directly below and as close as practical to the suction pump; and

v. a method is used that allows compliance with Clauses B.2.b.ii-iv of this Section to be readily determined and verified.

C. Additional Requirements for Hazardous Substance UST Systems. In addition to the requirements of LAC 33:XI.703.A, owners and operators of hazardous substance UST systems must provide release detection that meets the following requirements.

1. Release detection at existing UST systems must meet the requirements for petroleum UST systems specified in LAC 33:XI.703.B. By December 22, 1998, all existing hazardous substance UST systems must meet the release

detection requirements for new systems specified in Paragraph C.2 of this Section.

2. Release detection at new hazardous substance UST systems must meet the following requirements.

a. Secondary containment systems must be designed, constructed, and installed in accordance with LAC 33:V.4437 to:

i. contain regulated substances released from the tank system until they are detected and removed;

ii. prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

iii. be checked for evidence of a release at least every 30 days.

b. Double-walled tanks must be designed, constructed, and installed to:

i. contain a release from any portion of the inner tank within the outer wall; and

ii. detect the failure of the inner wall.

c. External liners (including vaults) must be designed, constructed, and installed to:

i. contain 100 percent of the capacity of the largest tank within the boundary of the external liner;

ii. prevent precipitation or groundwater intrusion from interfering with the ability to contain or detect a release of regulated substances; and

iii. surround the tank completely (i.e., the liner must be capable of preventing lateral as well as vertical migration of regulated substances).

d. Underground piping must be equipped with secondary containment that satisfies the requirements of Subparagraph C.2.a of this Section (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector, in accordance with LAC 33:XI.701.B.1.

e. Other methods of release detection may be used if the owners and operators:

i. demonstrate to the department's satisfaction that the alternate method can detect a release of the stored substance as effectively as any of the methods allowed in LAC 33:XI.701.A.2-7 can detect a release of petroleum;

ii. provide information to the department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and

iii. obtain approval from the Office of Environmental Assessment to use the alternate release detection method before the installation and operation of the new UST system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), amended by the Office of Environmental Assessment, LR 31:1073 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007), LR 34:1400 (July 2008), LR 34:2120 (October 2008).

§705. Release Detection Recordkeeping

A. All UST system owners and operators must maintain records in accordance with LAC 33:XI.509 demonstrating compliance with all applicable requirements of LAC 33:XI.701-703. These records must include the following.

1. All written performance claims pertaining to any release detection system used and documentation of the manner in which these claims have been justified or tested by the equipment manufacturer, installer, or third party independent testing laboratory must be maintained throughout the operational life of the release detection system.

2. The results of any sampling, testing, or monitoring must be maintained for at least three years, except that the results of tank tightness testing conducted in accordance with LAC 33:XI.701.A.3 must be retained until the next test is conducted.

3. Written documentation of all calibration, maintenance, and repair of release detection equipment used on-site must be maintained for at least three years after the servicing work is completed. Any schedules of required calibration and maintenance provided by the manufacturer of the release detection equipment must be retained for five years from the date of installation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1073 (May 2005).

§707. Reporting of Suspected Releases

A. All owners, operators, employees, agents, contractors, or assigns having knowledge of any of the conditions listed below shall notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923 within 24 hours after becoming aware of the occurrence or, if they have knowledge of an emergency condition, shall report it immediately in accordance with LAC 33:I.Chapter 39. Owners and operators of UST systems shall follow the procedures specified in LAC 33:XI.711 after discovery of any of the following conditions:

1. released regulated substances are discovered at the UST site or in the surrounding area (such as the presence of

free product or vapors in soils, basements, sewer and utility lines, or nearby surface water);

2. unusual operating conditions are observed (such as the erratic behavior of product-dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced;

3. monitoring results from a release detection method required under LAC 33:XI.703.B and C indicate that a release may have occurred, unless:

a. the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and additional monitoring conducted within 24 hours does not confirm the initial result; or

b. in the case of inventory control, the following month of data does not continue to indicate a loss;

4. monitoring results from the SIR method allowed under LAC 33:XI.701.A.7 indicate:

a. a UST system analysis report result of "fail"; or

b. a UST system analysis report result of "inconclusive."

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), LR 30:1677 (August 2004), amended by the Office of Environmental Assessment, LR 31:1073 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:74 (January 2008).

§709. Investigation Due to Off-Site Impacts

A. When the department requires it, owners and operators of UST systems must follow the procedures in LAC 33:XI.711 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances in an off-site location (such as the presence of free product or vapors in soils, basements, sewer and utility lines, or nearby surface and drinking waters).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).

§711. Release Investigation and Confirmation Steps

A. Unless corrective action is initiated in accordance with LAC 33:XI.715, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under LAC 33:XI.707 within seven days, using either the following steps or another procedure approved in writing by the department.

1. System Test. Owners and operators must conduct tests (according to the requirements for tightness testing in LAC 33:XI.701.A.3 and B.2) that determine whether a leak exists in the portion of the tank that routinely contains product or the attached delivery piping or both. They must then proceed as follows.

a. Owners and operators must repair, replace, or upgrade the UST system and begin corrective action in accordance with LAC 33:XI.715 if the test results for the system, tank, or delivery piping indicate that a leak exists.

b. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

c. Owners and operators must conduct a site check as described in Subsection B of this Section if the test results for the system, tank, and delivery piping do not indicate that a leak exists, but environmental contamination is the basis for suspecting a release.

2. Site Check. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. They must then proceed as follows.

a. If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with LAC 33:XI.715.

b. If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).

§713. Reporting and Cleanup of Spills and Overfills

A. Owners and operators of UST systems must contain, immediately clean up, and report a spill or overfill to the Office of Environmental Compliance in accordance with LAC 33:I.3923 within 24 hours. The owner or operator shall begin corrective action in accordance with LAC 33:XI.715 in the following cases.

1. A spill or overfill of petroleum has resulted in a release to the environment that exceeds one barrel (42 gallons) or that causes a sheen on nearby surface water. If the spill or overfill results in an emergency condition, as defined in LAC 33:I.3905, the incident must be reported in accordance with LAC 33:I.Chapter 39 immediately, but in no case later than one hour, regardless of the amount released.

2. A spill or overfill of a hazardous substance has resulted in a release to the environment that equals or exceeds the reportable quantity for that substance in LAC 33:I.3931. If the spill or overfill results in an emergency condition, as defined in LAC 33:I.3905, the incident must be reported in accordance with LAC 33:I.Chapter 39 immediately, but in no case later than one hour, regardless of the amount released. A release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 24 hours) to the National Response Center, under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to appropriate authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986 (40 CFR 355.40).

B. Follow-up written reports must be submitted within seven calendar days, as required by LAC 33:I.3925. The written report must satisfy the requirements of LAC 33:I.3925.B and C.

C. Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than one barrel and a spill or overfill of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours, owners and operators must immediately notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 18:728 (July 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), LR 30:1677 (August 2004).

§715. Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

A. Applicability. Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this Section except for USTs excluded under LAC 33:XI.101.B and UST systems subject to the department's Hazardous Waste Regulations. Investigations and corrective actions required by this Section must comply with LAC 33:I.Chapter 13, Risk Evaluation/Corrective Action Program.

B. Initial Response. When a release is confirmed in accordance with LAC 33:XI.711 or after a release from the UST system is identified in any other manner, owners and operators must take the following initial response actions within 24 hours of the release.

1. Report the release to the Office of Environmental Compliance in accordance with LAC 33:I.3923.

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.

C. Initial Abatement Measures and Site Check

1. Unless directed to do otherwise by the department, owners and operators must perform the following abatement measures.

a. Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment.

b. Visually inspect any aboveground releases or exposed belowground releases, and prevent further migration of the released substance into surrounding soils and groundwater.

c. Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that has migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements).

d. 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 must comply with applicable state and local regulations and requirements.

e. Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by LAC 33:XI.711.A.2 or the closure site assessment required by LAC 33:XI.907.A. In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to groundwater, and other factors as appropriate for identifying the presence and source of the release.

f. Investigate to determine the possible presence of free product, and begin removal of free product as soon as practicable and in accordance with LAC 33:XI.715.E.

2. Within 20 days after release confirmation or another reasonable period of time determined by the department in writing, owners and operators must submit a report to the Office of Environmental Assessment summarizing the initial abatement steps taken under Paragraph C.1 of this Section and any resulting information or data.

D. Initial Site Characterization

1. Unless directed to do otherwise by the department, owners and operators must 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 described in LAC 33:XI.715.A-C. This information must include, but is not necessarily limited to the following:

a. data on the nature and estimated quantity of release;

b. data from available sources and/or site investigations concerning surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;

c. results of the site check required under LAC 33:XI.715.C.1.e;

d. results of the free product investigations required under LAC 33:XI.715.C.1.f, to be used by owners and operators to determine whether free product must be recovered under LAC 33:XI.715.E; and

e. any other tests or investigations the department deems necessary to protect human health, the environment, and more particularly, the groundwaters and aquifers of the state.

2. Within 60 days of release confirmation or another reasonable period of time determined by the department in writing, owners and operators must submit the information collected in compliance with Paragraph D.1 of this Section to the Office of Environmental Assessment in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the department.

E. Free Product Removal. At sites where investigations under Subparagraph C.1.f of this Section indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the Office of Environmental Assessment, while continuing, as necessary, any actions initiated under Subsections B-D of this Section, or preparing for actions required under Subsections F-G of this Section. To meet the requirements of this Subsection, owners and operators must take the following actions.

1. Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges, or disposes of recovery by-products 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 safe and competent manner to prevent fires or explosions.

4. Unless directed to do otherwise by the department, prepare and submit to the Office of Environmental Assessment, within 45 days after confirming a release, a free product removal report that provides at least the following information:

a. the name(s) of the person(s) responsible for implementing 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 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. evidence that all permits or variances necessary for any discharges or emissions have been obtained; and

g. the disposition of the recovered free product.

F. Investigations for Soil and Groundwater Cleanup

1. To determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release under any of the following conditions:

a. evidence exists that the release has affected water wells (i.e., as found during release confirmation or previous corrective action measures);

b. free product needs to be recovered for compliance with LAC 33:XI.715.E;

c. evidence exists that contaminated soils may be in contact with groundwater (i.e., as found during conduct of the initial response measures or investigations required under LAC 33:XI.715.A-E);

d. the department requests an investigation on the basis of potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources. Groundwater monitoring wells installed pursuant to this requirement shall be installed in accordance with all regulations administered by the Louisiana Department of Transportation and Development, or its successor agency.

2. Owners and operators must submit the information collected under Paragraph F.1 of this Section as soon as practicable or in accordance with a schedule established by the department.

G. Corrective Action Plan

1. At any point after reviewing the information submitted in compliance with Subsections B-D of this Section, the department may require owners and operators to submit additional information or to develop and submit a corrective action plan and schedule for responding to contaminated soils and groundwater. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the department. Alternatively, owners and operators, after fulfilling the

requirements of Subsections B-D of this Section, may choose to submit a corrective action plan and schedule for responding to contaminated soil and groundwater. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the department, and must modify their plans as necessary to meet this standard.

2. The department will approve the corrective action plan and schedule only after ensuring that their implementation will adequately protect human health, safety, and the environment. In making this determination, the department's considerations shall include the following, as appropriate:

a. the physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

b. the hydrogeologic characteristics of the facility and the surrounding area;

c. the proximity, quality, and current and future uses of nearby surface water and groundwater;

d. the potential effects of residual contamination on nearby surface water and groundwater;

e. an exposure assessment;

f. documentation of compliance with Paragraph H.1 of this Section; and

g. any information assembled in compliance with this Chapter.

3. Upon approval of the corrective action plan and schedule or as directed by the department, owners and operators must implement the plan, including modifications to the plan made by the department. They must monitor, evaluate, and report the results of implementing the plan in accordance with the approved schedule in a format established by the department.

4. Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the corrective action plan is approved, provided that they:

a. notify the Office of Environmental Assessment of their intention to begin cleanup;

b. comply with any conditions the department imposes, including halting cleanup or mitigating adverse consequences from cleanup activities; and

c. incorporate these self-initiated cleanup measures in the corrective action plan submitted to the department for approval.

H. Public Participation

1. For each confirmed release that requires a corrective action plan, the responsible owner or operator must provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, letters to individual households, or personal contacts.

2. The department must ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.

3. Before approving a corrective action plan, the department may hold a public meeting to consider comments on the proposed corrective action plan if sufficient public interest exists, or for any other reason.

4. The department must give public notice that complies with Paragraph H.1 of this Section if implementation of an approved corrective action plan does not achieve the established cleanup criteria in the plan, and the department is considering termination of that plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of the Secretary, LR 24:2253 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), LR 30:1677 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007).

Chapter 9. Out-of-Service UST Systems and Closure

§901. Applicability to Previously Closed UST Systems

A. The owner and operator of a UST system permanently closed before July 20, 1990, must assess the excavation zone and close the UST system in accordance with this Chapter if directed to do so by the department. The department shall direct that such closure be undertaken if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1073 (May 2005).

§903. Temporary Closure

A. When a UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with LAC 33:XI.503, and any release detection in accordance with LAC 33:XI.701-705. If a release is suspected or confirmed, the owner and operator must comply with LAC 33:XI.707-715. However, release detection is not required as long as the UST system is empty. As defined in LAC 33:XI.103, the *UST system* is empty when all materials have been removed using

commonly employed practices so that no more than 2.5 centimeters (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system.

B. When a UST system is temporarily closed for three months or more, owners and operators must also comply with the following requirements:

1. leave vent lines open and functioning;

2. cap and secure all other lines, pumps, manways, and ancillary equipment; and

3. submit a completed copy of the registration form UST-REG-01 to the Office of Environmental Assessment, indicating the dates the UST system was temporarily closed.

C. When a UST system is temporarily closed for more than six months, owners and operators must permanently close the UST system if it does not meet either the performance standards in LAC 33:XI.303.D for new UST systems or the upgrading requirements in LAC 33:XI.303.E.3-6, except that the spill and overfill equipment requirements do not have to be met.

D. When a UST system is temporarily closed for more than 24 months, owners and operators shall complete a site assessment in accordance with LAC 33:XI.907. The results of the assessment and documentation of compliance with the temporary closure requirements in Subsection A of this Section must be submitted in duplicate to the Office of Environmental Assessment within 60 days following the end of the 24-month temporary closure period.

E. A tank tightness test in accordance with LAC 33:XI.701.A.3 must be conducted within five days after a UST system that has been temporarily closed for three months or more is brought back into service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, LR 31:1074 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), LR 33:2173 (October 2007), LR 34 :2120 (October 2008).

§905. Permanent Closure and Changes-in-Service

A. At least 30 days before beginning either permanent closure or a change-in-service under Subsections B, C, and D of this Section, owners and operators must notify the Office of Environmental Assessment of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action.

1. Notification shall be made by:

a. completing the notification form UST-SURV-01; and

b. notifying the appropriate regional office of the Office of Environmental Assessment by mail or fax at least seven days prior to implementing the removal or change.

2. Beginning January 20, 1992, all owners and operators must ensure that an individual exercising supervisory control over *closure-critical junctures* (as defined in LAC 33:XI.1303) is certified in accordance with LAC 33:XI.Chapter 13. The assessment of the excavation zone required under LAC 33:XI.907 must be performed after the department is notified but before the permanent closure or change-in-service is completed.

B. To permanently close a UST, owners and operators must empty and clean the tank and all associated piping by removing all liquids and accumulated sludges. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material.

C. Continued use of a UST system to store a nonregulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with LAC 33:XI.907.

D. Cleaning and closure procedures found in LAC 33:XI.599.Appendix A shall be used to comply with this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2560 (November 2000), amended by the Office of Environmental Assessment, LR 31:1074 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2173 (October 2007).

§907. Assessing the Site at Closure or Change-in-Service

A. Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site, utilizing the procedure approved by the department. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release. Results of this assessment must be submitted in duplicate to the Office of Environmental Assessment within 60 days following permanent closure or change in service. The assessment results shall include a site diagram indicating locations where samples were collected and a written statement specifying which USTs have been closed.

B. If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered through the methods described in Subsection A of this Section, or in any other manner, owners and operators must begin corrective action in accordance with LAC 33:XI.715.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 18:728 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2560 (November 2000), amended by the Office of Environmental Assessment, LR 31:1074 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2173 (October 2007).

Chapter 11. Financial Responsibility

§1101. Applicability

A. This Chapter applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this Section.

B. Owners and operators of petroleum UST systems are subject to these requirements if the petroleum UST systems are in operation on or after the date for compliance established in LAC 33:XI.1103.

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 Chapter.

D. The requirements of this Chapter do not apply to owners and operators of any UST system described in LAC 33:XI.101.B, C.1 or C.2.a.

E. If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in LAC 33:XI.1103.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).

§1103. Compliance Dates

A. Owners of petroleum underground storage tanks are required to comply with the applicable requirements of this Chapter by the following dates:

1. all petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of $20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration—January 24, 1989;

2. all petroleum marketing firms owning 100-999 USTs—October 26, 1989;

3. all petroleum marketing firms owning 13-99 USTs at more than one facility—April 26, 1991; and

4. all petroleum UST owners not described in Paragraphs 1, 2, or 3 of this Section, including all local government entities—December 31, 1993.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 18:729 (July 1992).

§1105. Definition of Terms

A. When used in this Chapter, the following terms shall have the meanings given below.

Accidental Release—any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

Bodily Injury—shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

Controlling Interest—direct ownership of at least 50 percent of the voting stock of another entity.

Financial Reporting Year—the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared:

a. a 10-K report submitted to the SEC;

b. an annual report of tangible net worth submitted to Dun and Bradstreet; or

c. annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. Financial reporting year may thus comprise a fiscal or a calendar year period.

Legal Defense Cost—any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

a. by EPA or a state to require corrective action or to recover the costs of corrective action;

b. by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

c. by any person to enforce the terms of a financial assurance mechanism.

Occurrence—an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

[NOTE: This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of *occurrence* in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of *occurrence*.]

Owner or Operator—when the owner and operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

Petroleum Marketing Facilities—all facilities at which petroleum is produced or refined, and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

Petroleum Marketing Firms—all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

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

Provider of Financial Assurance—an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in LAC 33:XI.1111-1125, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, or the state Underground Motor Fuel Storage Tank Trust Fund.

Substantial Business Relationship—the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).

§1107. Amount and Scope of Required Financial Responsibility

A. Owners or operators of petroleum underground storage tanks must 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 petroleum underground storage tanks in at least the following per-occurrence amounts:

1. for owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year, $1 million; and

2. for all other owners or operators of petroleum underground storage tanks, $500,000.

B. Owners or operators of petroleum underground storage tanks must 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 petroleum underground storage tanks in at least the following annual aggregate amounts:

1. for owners or operators of one to 100 petroleum underground storage tanks, $1 million; and

2. for owners or operators of 101 or more petroleum underground storage tanks, $2 million.

C. For the purposes of Subsections B and F of this Section only, a *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 of this Section, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in Subsections A and B of this Section 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.

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 shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

F. Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least $2 million of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least $2 million of annual aggregate assurance by the first-occurring effective date anniversary of any one 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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).

§1109. Allowable Mechanisms and Combinations of Mechanisms

A. Subject to the limitations of Subsection B of this Section, an owner or operator may use any one or combination of the mechanisms listed in LAC 33:XI.1111-1125 to demonstrate financial responsibility under this Chapter for one or more underground storage tanks.

B. 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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).

§1111. Financial Test of Self-Insurance

A. An owner or operator, and/or guarantor, may satisfy the requirements of LAC 33:XI.1107 by passing a financial test as specified in this Section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of Subsection B or C of this Section based on year-end financial statements for the latest completed fiscal year.

B. The owner or operator, and/or guarantor, must meet the requirements of Paragraph B.1 or B.2 below.

1. The owner or operator must be an eligible participant in the Underground Motor Fuel Storage Tank Trust (see LAC 33:XI.1121) and have a tangible net worth of at least $90,000.

2. The owner or operator, and/or guarantor, must meet the following requirements.

a. The owner or operator, and/or guarantor, must have a tangible net worth of at least 10 times:

i. the total of the applicable aggregate amount required by LAC 33:XI.1107, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the administrative authority under this Section;

ii. the sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and the amount of liability coverage for which a financial test is used to demonstrate financial responsibility under LAC 33:V.3322, 3707, 3711, 3715, 4403, 4407, and 4411; and

iii. the sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 144.63.

b. The owner or operator, and/or guarantor, must have a tangible net worth of at least $10 million.

c. The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in Subsection D of this Section.

d. The owner or operator, and/or guarantor, must either:

i. file financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

ii. report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

e. The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

C. The owner or operator, and/or guarantor must meet the following requirements.

1. The owner or operator, and/or guarantor must meet the financial test requirements of LAC 33:V.3715.F.1, substituting the appropriate amounts specified in LAC 33:XI.1107.B.1 and 2 for the "amount of liability coverage" each time specified in that Section.

2. The fiscal year-end financial statements of the owner or operator, and/or 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 an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

4. The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in Subsection D of this Section.

5. If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

a. he 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/or guarantor, with the amounts in such financial statements; and

b. in connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

D. To demonstrate that it meets the financial test under Subsection B or C of this Section, the chief financial officer of the owner or operator, or guarantor, must sign, within 120 days of the close of each *financial reporting year,* as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted. To prepare this letter, the owner or operator must use the form required by the department. This form may be obtained from the Office of Environmental Assessment.

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

Underground tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," and/or "guarantor"]: [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, other than the combination of this letter and the owner's or operator's status as an eligible participant in the Underground Motor Fuels Storage Tank Trust, are being used to assure any of the tanks at any one facility, list each tank assured by this financial test by the tank identification number provided in the registration submitted pursuant to LAC 33:XI.301.]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under the following regulations:

Regulations	**Amount**
Closure (LAC 33:V.3707 and 4403)	$_____
Post-Closure Care (LAC 33:V.3711 and 4407)	$_____
Liability Coverage (LAC 33:V.3715 and 4411)	$_____
Corrective Action (LAC 33:V.3322)	$_____
Plugging and Abandonment (40 CFR 144.63)	$_____
Closure	$_____
Post-Closure Care	$_____
Liability Coverage	$_____
Corrective Action	$_____
Plugging and Abandonment	$_____
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 financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of LAC 33:XI.1111.B.1 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of LAC 33:XI.1111.B.2 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative III if the criteria of LAC 33:XI.1111.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, and/or guarantee	**$**_____
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee	**$**_____
3. Sum of lines 1 and 2	**$**_____
4. Total tangible assets	**$**_____
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line 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 $90,000?	____	____
8. Is line 6 at least 3 times line 3?	____	____
9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission?	____	____
10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration?	____	____
11. Have financial statements for the latest fiscal year been filed with 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, and/or guarantee	**$**_____
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee	**$**_____
3. Sum of lines 1 and 2	**$**_____
4. Total tangible assets	**$**_____
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line 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 Securities and Exchange Commission?	____	____
10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration?	____	____
11. Have financial statements for the latest fiscal year been filed with 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 III

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee	$_____
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee	$_____
3. Sum of lines 1 and 2	$_____
4. Total tangible assets	$_____
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line 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
7. Is line 6 at least $10 million?	____	____
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	_____

	Yes	No
19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or 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 LAC 33:XI.1111.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 he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

F. The administrative authority may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the administrative authority finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of LAC 33:XI.1111.B or C and D, the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

G. If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the administrative authority that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Office of Environmental Assessment of such failure within 10 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2560 (November 2000), LR 27:2232 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2521 (October 2005), LR 33:2173 (October 2007).

§1113. Guarantee

A. An owner or operator may satisfy the requirements of LAC 33:XI.1107 by obtaining a guarantee that conforms to

the requirements of this Section. The guarantor must be as described in either Paragraph A.1 or 2 below.

1. The guarantor is a firm that:

a. possesses a controlling interest in the owner or operator;

b. possesses a controlling interest in a firm described under Subparagraph A.1.a of this Section; or

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

2. The guarantor is a firm engaged in a substantial business relationship with the owner or operator and is issuing the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of LAC 33:XI.1111 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in LAC 33:XI.1111.D and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator and to the Office of Environmental Assessment. If the Office of Environmental Assessment notifies the guarantor that he no longer meets the requirements of the financial test of LAC 33:XI.1111.B or C and D, the guarantor must notify the owner or operator within 10 days of receiving such notification from the Office of Environmental Assessment. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in LAC 33:XI.1139.C.

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 [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to the Louisiana Department of Environmental Quality 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 LAC 33:XI.1111.B or C and D and agrees to comply with the requirements for guarantors as specified in LAC 33:XI.1113.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 registration submitted pursuant to LAC 33:XI.301 and the name and address of the facility.] This guarantee satisfies the requirements of LAC 33:XI.Chapter 11 for assuring funding for [insert: "taking corrective action" and/or "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. [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Department of Environmental Quality 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 administrative authority of the Department of Environmental Quality has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the administrative authority, shall fund a standby trust fund in accordance with the provisions of LAC 33:XI.1135 in an amount not to exceed the coverage limits specified above.

In the event that the administrative authority 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 LAC 33:XI.715, the guarantor upon written instructions from the administrative authority shall fund a standby trust in accordance with the provisions of LAC 33:XI.1135, 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 ["sudden" and/or "nonsudden"] 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 administrative authority, shall fund a standby trust in accordance with the provisions of LAC 33:XI.1135 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 LAC 33:XI.1111.B or C and D, guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator] and the administrative authority. 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 Title 11 (Bankruptcy), U.S. Code, 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 the Department of Environmental Quality's Underground Storage Tank Regulations.

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 LAC 33:XI.Chapter 11 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 [insert owner or operator] under a worker's compensation, disability benefits, or unemployment compensation law or other similar law;

b. bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert 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 [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

e. bodily damage or property damage for which [insert 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 LAC 33:XI.1107.

9. Guarantor expressly waives notice of acceptance of this guarantee by the Department of Environmental Quality, 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 LAC 33:XI.1113.C 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:_____

D. An owner or operator who uses a guarantee to satisfy the requirements of LAC 33:XI.1107 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the administrative authority under LAC 33:XI.1135. This standby trust fund must meet the requirements specified in LAC 33:XI.1125.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2521 (October 2005), LR 33:2174 (October 2007).

§1115. Insurance and Risk Retention Group Coverage

A. An owner or operator may satisfy the requirements of LAC 33:XI.1107 by obtaining liability insurance that conforms to the requirements of 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 Paragraph B.1 of this Section, or evidenced by a certificate of insurance worded as specified in Paragraph B.2 of this Section, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

1. Endorsement

Name [name of each covered location]:

_____

_____

Address [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

a. 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 registration submitted pursuant to LAC 33:XI.301 and the name and address of the facility.]

for [insert: "taking corrective action" and/or "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 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 and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

b. 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 Clauses i-v of this Subparagraph are hereby amended to conform with Clauses i-v.

i. 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.

ii. 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 LAC 33:XI.1111-1123.

iii. Whenever requested by the administrative authority of the Department of Environmental Quality, the ["insurer" or "group"] agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements.

iv. Cancellation or any other termination of the insurance by the ["insurer" or "group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

v. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ("insurer" or "group") within six months of the effective date of the cancellation or termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in LAC 33:XI.1115.B.1 and that the ["insurer" or "group"] is ["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 [name of each covered location]:

_____

_____

Address [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

a. [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 registration submitted pursuant to LAC 33:XI.301 and the name and address of the facility.]

for [insert: "taking corrective action" and/or "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 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 and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

b. The ["insurer" or "group"] further certifies the following with respect to the insurance described in Subparagraph a:

i. bankruptcy or insolvency of the insured shall not relieve the ["insurer" or "group"] of its obligations under the policy to which this certificate applies;

ii. 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 LAC 33:XI.1111-1123;

iii. whenever requested by the administrative authority of the Department of Environmental Quality, the ["insurer" or "group"] agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements;

iv. cancellation or any other termination of the insurance by the ["insurer" or "group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured;

[Insert for claims-made policies:

v. the insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ("insurer" or "group") within six months of the effective date of the cancellation or other termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in LAC 33:XI.1115.B.2 and that the ["insurer" or "group"] is ["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]

[Typed 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 or more states.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).

§1117. Surety Bond

A. An owner or operator may satisfy the requirements of LAC 33:XI.1107 by obtaining a surety bond that conforms to the requirements of this Section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

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: _____

Principal [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) [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 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 registration submitted pursuant to LAC 33:XI.301 and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "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 Department of Environmental Quality, 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), as amended, to provide financial assurance for [insert: "taking corrective action" and/or "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 ["take corrective action, in accordance with LAC 33:XI.715 and the administrative authority of the Department of Environmental Quality's instructions for," and/or "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 LAC 33:XI.Chapter 11, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

1. any obligation of [insert owner or operator] under a worker's compensation, disability benefits, or unemployment compensation law or other similar law;

2. bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

3. bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

4. property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank; or

5. bodily injury or property damage for which [insert 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 LAC 33:XI.1107.

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 administrative authority of the Department of Environmental Quality that the Principal has failed to ["take corrective action, in accordance with LAC 33:XI.715 and the administrative authority's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with the department's Underground Storage Tank Regulations and the administrative authority's instructions," and/or "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 administrative authority under LAC 33:XI.1135.

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the administrative authority 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 administrative authority under LAC 33:XI.1135.

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

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

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

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

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in LAC 33:XI.1117.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: $ _____

C. Under the terms of the bond, the surety will 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 LAC 33:XI.1107 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the administrative authority under LAC 33:XI.1135. This standby trust fund must meet the requirements specified in LAC 33:XI.1125.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).

§1119. Letter of Credit

A. An owner or operator may satisfy the requirements of LAC 33:XI.1107 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Section. The issuing institution must be an entity that has the authority to issue letters of credit in each state where used and 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

[Name and address of issuing institution]

[Name and address of administrative authority of the Department of Environmental Quality]

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit Number _____in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars $[insert dollar amount], available upon presentation of:

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

2. your signed statement reading as follows:

"I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "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 [in words] $[insert dollar amount] per occurrence and [in words] $[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and the 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 registration submitted pursuant to LAC 33:XI.301 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 [insert owner or operator] under a worker's compensation, disability benefits, or unemployment compensation law or other similar law;

b. bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert 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 [insert 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 [insert 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 LAC 33:XI.1107.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [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 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 LAC 33:XI.1119.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 by the International Chamber of Commerce," or "the Uniform Commercial Code"].

C. An owner or operator who uses a letter of credit to satisfy the requirements of LAC 33:XI.1107 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the administrative authority under LAC 33:XI.1135. This standby trust fund must meet the requirements specified in LAC 33:XI.1125.

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 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 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).

§1121. Use of the Motor Fuels Underground Storage Tank Trust Fund

The administrative authority was authorized by R.S. 30:2194-2195.10 to receive and administer the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) to provide financial responsibility for owners and/or operators of underground motor fuel storage tanks. Under the conditions described in this Section, an owner and/or operator who is eligible for participation in the MFUSTTF may use this mechanism to partially fulfill the financial responsibility requirements for eligible USTs. To use the MFUSTTF as a mechanism for meeting the requirements of LAC 33:XI.1107, the owner and/or operator must be an *eligible participant* as defined in Subsection A of this Section. In addition, the owner and/or operator must use one of the other mechanisms described in LAC 33:XI.1111, 1113, 1115, 1117, 1119, 1123, or 1125 to demonstrate financial responsibility for the amounts specified in Subsection C of this Section, which are the responsibility of the participant and not covered by the MFUSTTF.

A. Definitions. The following terms shall have the meanings ascribed to them as used in this Section.

Advisory Board—the Motor Fuels Underground Storage Tank Trust Fund Advisory Board (established under R.S. 30:2195.8), whose eight members consist of the following:

a. the Secretary of the Department of Environmental Quality or his designee;

b. four members appointed by the president of the Louisiana Oil Marketers and Convenience Store Association;

c. one member appointed by the Mid-Continent Oil and Gas Association; and

d. two members appointed by the secretary who represent the response action contractor community.

Eligible Participant—any owner of an operating or newly-installed underground storage tank who has registered the tank with the department prior to the date of a release, has paid the annual tank registration fees along with any late payment fees, has met the financial responsibility requirements imposed by Subsection B of this Section, and, if applicable, has met the noncompliance financial responsibility amounts provided in R.S. 30:2195.10.

Motor Fuels Underground Storage Tank—a UST used only to contain an accumulation of motor fuels.

Substantial Compliance—the owner or operator of a UST system shall be considered to be in substantial compliance when he or she has registered that tank with the department in accordance with LAC 33:XI.301, has complied with the state and federal laws and regulations applicable to USTs and the rules and regulations adopted pursuant thereto, has met the financial responsibility requirements specified in Subsection B of this Section, and has promptly notified the administrative authority of any third-party claim or suit made against him or her.

Third-Party Claim—any civil action brought or asserted by any person against the secretary of the department and any owner of any underground storage tank for damages to person or property when damages are the direct result of the contamination of groundwater and/or subsurface soils by motor fuels released during operation of storage tanks that were being operated in substantial compliance as provided for in this Section. The term *damages to person* shall be limited to damages arising directly out of the ingestion or inhalation of petroleum constituents from water well contamination or inhalation of petroleum constituents seeping into homes or buildings, and the term *damages to property* shall be limited to the unreimbursed costs of a response action and the amount by which property is proven to be permanently devalued as a result of the release.

B. Financial Responsibility Requirements for MFUSTTF Participants

1. Unless revised by the administrative authority in accordance with R.S. 30:2195.9(A)(3), MFUSTTF participants taking response actions must pay the following amounts before any disbursements are made from the fund:

a. $10,000 per occurrence for cleanup and an additional $10,000 per occurrence for third-party judgments, for the period from July 15, 1988 through December 31, 1989;

b. $15,000 per occurrence for cleanup and an additional $15,000 per occurrence for third-party judgments, for the period from January 1, 1990 through July 14, 1992;

c. for the period from July 15, 1992 through June 15, 1995:

i. $5,000 per occurrence for cleanup and an additional $5,000 for third-party judgments for owners with 1 to 12 tanks in Louisiana;

ii. $10,000 per occurrence for cleanup and an additional $10,000 for third-party judgments for owners with 13 to 99 tanks in Louisiana; and

iii. $15,000 per occurrence for cleanup and an additional $15,000 for third-party judgments for owners with 100 or more tanks in Louisiana; and

d. $5,000 per occurrence for cleanup and an additional $5,000 per occurrence for third-party judgments, for the period from June 16, 1995 through December 31, 2001.

2. Thereafter, the advisory board shall review the financial responsibility requirements on an annual basis and may recommend adjustments to the requirements to the administrative authority. The administrative authority shall determine and set the financial responsibility requirements annually [as provided in R.S. 30:2195.9(A)(3)].

3. Eligible participants must demonstrate financial responsibility for the established amounts by the allowable mechanisms described in LAC 33:XI.1111-1119 and LAC 33:XI.1123-1125.

4. Substitution of a Departmental Lien

a. A lien filed by the department with the same ranking and privilege as that authorized by R.S. 30:2195(F)(2) may be substituted for the financial responsibility requirement of this Section, but in no case shall the lien be substituted on behalf of an owner and/or operator who continues to operate the system. The use of the funds in the MFUSTTF during any fiscal year on a site for which the lien, as authorized by this Section, has been used to substitute for the financial responsibility amount shall not exceed 20 percent of the amount collected in the previous fiscal year. The administrative authority is authorized to exceed the 20 percent limitation contained in this Paragraph upon recommendation by the advisory board.

b. Upon recommendation by the advisory board to exceed the 20 percent limitation as provided in Subparagraph B.4.a of this Section, the administrative authority shall provide written notification to the environmental legislative oversight committees listing the project name, the project location, and the amount of the project that exceeds the 20 percent limitation.

C. Conditions for Use of the MFUSTTF. Funds in the MFUSTTF shall be used under the following conditions.

1. Whenever the administrative authority determines that an incidence of groundwater or subsurface soils contamination resulting from the storage of motor fuels may pose a threat to the environment or to public health, safety, or welfare, and the owner or operator of the UST system has been found to be an *eligible participant* (as defined in LAC 33:XI.1121.A), the department shall obligate monies available in the MFUSTTF to provide for the following response actions.

a. Monies shall be obligated for investigation and assessment of sites shown to be contaminated by a release into the groundwater or subsurface soils from an underground motor fuel storage tank.

b. Monies shall be obligated for interim replacement and permanent restoration of potable water supply where it has been demonstrated that the supply was contaminated by a leak from an underground motor fuel storage tank.

c. Monies shall be obligated for rehabilitation and remediation of sites contaminated by a leak into the groundwater or subsurface soils from an underground motor fuel storage tank, which may consist of cleanup of affected soil, groundwater, and inland surface waters, using cost-effective methods that are technologically feasible and reliable, while ensuring adequate protection of the public health, safety, and welfare, and minimizing environmental damage, in accordance with the site selection and cleanup criteria established by the department.

i. Nothing herein shall be construed to authorize or require the department to obligate funds for payment of costs that may be associated with, but are not integral to, site rehabilitation, such as the cost of retrofitting or purchases of equipment needed in assisting cleanup operations.

ii. Subject to the provisions of Paragraphs C.2 and 3 of this Section, the funds in the MFUSTTF shall be used to replace leaking USTs and attendant product piping if the tanks are of double-wall construction of continuous glass filament winding, are manufactured in Louisiana by a corporation whose domicile and corporate headquarters are in Louisiana, and comply with all applicable state and federal standards. Said funds shall be allocated on a match basis of 25 percent of the replacement cost of the leaking tanks and piping.

iii. The monies expended from the MFUSTTF for any of the above approved costs shall be spent only up to such sum as that which is necessary to satisfy petroleum UST financial responsibility requirements specified in LAC 33:XI.1107.

2. Whenever the department has incurred costs for taking response actions with respect to the release of motor fuels from a UST system, or the department has expended funds from the MFUSTTF for response costs or third-party liability claims, the owner or operator of the underground motor fuel storage tank shall be liable to the department for

such costs only if the owner or operator was not in substantial compliance on the date of discharge of the motor fuels that necessitated the cleanup. Otherwise, liability is limited to the provisions contained in LAC 33:XI.1121.B. Nothing contained herein shall be construed as authorizing the expenditure from the MFUSTTF on behalf of any owner or operator of a UST system who is not an eligible participant on the last anniversary date of the MFUSTTF for any third-party liability.

3. If the administrative authority has expended funds on behalf of an owner or operator who was not in substantial compliance, and the MFUSTTF is entitled to reimbursement of those funds so expended, the administrative authority shall have the authority to, and is obligated to, use any and all administrative and judicial remedies that might be necessary for recovery of the expended funds plus legal interest from the date of payment by the administrative authority and all costs associated with the recovery of the funds.

4. The MFUSTTF may be used for reimbursement of any costs associated with the review of applications for reimbursement from the MFUSTTF, legal fees associated with the collection of costs from parties not in substantial compliance, audits of the MFUSTTF, and accounting and reporting regarding the uses of the MFUSTTF.

5. The MFUSTTF may be used to make payments to a third party who brings a third-party claim against any owner or operator of an underground motor fuel storage tank because of damages caused by a release into the groundwater or subsurface soils and who obtains a final judgment in said action enforceable in Louisiana against the owner or operator only if it has been satisfactorily demonstrated that the owner or operator was an *eligible participant* as defined in LAC 33:XI.1121.A when the release occurred. The indemnification limit of the MFUSTTF with respect to satisfaction of third-party claims shall be that which is necessary to satisfy the requirements of LAC 33:XI.Chapter 11.

D. Procedures for Disbursements from the MFUSTTF

1. Monies held in the MFUSTTF are disbursed by the administrative authority in the following manner.

a. Payments are made in reasonable amounts to eligible participants or for reimbursement of payment to approved response action contractors for response actions when authorized by the administrative authority only after the owner or operator of the underground motor fuel storage tank or those acting for the owner or operator have paid the amount required by LAC 33:XI.1121.C.

b. Cost-effective procedures, as established by the administrative authority, shall be implemented by eligible participants using MFUSTTF monies.

2. Payments are made to third parties who bring suit against the administrative authority in his or her official capacity as representative of the MFUSTTF and the owner or operator of an underground motor fuel storage tank who is an *eligible participant* as defined in LAC 33:XI.1121.A and such third party obtains a final judgment in that action enforceable in Louisiana. The owner or operator stated above shall pay the amount required by LAC 33:XI.1121.B toward the satisfaction of said judgment, and after that payment has been made, the MFUSTTF will pay the remainder of said judgment. The attorney general of the state of Louisiana is responsible for appearing in said suit for and on behalf of the administrative authority as representative of the MFUSTTF. The administrative authority as representative of the MFUSTTF is a necessary party in any suit brought by any third party that would allow that third party to collect from the MFUSTTF, and the administrative authority must be made a party to the initial proceedings. Payment shall be made to the third-party claimant only if the judgment is against an owner or operator who was an eligible participant on the date that the incident that gave rise to the claim occurred. The costs to the attorney general of defending these suits, or to those assistants that the administrative authority employs or the attorney general appoints to assist, shall be recovered from the MFUSTTF. If the MFUSTTF is insufficient to make payments when the claims are filed, such claims shall be paid in the order of filing when monies are paid into the MFUSTTF. Neither the amount of money in the MFUSTTF, the method of collecting it, nor any of the particulars involved in setting up the MFUSTTF shall be admissible as evidence in any trial in which suit is brought when the judgment rendered could affect the MFUSTTF.

3. For sites with more than one eligible release and with multiple owners and/or operators wishing to use MFUSTTF monies, cost effective procedures shall require that the multiple owners and/or operators provide to the administrative authority a single investigation and corrective action plan that complies with the requirements of LAC 33:XI.709, 711, and 715. The MFUSTTF shall reimburse the owners and/or operators only after the submittal of one certified request for reimbursement for work that has been completed according to the administrative authority's approved investigation and corrective action plan.

4. For sites with more than one eligible release and with multiple owners and/or operators wishing to use MFUSTTF monies who cannot agree on the selection of a single qualified response action contractor (RAC) for the purpose of complying with Paragraph D.3 of this Section, or who have failed to begin investigation or corrective action within the time required by the administrative authority, the administrative authority shall select a RAC to carry out the investigation and/or corrective action or order the respective owners and/or operators to begin investigation or corrective action without MFUSTTF monies. The administrative authority, in choosing a RAC, shall solicit notices of interest in the project from all approved RACs and select a RAC randomly through a public drawing from all RACs expressing an interest in the project. The RAC selected shall not be one currently under contract to any one of the multiple owners and/or operators of the site. Owners and/or operators shall continue to monitor site cleanup and shall sign and submit a sworn application requesting

reimbursement. Thereafter, the administrative authority shall determine all reasonable costs and shall pay the RAC directly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and specifically 2195-2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), LR 27:521 (April 2001), amended by the Office of Environmental Assessment, LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:864 (May 2008), LR 35:1881 (September 2009).

§1123. Trust Fund

A. An owner or operator may satisfy the requirements of LAC 33:XI.1107 by establishing a trust fund that conforms to the requirements of this Section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

B. The wording of the trust agreement must be identical to the wording specified in LAC 33:XI.1125.B.1, and must be accompanied by a formal certification of acknowledgement as specified in LAC 33:XI.1125.B.2.

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

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

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

F. Within 60 days after receiving a request from the owner or operator for release of funds as specified in Subsection D or E of this Section, the administrative authority will instruct the trustee to release to the owner or operator such funds as the administrative authority specifies in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2521 (October 2005), LR 33:2174 (October 2007).

§1125. Standby Trust Fund

A. An owner or operator using any one of the mechanisms authorized by LAC 33:XI.1113, 1117, or 1119 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

B. The standby trust agreement must meet the following requirements.

1. The standby 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 [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of _____" or "a national bank"], the "Trustee."

[Whereas, the Department of Environmental Quality, an agency of the government of the state of Louisiana, 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 (this paragraph is only applicable to the standby trust agreement)];

[Whereas, the Grantor has elected to establish (insert either "a guarantee," "surety bond," or "letter of credit") to provide all or part of such financial assurance for the 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, or letter of credit, from which the standby trust fund is established to receive payments (this paragraph is only applicable to the standby trust agreement)].

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department of Environmental Quality. 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 administrative authority of the Department of Environmental Quality's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any

payments necessary to discharge any liability of the Grantor established by the department.

Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"]

The Trustee shall make payments from the Fund as the administrative authority shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "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 [insert owner or operator] under a worker's compensation, disability benefits, or unemployment compensation law or other similar law;

b. bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert 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 [insert 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 [insert 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 LAC 33:XI.1107.

The Trustee shall reimburse the Grantor, or other persons as specified by the administrative authority, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the administrative authority shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the administrative authority 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 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 thereon.

Section 7. Commingling and Investment

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

Section 13. Instructions to the Trustee

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the administrative authority of the Department of Environmental Quality to the Trustee shall be in writing, signed by the administrative authority, 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 administrative authority hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the administrative authority, 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 administrative authority of the Department of Environmental Quality 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 administrative authority of the Department of Environmental Quality, 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 administrative authority 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 Louisiana, 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 LAC 33:XI.1125.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]

2. The standby trust agreement must be accompanied by the following formal certification of acknowledgement.

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]

C. The administrative authority will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the administrative authority determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).

§1127. Substitution of Financial Assurance Mechanisms by Owner or Operator

A. An owner or operator may substitute any alternate financial assurance mechanisms as specified in this Chapter, provided that at all times he or she maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of LAC 33:XI.1107.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).

§1129. Cancellation or Nonrenewal by a Provider of Financial Assurance

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

1. Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

2. Termination of insurance or risk retention group coverage may not occur until 60 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 LAC 33:XI.1131, the owner or operator must obtain alternate coverage as specified in this Section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the Office of Environmental Assessment of such failure and submit:

1. the name and address of the provider of financial assurance;

2. the effective date of termination; and

3. the evidence of the financial assistance mechanism subject to the termination maintained in accordance with LAC 33:XI.1133.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2521 (October 2005), LR 33:2174 (October 2007).

§1131. Reporting by Owner or Operator

A. An owner or operator must submit to the Office of Environmental Assessment the appropriate forms listed in LAC 33:XI.1133.B documenting current evidence of financial responsibility as follows.

1. The owner or operator must submit the appropriate forms within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under LAC 33:XI.713 or 715.B.

2. The owner or operator must submit the appropriate forms if he or she fails to obtain alternate coverage as required by this Chapter, within 30 days after the owner or operator receives notice of:

a. commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, 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; or

d. other incapacity of a provider of financial assurance.

3. The owner or operator must submit the appropriate forms as required by LAC 33:XI.1111.G and 1129.B.

B. An owner or operator must certify compliance with the financial responsibility requirements of these regulations as specified in the new tank registration form required to be submitted to the department under LAC 33:XI.301.B.

C. The administrative authority may require an owner or operator to submit evidence of financial assurance as described in LAC 33:XI.1133.B or other information relevant to compliance with this Chapter at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2562 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2521 (October 2005), LR 33:2174 (October 2007).

§1133. Recordkeeping

A. Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this Chapter for an underground storage tank until released from the requirements of this Chapter under LAC 33:XI.1137. An owner or operator must maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site must be made available upon request of the department.

B. An owner or operator must maintain the following types of evidence of financial responsibility.

1. An owner or operator using an assurance mechanism specified in LAC 33:XI.1111-1123 must maintain a copy of the instrument worded as specified.

2. An owner or operator using a financial test or guarantee must 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 120 days after the close of the financial reporting year.

3. An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed

standby trust fund agreement and copies of any amendments to the agreement.

4. An owner or operator using an insurance policy or risk retention group coverage must 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.

5. An owner or operator covered by the Underground Motor Fuel Storage Tank Trust Fund must maintain on file documentation that he or she has met the financial responsibility requirements of LAC 33:XI.1121.B.

6. An owner or operator using an assurance mechanism specified in LAC 33:XI.1111-1123 must 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 LAC 33:XI.Chapter 11.

The financial assurance mechanism(s) used to demonstrate financial responsibility under LAC 33:XI.Chapter 11 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" and/or "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]

The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991).

§1135. Drawing on Financial Assurance Mechanisms

A. The administrative authority shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the administrative authority, up to the limit of funds provided by the financial assurance mechanism, into the standby trust under the circumstances described in either Paragraph A.1 or 2 below.

1. The administrative authority shall require that the funds be placed into the standby trust if both of the following occur:

a. the owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

b. the administrative authority determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator, or the owner or operator has notified the administrative authority pursuant to LAC 33:XI.707-713 or 715 of a release from an underground storage tank covered by the mechanism.

2. The conditions of Paragraph B.1 or Subparagraph B.2.a or b of this Section are satisfied.

B. The administrative authority may draw on a standby trust fund under the following circumstances.

1. The administrative authority 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, has not conducted corrective action as required under LAC 33:XI.715.

2. The administrative authority has received one of the following.

a. The administrative authority receives certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) 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 [insert 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

Attorney for Owner or Operator

(Notary) Date

[Signature(s)]

Claimant(s)

Attorney(s) for Claimant(s)

(Notary) Date

b. The administrative authority receives 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 Chapter, and the administrative authority determines that the owner or operator has not satisfied the judgment.

C. If the administrative authority determines that the amount of corrective action costs and third-party liability claims eligible for payment under Subsection B of this Section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The administrative authority shall pay third-party liability claims in the order in which the administrative authority receives certifications under Subparagraph B.2.a of this Section, and valid court orders under Subparagraph B.2.b of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).

§1137. Release from the Requirements

A. An owner or operator is no longer required to maintain financial responsibility under this Chapter 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 LAC 33:XI.Chapter 9.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).

§1139. Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the Office of Environmental Assessment by certified mail of such commencement and submit the appropriate forms listed in LAC 33:XI.1133.B documenting current financial responsibility.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in LAC 33:XI.1113.

C. An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit. The owner or operator must obtain alternate financial assurance as specified in this Chapter within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he must notify the Office of Environmental Assessment.

D. Within 30 days after receipt of notification that the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2562 (November 2000), amended by the Office of Environmental Assessment, LR 31:1578 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2522 (October 2005), LR 33:2174 (October 2007), LR 34:1902 (September 2008).

§1141. Replenishment of Guarantees, Letters of Credit, or Surety Bonds

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

1. replenish the value of financial assurance to equal the full amount of coverage required; or

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

B. For purposes of this Section, the full amount of coverage required is the amount of coverage required by LAC 33:XI.1107. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).

Chapter 12. Requirements for Response Action Contractors Who Assess and Remediate Motor Fuel Contaminated Sites Eligible for Cost Reimbursement in Accordance with the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF)

§1201. Scope

A. These requirements apply to persons engaged in release response action activities including, but not limited to, assessment, remedial planning, design, engineering, construction, and the operation of recovery systems or ancillary services that are carried out in response to any

discharge or release or threatened release of motor fuel into the groundwater or subsurface soils, and who have been hired by an owner or operator who seeks and is eligible for reimbursement for such services under the MFUSTTF, hereinafter referred to as the Tank Trust Fund (TTF).

B. Effective July 15, 1988, the Tank Trust Fund required that Response Action Contractors (RACs) be approved by the department. Any RAC performing UST site work due to a release eligible for Tank Trust Fund participation must meet standards approved by the department, and its name must appear on the RAC list maintained by the department. Only RACs appearing on the list at the time the work was performed are eligible for reimbursement from the TTF.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194(C) and 2195.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:522 (April 2001).

§1203. Prohibitions

A. Twelve months after promulgation of these regulations, April 20, 2002, no person shall conduct a response action at a UST site unless the person has met the standards for the qualification of a *RAC*, as defined herein, and appears on the approved current RAC listing. These RACs shall be approved for RAC listing by the administrative authority. The MFUSTTF Advisory Board (hereinafter referred to as the "Board") may recommend to the administrative authority at any time that RACs be added or deleted from the list.

B. Persons performing *technical services*, as defined in LAC 33:XI.103, must be RACs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194(C) and 2195.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:522 (April 2001).

§1205. Qualifications

A. In order to be listed by the department as an approved RAC for work that is eligible for Tank Trust Fund reimbursement, persons must submit, on a department-prescribed application form, documentation demonstrating and verifying that they meet the following minimum requirements:

1. the applicant must be licensed by the State of Louisiana Licensing Board for Contractors with a specialty compatible with UST assessment/remedial activities. A copy of the valid, unexpired license must be provided in the name of the applicant to be placed on the RAC list;

2. the applicant must have a minimum of $1 million of contractor's general liability insurance and a minimum of $1 million of coverage for an accidental and/or unexpected release(s) from a UST system(s) and/or any other accidental releases related to site-specific RAC activities. A valid, unexpired copy of the certificates of insurance coverage must be provided in the name of the applicant to be placed on the RAC list and with the department listed as an additional insured. Certificate of insurance shall provide that the insurer shall give 30 days notice of cancellation to all insured;

3. the applicant's employees must comply with applicable Occupational Safety and Health Administration (OSHA) training and certification requirements. A written statement indicating compliance must be provided;

4. the applicant must have on staff, either a registered engineer, licensed in the state of Louisiana, with expertise in geotechnical engineering and hydrogeology or a geologist with expertise in these fields. A copy of the current engineering registration or the college transcripts for the geologists must be provided;

5. the applicant must sign a certification statement certifying that the RAC will not accept an authorization for work from an eligible Tank Trust Fund participant if the RAC cannot begin work within 72 hours of authorization. The certification shall include a commitment that the RAC will retain documentation demonstrating compliance with this requirement; and

6. the applicant must provide a job history and adequately demonstrate relevant experience in environmental subsurface investigation and remediation at sites exhibiting subsurface motor fuels contamination. A minimum of five jobs must be documented, and the applicant must adequately demonstrate the following:

a. experience in oversight of installation of groundwater monitoring wells and soil borings;

b. experience in developing and sampling/monitoring groundwater monitoring wells;

c. experience in the oversight of physical removal, treatment, and/or proper disposal of soils contaminated with hydrocarbons or motor fuels;

d. experience in the removal of free phase hydrocarbons from the subsurface; and

e. proficiency with projects that require design and installation/implementation of corrective action programs for the purpose of remediating contaminated soils and/or groundwater sites impacted by USTs.

B. In order to adequately demonstrate required experience, as provided in Subparagraphs A.6.a-e of this Section, only the applicant's experience, or the experience of a full-time employee of the applicant, shall be considered. The experience of a subcontractor or person(s) on retainer shall not be considered, and therefore, will not meet the requirements of this Section.

C. The RAC List will be updated once per quarter to include applicants who have met the requirements of this Section. All new applications or annual updates shall be submitted to the Office of Management and Finance by 4:30 p.m. on or before the fifteenth day of March, June, September, and December.

D. Applicants who submit applications lacking the documentation required in Subsection A of this Section shall be notified in writing of the deficiencies.

E. Any application that adequately demonstrates the requirements of Subsection A of this Section shall be submitted to the administrative authority for approval. Upon approval by the administrative authority the applicant shall be included on the approved RAC list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194(C) and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:523 (April 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2522 (October 2005), LR 33:2174 (October 2007).

§1207. RAC Listing

A. Notification Requirements. Notification in writing shall be made to the department within 30 days by a RAC who no longer meets the qualification requirements of LAC 33:XI.1205.A.

B. Annual Update Requirements. No later than March 1 of each year, each RAC shall submit the following information to the department:

1. a copy of a valid, unexpired license by the State of Louisiana Licensing Board for Contractors with a specialty compatible with UST assessment/remedial activities in the name of the RAC identified on the RAC listing;

2. a copy of a valid, unexpired certificate bearing the name of the person identified on the RAC listing indicating a minimum of $1 million contractor's general liability insurance and a minimum of $1 million of coverage for an accidental and/or unexpected release(s) from a UST system(s) and/or any other accidental releases related to site-specific RAC activities; and

3. a copy of a *certificate or documentation* showing current OSHA compliance for HAZWOPER training, as defined in 29 CFR 1910.120, for at least one full-time employee of the RAC.

C. Failure to submit the documentation required in this Section shall result in removal from the RAC listing until such time as the required information is submitted and reviewed by the department and the administrative authority approves the RAC listing.

D. A RAC shall notify the owner/operator within 24 hours of receiving notice of a RAC listing removal, suspension, and/or revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194(C) and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:523 (April 2001).

§1209. Suspension/Revocation from RAC Listing

A. The administrative authority may suspend or revoke a RAC from the listing based on the following:

1. evidence of fraud or deceit with respect to any documentation submitted to the department; or

2. willful violation of the laws and regulations of Louisiana regarding site assessment or remediation.

B. The administrative authority may revoke a RAC's listing when the RAC or its employees have been convicted of a felony related to response action activities. This revocation is not subject to the RAC listing revocation procedures provided for in this Section.

C. The suspension or revocation of a RAC listing will depend upon seriousness of the offense(s).

1. After a suspension period of 90-365 days as specified by the department, a RAC may petition the department in accordance with the requirements of LAC 33:XI.1205 for relisting.

2. After a period of five years, a RAC whose listing has been revoked may reapply. If a RAC listing is revoked a second time, the revocation shall be permanent.

D. Written Notice

1. When the department determines that a RAC listing should be suspended or revoked, the department shall notify that RAC by certified mail. Such written notice shall contain the following:

a. facts that will justify a recommendation to the administrative authority for suspension or revocation from the RAC listing;

b. a description of the general nature of the evidence supporting the recommendation; and

c. unless the RAC, within 30 days after receipt of the notice, submits a request for an informal hearing before the board, the department shall recommend to the administrative authority that the RAC's listing be suspended or revoked. The request for informal hearing shall be submitted to the Office of Management and Finance. A written statement giving the RAC's view of the circumstances shall accompany the request for hearing.

2. If the RAC does not mail a request for hearing and a statement of the circumstances within the time frame specified, the department shall recommend to the administrative authority the suspension for a specified period of time or revocation from the RAC listing.

E. Hearings before the Board

1. At least 20 days prior to a hearing, the department shall provide the RAC with a notice of the hearing. The notice shall be sent by certified mail and include the time, date, and location of the hearing.

2. All hearings on suspension or revocation from the RAC listing held before the board shall not be an adjudicatory hearing as provided for in the Administrative Procedure Act and shall be conducted with rapidity and without the observance of all formalities. All hearings conducted by the board shall be recorded and a transcript prepared.

3. Within 90 days after conducting an informal hearing, the board shall forward its recommendation to the administrative authority for a decision.

4. Upon receiving notice of a RAC listing removal, suspension, and/or revocation, a RAC shall notify the owner/operator within 24 hours.

F. Record of Hearing. The record of proceedings conducted under this Section shall consist of the following:

1. the RAC's certified request for hearing and statement of the circumstances;

2. the notice of the hearing;

3. all documentary evidence and written comments received;

4. the recording of the hearing; and

5. written recommendations from the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194(C) and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:524 (April 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2175 (October 2007).

Chapter 13. Certification Requirements for Persons Who Install, Repair, or Close Underground Storage Tank Systems

§1301. Applicability

A. The requirements of this Chapter apply to persons engaged in critical junctures of a UST system. Certification is not required for those persons engaged in the process of relining an underground storage tank through the application of such materials as epoxy resins, nor does it include the process of conducting a tightness test to establish the integrity of the tank, or installing or initial testing of UST system cathodic protection systems.

B. After January 20, 1992, no person shall conduct critical junctures of a UST system unless the person present at the site and exercising responsible supervisory control over the critical juncture is currently certified in accordance with this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, LR 31:1074 (May 2005).

§1303. Definitions

A. The terms defined in this Section shall have the following meanings in this Chapter.

Closure—the process of removing and disposing of a UST system no longer in service, the process of abandoning such a system in place through the use of prescribed techniques for the purging of vapors and the filling of the vessel with an inert material, the process of properly labeling a tank, and the process of collecting subsurface samples.

Closure-Critical Juncture—those steps in the UST system closure process that are crucial to the prevention or detection of releases from that system. These steps are:

a. the process of cleaning/vapor removal;

b. all subsurface sample collection events; and

c. the removal or filling with inert material of the tank.

Critical Junctures—those steps identified in *installation-critical junctures*, *repair-critical junctures*, or *closure-critical junctures* of UST systems, as defined in this Section.

Individual Certification—certification in either installation/repair or closure of a UST system.

Install—the process of placing a UST system in the ground and preparing it to be put into service.

Installation-Critical Juncture—those steps during the installation of a UST system that are crucial to the prevention or detection of releases from that system. These steps are:

a. the preparation of the excavation immediately prior to receiving backfill and the tank;

b. the setting of the tank and the piping, including placement of any anchoring devices, backfilling to the level of the tank, and strapping (if any);

c. any time during the installation in which piping components are connected;

d. all pressure testing of the UST system (including associated piping) performed during the installation;

e. completion of the backfill and filling of the excavation; and

f. installation of release detection devices within the excavation zone.

Person—an individual who engages in the *installation*, *repair* or *closure*, as defined in this Section, of UST systems.

Renewal Fee—biannual fee for installation/repair and/or closure certification.

Repair—modification or correction of a UST system through such means as replacement of valves, fill pipes, vents, and liquid level monitoring systems, and the routine maintenance and inspection of the efficacy of cathodic protection devices.

Repair-Critical Juncture—those steps in the UST system repair or modification process that are crucial to the prevention of releases from that system. These include the following:

a. the completion of the excavation of existing tanks and/or piping;

b. the actual performance of the repairs to the tank and/or piping;

c. any time during the repair process when components of the piping are connected;

d. any time during the repair process when the tank and/or the associated piping are tested; and

e. any time during the modification process when equipment is connected to the tank and/or piping.

UST Certification Board—a board of seven members, to be appointed in the manner prescribed in LAC 33:XI.1313, for the purpose of providing expert counsel to personnel of the department with respect to determining applicant eligibility, and the examination, certification, and certification renewal of persons engaged in UST system installation, repair and/or closure. The board's activities are, however, advisory only, and final authority for administration of the certification program rests with the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, LR 31:1075 (May 2005).

§1305. Categories of Certification and Requirements for Issuance and Renewal of Certificates

A. Categories of Certification. UST certificates issued by the department will address the following categories:

1. installation/repair; and

2. closure.

B. Requirements for Certification Examination

1. To qualify for an examination, a person need not be a resident of Louisiana. A person must provide, to the Office of Environmental Assessment, payment of the examination fee and meet the following requirements to be eligible for a UST certification examination.

a. Any person who applies for a certificate addressing UST system installation/repair must demonstrate:

i. two years of experience in UST system installation/repair; and

ii. active participation in a minimum of five separate jobs involving UST system installations/repairs (three of which must be installations) conducted after December 22, 1988.

b. Any person who applies for a certificate addressing UST system closure must demonstrate:

i. two years of experience in UST system closures; and

ii. active participation in a minimum of five jobs involving UST system closures conducted after December 22, 1988.

c. The following may substitute for the experience required in LAC 33:XI.1305.B.1.a or b:

i. a civil or mechanical engineering degree from a recognized college or university; or

ii. closely related work experience on a year-for-year basis.

2. All information regarding an applicant's qualifications shall be provided on a department-prescribed application form. Applications shall include a listing of jobs performed, their locations, and the names of the companies/employers for whom the jobs were conducted.

C. Requirements for Certification. No person shall be issued a certificate unless he or she has successfully passed a written examination described in LAC 33:XI.1307.

D. Fees. The following fees are hereby established for certification and renewal:

1. examination fee for individual certification, $132; and

2. certification renewal fee, $132.

E. Jurisdiction. The UST certificate shall be valid in all parishes and municipalities throughout Louisiana. All certified persons shall be required to conduct their operations within local jurisdictions in conformity with local requirements.

F. Expiration and Renewal of Certificates

1. All UST certificates and certificate renewals shall expire December 31 of every second year. Applications for certificate renewal and payment of the renewal fee should be submitted to the Office of Environmental Assessment by November 1 of each year they expire. A person whose certificate has expired prior to his or her submission of evidence of compliance with Paragraph F.2 of this Section shall be considered a new applicant for certification.

2. A person who has been issued a certificate may renew it for another two-year period by paying the designated renewal fee and:

a. submitting, on a department-prescribed form, a certificate renewal application demonstrating that he or she has completed 16 hours of department-approved continuing education training courses; or

b. submitting, on a department-prescribed form, a certificate renewal application and successfully passing a written examination described in LAC 33:XI.1307. Payment of the examination fee specified in LAC 33:XI.1305.D.1 is not required.

G. Issuance and Display of Identification Cards and Certificates

1. Upon issuance of a UST certificate, the department will issue an identification card to the successful applicant

that shows the person's name, driver's license or state identification number and the issuing state, categories of certification, certificate number, certificate issuance date, and certificate expiration date.

2. A person who holds a current certificate shall present his or her identification card upon request by a representative of the Department of Environmental Quality or the owner or operator of the UST system for which installation, repair, or closure is to be conducted.

H. Changes in Employment. It is incumbent upon a certified person to provide written notification to the Office of Environmental Assessment within 20 days after his or her knowledge of a change in employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2562 (November 2000), LR 29:691 (May 2003), LR 29:2052 (October 2003), amended by the Office of Environmental Assessment, LR 30:2804 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2522 (October 2005), LR 33:2175 (October 2007).

§1307. Certification Examinations

A. Nature of the Examinations. Examinations administered to candidates for certification under the terms of this Chapter shall be written, multiple-choice examinations. Specific examinations will be given for each category of certification. The questions used in an actual examination shall be extracted from a larger set of questions approved by the department and based on current technology and industry-recommended practices with respect to the proper installation, repair, or closure of UST systems. Questions shall be considered confidential and not subject to general public review procedures.

B. Source of Examination Questions. Questions used in the examination shall be derived from standards, instructions, and recommended practices listed in LAC 33:XI.599.Appendix A. Additional questions may be derived from regulations adopted by the department and from state and federal laws pertaining to UST system installation, repair, or closure.

C. Administration of Examinations

1. Examinations shall be conducted by personnel of the department or persons designated by the department.

2. Beginning after July 20, 1991, the department or persons designated by the department shall conduct written examinations at such times and locations within the state as the department may designate in order to identify persons as being qualified to receive UST certification.

3. No fewer than four examinations shall be offered per year for each of the two years following July 20, 1991, and at least two examinations per year for each year thereafter.

D. Passing Grade. Candidates for certification shall correctly answer not less than 75 percent of the questions in a category of certification to qualify for that category of certification.

E. Failed Examinations. No applicant will be allowed to take an examination more than three times within a 12-month period. A new application, with applicable fees, must be submitted each time before the new examination may be taken.

F. Revision, Security, and Administration of Certification Examinations. The department shall update examinations, preserve the security of examinations, and administer examinations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, LR 31:1075 (May 2005).

§1309. Approval of Continuing Training Courses

A. No course in continuing education submitted to the Office of Environmental Assessment will be considered for approval unless the course:

1. is relevant to the subject area of installation, repair, closure, or the regulation of UST systems; and

2. offers instruction on the most current generally acceptable technology or methods for the subjects in LAC 33:XI.1309.A.1. The technology or methods presented must satisfy department rules, and state and federal laws governing UST system installation, repair, or closure.

B. Applications for approval of specific training programs shall be submitted to the Office of Environmental Assessment in writing. Such submissions shall contain a complete course outline; training material; sample certificates; methodology for verifying attendance; date, time, and location of the course; the name of the offering organization; the credentials of the instructors; and a certification that the technology or methods that will be presented in the training program will satisfy department rules, and state and federal laws governing UST system installation, repair, or closure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2562 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2522 (October 2005), LR 33:2175 (October 2007).

§1311. Denial of Issuance or Renewal of a Certificate or Revocation of a Certificate

A. Should an applicant be denied issuance or renewal of a UST certificate or should a person's certificate be revoked, the reason or reasons for such denial or revocation shall be

set forth in writing to the person by the administrative authority.

B. Possible reasons for denial of issuance or renewal of a certificate or for revocation of a certificate include the following:

1. failure to achieve a passing grade on the written examination described in LAC 33:XI.1307;

2. failure to submit required documentation;

3. previous revocation of a certificate held by the applicant;

4. evidence of fraud or deceit with respect to documentation required by and submitted to the department;

5. failure to present the identification card upon request of a department representative at a UST system installation, repair, or closure;

6. willful violation of the laws and regulations of Louisiana regarding UST system installation, repair, or closure; or

7. any other cause that, in the opinion of the administrative authority, constitutes adequate grounds for denial or revocation of a certificate.

C. Appeal of Denial or Revocation. A person who has been denied issuance or renewal of a certificate or who has had a certificate revoked may appeal the action in accordance with R.S. 30:2024(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, LR 31:1075 (May 2005).

§1313. UST Certification Board

A. Composition. The administrative authority shall appoint seven members of a body to be known as the UST Certification Board. Members of the board shall be as follows:

1. the administrative authority or his or her designee;

2. a representative of the Louisiana Oil Marketers' Association;

3. a representative of the Mid-Continent Oil and Gas Association;

4. two representatives from within the UST contractor community; and

5. two representatives from the Louisiana Association of Petroleum Equipment Contractors.

B. Function. Members of the UST Certification Board shall offer technical expertise, suggestions, and other counsel to the administrative authority to assist in the planning, updating, and administration of the UST certification program. The board's activities shall, however, be advisory only, and final authority for administration of the certification program shall rest with the department.

C. Tenure and Public Identification. The normal term of office for a member of the board shall be two years. The administrative authority may, however, at the time of the initial appointment of board members, designate terms of lesser duration for some members as a means of achieving staggered tenure and preserving continuity. No board member may be appointed to more than two successive two-year terms. The identity, affiliation, and tenure of each board member shall be a matter of public record.

D. Meetings and Compensation. The board shall meet at least once per annum during the first quarter of the calendar year and more frequently if requested by the administrative authority. Members of the board not otherwise employed by the state shall serve without compensation.

E. Chairman. At the first meeting of the board held each year, members of the board shall elect a chairman from among their own number. The chairman shall serve for one year, shall preside at meetings of the board, and shall be eligible for reelection.

F. Vice Chairman and Secretary. The person elected as chairman shall appoint another member of the board to serve as vice chairman. The vice chairman shall preside at meetings of the board in the absence of the chairman. The administrative authority shall designate a member of his or her staff to serve as secretary to the board. The secretary shall prepare meeting agendas and notices, prepare minutes of board meetings, and otherwise maintain records related to the proceedings and activities of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, LR 31:1075 (May 2005), repromulgated by the Office of the Secretary, Legal Affairs Division, LR 32:394 (March 2006).

Chapter 15. Enforcement

§1501. Inspection and Entry

A. Owners and operators of USTs shall allow an authorized representative of the department, upon proper presentation of credentials, to do the following.

1. The representative shall be allowed to enter, for inspection or sampling purposes, the premises where a UST system is or might be located or in which monitoring equipment or records required by these regulations are kept. Most inspections will be unannounced and should be allowed to begin immediately, but in no case shall begin more than 30 minutes after the time the inspector presents his or her credentials and announces the purpose(s) of the inspection. A delay of over 30 minutes shall constitute a violation of these regulations. Additional time may be granted, however, if the inspector or the administrative authority determines that the circumstances warrant such action.

2. The representative shall have access to and be allowed to copy any records that the department or the representative finds necessary for the enforcement of these regulations. For records maintained in either a central or private office that is open only during normal office hours and is closed at the time of the inspection, the records shall be made available as soon as the office is open, but in no case later than noon the next working day.

3. Photographs (Reserved)

4. The representative shall be allowed to inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under these regulations.

5. The representative shall be allowed to sample or monitor for the purposes of assuring compliance with these regulations, or as otherwise authorized by the Act (R.S. 30:2001 et seq.), any substances or parameters at any location.

B. Sample Collection

1. When the department's inspector announces that samples will be collected, the owner/operator will be given 30 minutes to prepare containers in order to collect duplicates. If the owner/operator cannot obtain and prepare sample containers within this time, he or she is considered to have waived his or her right to collect duplicate samples, and the sampling will proceed immediately. Further delay on the part of the owner/operator in allowing initiation of the sampling will constitute a violation of these regulations.

2. At the discretion of the department's inspector or the administrative authority, sample collection shall proceed immediately (without the 30 minutes described in LAC 33:XI.1501.B.1), and the inspector will supply the owner/operator with duplicate samples.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).

§1503. Failure to Comply

A. Failure of any person to comply with any of the provisions of these regulations or any order issued hereunder constitutes a violation of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).

§1505. Investigations: Purposes, Notice

A. Investigations shall be undertaken to determine whether a violation has occurred or is about to occur, the scope and nature of the violation, and the persons or parties involved. Notice of the initiation of an investigation may be given to any complainant who provided the information prompting the investigation, and if advisable, to the person(s) under investigation, if the identity of such person(s) is known.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990).