SUBCHAPTER 02O - FINANCIAL RESPONSIBILITY REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS

SECTION .0100 - GENERAL CONSIDERATIONS

15A NCAC 02O .0101 GENERAL
(a) The purpose of this Subchapter is to establish the requirements for financial responsibility for owners and operators of underground storage tanks located in North Carolina.
(b) The Department of Environment, Health, and Natural Resources (Department) shall administer the underground storage tank financial responsibility compliance program for the State of North Carolina.
(c) Department staff may conduct inspections as necessary to ensure compliance with this Subchapter.

History Note:  Authority G.S. 143-215.3(a)(15); 143-215.94H; 143B-282(2)(h);
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 02O .0102 COPIES OF REFERENCED FEDERAL REGULATIONS
(a) Copies of applicable Code of Federal Regulations sections incorporated in this Subchapter are available for inspection at Department of Environment, Health, and Natural Resources regional offices. They are:
   (1) Asheville Regional Office, Interchange Building, 59 Woodfin Place, Asheville, North Carolina 28802;
   (2) Winston-Salem Regional Office, Suite 100, 8025 North Point Boulevard, Winston-Salem, North Carolina 27106;
   (3) Mooresville Regional Office, 919 North Main Street, Mooresville, North Carolina 28115;
   (4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27611;
   (5) Fayetteville Regional Office, Wachovia Building, Suite 714, Fayetteville, North Carolina 28301;
   (6) Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina 27889;
(b) Copies of such regulations can be made at these regional offices for ten cents ($0.10) per page. Individual complete copies may be obtained from the U.S. Environmental Protection Agency, Office of Underground Storage Tanks, Post Office Box 6044, Rockville, Maryland 20850 for no charge.

History Note:  Authority G.S. 12-3.1(c); 143-215.3(a)(15); 143B-282(2)(h);
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 02O .0103 SUBSTITUTED SECTIONS
(a) References to sections of the Federal Regulations incorporated by reference will refer to those sections and any subsequent amendments and editions.
(b) References to 40 CFR 280.93 are to be taken as references to Rule .0204 of this Subchapter, with Paragraph correspondence being: 40 CFR 280.93(a) corresponds to 15A NCAC 2O .0204(a) and (b); 40 CFR 280.93(b) corresponds to 15A NCAC 2O .0204(c) and (d); 40 CFR 280.93(c) and (d) have no correspondence; and 40 CFR 280.93(e), (f), (g), and (h) correspond to 15A NCAC 2O .0204(f), (g), (h), and (i), respectively.
(c) References to 40 CFR 280.95 are to be taken as references to Rule .0302 of this Subchapter, with Paragraph correspondence being: 40 CFR 280.95(a), (e), (f), and (g) correspond to 15A NCAC 2O .0302(a), (c), (d), and (e), respectively; 40 CFR 280.95(b) and (c) correspond to 15A NCAC 2O .0302(b); 40 CFR 280.95(d) corresponds to 15A NCAC 2O .0302(f) and (g).

History Note:  Authority G.S. 143-215.94H; 143-215.94T; 150B-21.6;
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.
SECTION .0200 - PROGRAM SCOPE

15A NCAC 02O .0201  APPLICABILITY
(a) The provisions for "Applicability" contained in 40 CFR 280.90 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.
(b) The Rules contained in this Subchapter apply to all dual usage tanks as defined in Rule .0203 of this Section.

History Note:  Authority G.S. 143-215.94A; 143-215.94H; 143-215.94T; 150B-21.6;  

15A NCAC 02O .0202  COMPLIANCE DATES
The provisions for "Compliance Dates" contained in 40 CFR 280.91 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

History Note:  Authority G.S. 143-215.94A; 143-215.94H; 150B-21.6;  

15A NCAC 02O .0203  DEFINITIONS
(a) The definitions contained in 15A NCAC 2N .0203 and 40 CFR 280.92 are hereby incorporated by reference including any subsequent amendments and editions, except for "Director of the Implementing Agency", "Occurrence", and "Financial Reporting Year". Locations where this material is available are specified in Rule .0102 of this Subchapter.
(b) The following definitions are defined for the purposes of this Subchapter:

<table>
<thead>
<tr>
<th></th>
<th>Definition</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>&quot;Annual Operating Fee&quot; is an annual fee required to be paid by the owner or operator of each commercial underground storage tank, as defined in G.S. 143-215.94A, in use on or after January 1 of the year, beginning with 1989.</td>
</tr>
<tr>
<td>2</td>
<td>&quot;Dual Usage Tank&quot; means an underground storage tank which has had varied usage which would cause the tank to be considered an underground storage tank regulated in accordance with 15A NCAC 2N during certain times and an unregulated tank during other times and for which both the regulated and unregulated usages were integral to the operation or existence of the tank.</td>
</tr>
<tr>
<td>3</td>
<td>&quot;Director of the Implementing Agency&quot; means the Director of the Division of Environmental Management of the Department of Environment, Health, and Natural Resources.</td>
</tr>
<tr>
<td>4</td>
<td>&quot;Financial reporting year&quot; means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:</td>
</tr>
<tr>
<td></td>
<td>(A) a 10K report submitted to the SEC;</td>
</tr>
<tr>
<td></td>
<td>(B) an annual report of tangible net worth submitted to Dun and Bradstreet;</td>
</tr>
<tr>
<td></td>
<td>(C) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration; or</td>
</tr>
<tr>
<td></td>
<td>(D) a compilation report by a Certified Public Accountant or Certified Public Accounting Firm.</td>
</tr>
<tr>
<td>5</td>
<td>&quot;Occurrence&quot; means one or more releases which result(s) in a single plume of soil, groundwater, and/or surface water contamination (consisting of free product and/or associated dissolved contaminants exceeding standards established under 15A NCAC 2L .0202 or any other applicable laws, rules, or regulations) emanating from a given site.</td>
</tr>
</tbody>
</table>

History Note:  Authority G.S. 143-215.94A; 143-215.94H; 150B-21.6;  

15A NCAC 02O .0204  AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY
(a) Owners or operators of petroleum underground storage tanks located in North Carolina must demonstrate financial responsibility for at least one million dollars ($1,000,000) per occurrence 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.
(b) Compliance with all laws, rules, and regulations relating to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund shall constitute demonstration of financial responsibility for that amount specified in Paragraph (a) of this Rule which is in excess of the sum of the amounts required to be paid per occurrence by the owner or operator for cleanup and for third-party claims.

(c) Owners or operators of petroleum underground storage tanks located in North Carolina 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, one million dollars ($1,000,000); and
2. For owners or operators of 101 or more petroleum underground storage tanks, two million dollars ($2,000,000).

(d) If all laws, rules, and regulations relating to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund are complied with, the owner or operator may meet the financial responsibility requirements of Paragraph (c) of this Rule by providing an annual aggregate financial assurance of at least the sum of the amounts specified in Subparagraphs (d)(1), (2), and (3) of this Rule as follows, in addition to the assurance provided by the Commercial Fund:

1. The average maximum amount required to be paid by an owner or operator per occurrence for cleanup as determined in accordance with Paragraph (e) of this Rule;
2. The average maximum amount required to be paid by an owner or operator per occurrence for third party claims as determined in accordance with Paragraph (e) of this Rule; and
3. Three percent of the multiple of:
   A. the amount in Subparagraph (d)(1) of this Rule; and
   B. the number of tanks being covered.

(e) An owner or operator providing financial assurance for more than one underground storage tank where the various tanks do not all require the same maximum amounts to be paid per occurrence for cleanup and/or third party claims shall calculate an average maximum amount to be paid per occurrence as follows:

1. Determine the maximum amount to be paid per occurrence for each underground storage tank being assured;
2. Sum the values determined in Subparagraph (e)(1) of this Rule and divide by the number of underground storage tanks being assured.

(f) Owners or operators shall annually review the amount of aggregate assurance provided. The amounts of required financial responsibility and annual aggregate assurance shall be adjusted at the time of the review to that required in Paragraphs (a), (b), (c), and (d) of this Rule. All changes in status, including installations and closures, shall be reported to the Department, and all fees due shall be paid in accordance with applicable laws, rules, and regulations.

(g) 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.

(h) The amounts of assurance required under this Rule exclude legal defense costs.

(i) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

(j) Assurance for petroleum underground storage tanks located in North Carolina must be provided separately from that provided for petroleum underground storage tanks not located in North Carolina.


SECTION .0300 - ASSURANCE MECHANISMS

15A NCAC 02O .0301  ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS

The provisions for "Allowable Mechanisms and Combinations of Mechanics" contained in 40 CFR 280.94 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter. "Guarantee" and "Surety Bond" are acceptable mechanisms in the State of North Carolina.
15A NCAC 02O .0302 SELF INSURANCE
(a) Assurance of financial responsibility may be provided by an owner or operator or guarantor as a self-insurer if the owner or operator has complied with all of the laws, rules, and regulations relative to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the owner or operator or guarantor either establishes a Trust Fund as set out in Paragraph (b) of this Rule or qualifies to be a self-insurer by passing the financial test in Paragraph (b) of this Rule or a financial test of 40 CFR 280.95.
(b) To qualify as an insurer, an owner, operator, or guarantor, individually or collectively, must meet the following criteria based on year-end financial statements for the latest completed fiscal year.
   (1) The owner or operator, or guarantor, individually or collectively must have a total tangible net worth of at least:
      (A) The sum of the amounts specified in Subparagraphs (b)(1)(A)(i) and (ii) of this Rule as follows, not to exceed three million dollars ($3,000,000) and not to be less than one hundred fifty thousand dollars ($150,000):
         (i) the multiple of:
            (I) the number of tanks being covered by this mechanism,
            (II) the cleanup costs required to be paid by the owner or operator per occurrence in accordance with G.S. 143-215.94B(b),
            (III) the proportion of the required financial assurance required pursuant to Rule .0204 of this Subchapter being covered by this mechanism, and
            (IV) a constant representing an average value per tank calculated from 0.05 for each underground storage tank covered by this mechanism which is in compliance with any performance standards required on December 22, 1998, and 0.18 for each underground storage tank covered by this mechanism which is not in compliance with any performance standards required on December 22, 1998.
         (ii) two percent of the multiple of:
            (I) the number of tanks being covered by this mechanism,
            (II) the amount for third party claims required to be paid by the owner or operator per occurrence in accordance with G.S. 143-215.94B(b), and
            (III) the proportion of the required financial assurance required pursuant to Rule .0204 of the Subchapter being covered by this mechanism;
      (B) Any amount of tangible net worth used to assure financial responsibility for petroleum underground storage tanks not located in North Carolina;
      (C) Ten times the sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for Hazardous Waste Management Facilities and Hazardous Waste Storage Facilities for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Parts 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and
      (D) Ten times the sum of current plugging and abandonment cost estimates for injection wells for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Part 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.
   (2) In addition to any other requirements of this Section, a Guarantor must have a net worth of at least two hundred thousand dollars ($200,000) greater than any tangible net worth used by the guarantor in Subparagraph (b)(1) of this Rule.
   (3) The owner or operator, or guarantor, individually or collectively, must each have a letter signed by the chief financial officer, worded as specified in Paragraph (g) of this Rule, and must do one of the following:
      (A) Obtain annually a compilation report issued by an independent certified public accountant or certified public accounting firm;
      (B) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or
(C) 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.

(4) The firm's year-end financial statements must be independently compiled and cannot include an adverse accountant's report or a "going concern" qualification.

(c) If an owner or operator is acting as a self-insurer in accordance with Paragraph (b) of this Rule and finds that he or she no longer meets the requirements of the test in Paragraph (b) of this Rule 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.

(d) The Department may require reports of financial condition at any time from a guarantor and from an owner or operator who is self insuring. If the Department finds, on the basis of such reports or other information, that the owner, operator, or guarantor no longer meets the financial test requirements of Paragraph (b) of this Rule, the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(e) 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 Department that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Department of such failure within 10 days.

(f) To demonstrate that it meets the financial test under Paragraph (b) of this Rule, the chief financial officer of each 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 in Paragraph (g) of this Rule, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

(g) LETTER FROM CHIEF FINANCIAL OFFICER

I, [insert: name of chief financial officer], the chief financial officer of [insert: name and address of the owner or operator, or guarantor] have prepared this letter 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" 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 storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," or "guarantor"]: [List or attach the following information for each facility: the name and address of the facility where tanks assured by this financial test are located, facility number(s) assigned by the Department, and date(s) of last payment of annual tank operating fee(s). If separate mechanisms or combinations of mechanisms, other than the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund are being used to assure any of the tanks at this facility, list each tank assured by this financial test.]

[When appropriate, include the following for Hazardous Waste Management Facilities, Hazardous Waste Storage Facilities, and Injection Wells: A [insert: "financial test," or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

<table>
<thead>
<tr>
<th>EPA Regulations</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Closure (including §264.143 and §265.143)</td>
<td>$________</td>
</tr>
<tr>
<td>Post-Closure Care (including §264.145 and §265.145)</td>
<td>$________</td>
</tr>
<tr>
<td>Liability Coverage (including §264.147 and §265.147)</td>
<td>$________</td>
</tr>
<tr>
<td>Corrective Action (including §264.101(b))</td>
<td>$________</td>
</tr>
<tr>
<td>Plugging and Abandonment (including §144.63)</td>
<td>$________</td>
</tr>
<tr>
<td>Total</td>
<td>$________</td>
</tr>
</tbody>
</table>

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

1. a. Number of USTs being covered
   
   __________

   b. Average maximum amount of cleanup costs
      (Rule .0204(d) (1))
      
      __________

   c. Average maximum amount of third-party costs
      (Rule .0204(d) (2))
      
      __________

   d. proportion covered
      
      __________
e. constant (Rule .0302(b)(1)(A)(i))

f. Cleanup Total (a x b x d x e) $__________

g. Third-Party Total (0.02 x a x c x d) $__________

h. If Guarantor, list $200,000 $__________

2. Tangible assets applied to USTs not in North Carolina $__________

3. Ten times the costs for Hazardous Waste Facilities and Injections Wells $__________

4. Sum of lines 1f, 1g, 1h, and 2 $__________

5. Total tangible assets $__________

6. Total liabilities [if any of the amount reported on line 4 is included in total liabilities, you may deduct that amount from this line and add that amount to line 7] $__________

7. Tangible net worth [subtract line 6 from line 5] $__________

8. Is line 7 at least [for an owner or operator: $150,000; for a guarantor: $350,000]? Yes No

9. Is line 7 equal to or greater than line 4? Yes No

10. Has a compilation report been issued by an certified public accountant or certified public accounting firm? Yes No

11. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? Yes No

12. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? Yes No

13. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? Yes No

14. 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] Yes No

I hereby certify that the wording of this letter is identical to the wording specified in 15A NCAC 20 .0302, as such regulations were constituted on the date shown immediately below, and that the information contained herein is complete and accurate.

[Signature of chief financial officer]
[Name]
[Title]
[Date]

(h) The provisions for "Trust Fund" contained in 40 CFR 280.102 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.


15A NCAC 020 .0303 GUARANTEE

The provisions for "Guarantee" contained in 40 CFR 280.96 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.


15A NCAC 020 .0304 INSURANCE AND RISK RETENTION GROUP COVERAGE

The provisions for "Insurance and Risk Retention Group Coverage" contained in 40 CFR 280.97 are hereby incorporated by reference including any subsequent amendments and editions, except that "licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states" in §280.97(b)(1), (b)(2), and (c) is replaced by "licensed, registered, or otherwise authorized to provide insurance in North Carolina". Locations where this material is available are specified in Rule .0102 of this Subchapter.
15A NCAC 02O .0305  SURETY BOND
The provisions for "Surety Bond" contained in 40 CFR 280.98 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.


15A NCAC 02O .0306  LETTER OF CREDIT
The provisions for "Letter of Credit" contained in 40 CFR 280.99 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.


15A NCAC 02O .0307  STANDBY TRUST FUND
The provisions for "Standby Trust Fund" contained in 40 CFR 280.103 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.


15A NCAC 02O .0308  INSURANCE POOLS
(a) Insurance Pools established by owners and operators may be used alone or in combination to demonstrate financial assurance in accordance with Rules .0204 and .0301 of this Subchapter.
(b) To be an eligible mechanism, Insurance Pools must comply with the requirements of G.S. 143-215.94I and any other requirements imposed by the Commissioner of Insurance of the State of North Carolina and any relevant law, rule, or regulation.
(c) Each owner and operator provided financial assurance through an Insurance Pool must maintain a certificate of insurance issued by the Insurance Pool listing, at least:
   (1) the name and address of the member;
   (2) the location of the facilities owned by that member where underground storage tanks are being insured by the pool;
   (3) the number of insured underground storage tanks at each facility;
   (4) the capacity of each insured underground storage tank;
   (5) the amount of insurance provided for each underground storage tank; and
   (6) the name, address, and signature of the Administrator of the Insurance Pool.


15A NCAC 02O .0309  SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS

15A NCAC 02O .0310  CANCELLATION OR NONRENEWAL BY A PROVIDER OF ASSURANCE


15A NCAC 02O .0311  LOCAL GOVERNMENT BOND RATING TEST
The regulations governing "Local Government Bond Rating Test" set forth in 40 CFR 280.104 (Subpart H) are hereby incorporated by reference.

History Note: Authority G.S. 143-215.94H; 150B-21.6; Eff. June 1, 2017.

15A NCAC 02O .0312 LOCAL GOVERNMENT FINANCIAL TEST
The regulations governing "Local Government Financial Test" set forth in 40 CFR 280.105 (Subpart H) are hereby incorporated by reference.

History Note: Authority G.S. 143-215.94H; 150B-21.6; Eff. June 1, 2017.

15A NCAC 02O .0313 LOCAL GOVERNMENT GUARANTEE
The regulations governing "Local Government Guarantee" set forth in 40 CFR 280.106 (Subpart H) are hereby incorporated by reference.

History Note: Authority G.S. 143-215.94H; 150B-21.6; Eff. June 1, 2017.

15A NCAC 02O .0314 LOCAL GOVERNMENT FUND
The regulations governing "Local Government Fund" set forth in 40 CFR 280.107 (Subpart H) are hereby incorporated by reference.

History Note: Authority G.S. 143-215.94H; 150B-21.6; Eff. June 1, 2017.

15A NCAC 02O .0315 SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS

History Note: Authority G.S. 143-215.94H; 150B-21.6; Eff. June 1, 2017.

15A NCAC 02O .0316 CANCELLATION OR RENEWAL BY A PROVIDER OF ASSURANCE
The regulations governing "Cancellation or Non-renewal by a Provider of Financial Assurance " set forth in 40 CFR 280.109 (Subpart H) are hereby incorporated by reference.

History Note: Authority G.S. 143-215.94H; 150B-21.6; Eff. June 1, 2017.

SECTION .0400 - RESPONSIBILITIES OF OWNERS AND OPERATORS

15A NCAC 02O .0401 REPORTING BY OWNER OR OPERATOR
The provisions for "Reporting by Owner or Operator" contained in 40 CFR 280.106 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.


15A NCAC 02O .0402 RECORD KEEPING
(a) The provisions for "Record Keeping" contained in 40 CFR 280.107 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.
(b) In addition to the requirements incorporated in Paragraph (a) of this Rule, the following are required as evidence of financial responsibility:

(1) An owner or operator using an "Insurance Pool" must maintain a copy of the signed insurance certificate as specified in Rule .0308(c) of this Subchapter.

(2) Each owner or operator must maintain copies of cancelled checks for payment of annual tank operating fees for the preceding three years or any alternate evidence of payment of the annual operating fees supplied by the Department.


SECTION .0500 - CHANGES IN STATUS

15A NCAC 02O .0501 DRAWING ON FINANCIAL ASSURANCE MECHANISMS
The provisions for "Drawing on Financial Assurance Mechanisms" contained in 40 CFR 280.108 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.


15A NCAC 02O .0502 RELEASE FROM THE REQUIREMENTS
The provisions for "Release From the Requirements" contained in 40 CFR 280.109 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.


15A NCAC 02O .0503 INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF ASSURANCE
(a) The provisions for "Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance" contained in 40 CFR 280.110, except for Subsection 280.110(d), are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

(b) Within 30 days after receipt of notification that the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain financial assurance for the full amounts specified in Rule .0204, Paragraphs (a) and (c), of this Subchapter.

(c) Within 30 days after receipt of notification that the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund has become incapable of paying for additional cleanup actions to be undertaken by the Department, any owner or operator or guarantor who self insures or guarantees based on Rule .0302, Paragraph (b), of this Subchapter must obtain financial assurance for at least twice the amount specified in Rule .0204, Paragraph (d), of this Subchapter assured in accordance with Rule .0302, Paragraph (b), of this Subchapter.


15A NCAC 02O .0504 REPLLENISHMENT
(a) The provisions for "Replenishment of Guarantees, Letters of Credit, or Surety Bonds" contained in 40 CFR 280.111 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

(b) If at any time after a standby trust is funded upon the instruction of the Department with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced to less than the amount for which the owner or operator is responsible per occurrence for third party claims, the owner or operator shall within 60 days 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 full amount of coverage provided by the Standby Trust.