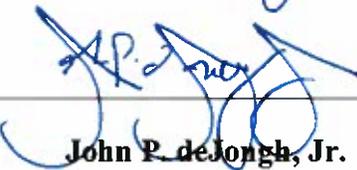


VIRGIN ISLANDS RULES AND REGULATIONS
TITLE 12
CHAPTER 16. UNDERGROUND STORAGE TANKS

APPROVED

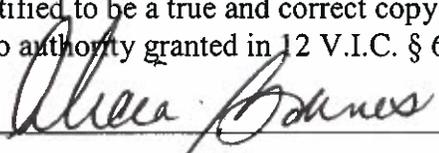
6th Day of May, 2014



John P. deJongh, Jr.

GOVERNOR

Copy below is hereby certified to be a true and correct copy of the regulations adopted, pursuant to authority granted in 12 V.I.C. § 654 (b), by:



Alicia V. Barnes
COMMISSIONER

Virgin Islands Department of Planning and Natural Resources

The copy below interprets or applies 12 V.I.C. § § 651-684.

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654-1. Applicability

- (a) This Chapter applies to all owners and operators of an Underground Storage Tank (“UST”) system as defined in section 654-1b of this Chapter, except as otherwise provided in paragraphs (b) through (d) of this section. Any UST system listed in paragraph (c) shall meet the requirements of section 654-1a of this Chapter for deferred UST systems.
- (b) The following UST systems are excluded from the requirements of this part:
 - (1) Any UST system holding:
 - (i) Hazardous wastes regulated under Subtitle C of the Solid Waste Disposal Act, 42 U.S.C. § 6921 through 42 U.S.C. § 6939b, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq., in effect on September 30, 1996; or
 - (ii) A mixture of such hazardous waste and other regulated substances.
 - (2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 (33 U.S.C. §1342) or Section 307(b) (33 U.S.C. § 1317(b)) of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 et seq., in effect on October 31, 1994.
 - (3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.
 - (4) Any UST system whose capacity is 110 gallons or less.
 - (5) Any UST system that contains a *de minimis* concentration of regulated substances.
 - (6) Any emergency spill of overflow containment UST system that is expeditiously emptied after use.
- (c) Sections 654-2, 654-3a, 654-5, 654-6, 654-8, 654-9, 654-14, and 654-15 do not apply to any of the following types of UST systems:
 - (1) Wastewater treatment tank systems;
 - (2) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011, et seq.);

- (3) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR part 50, appendix A;
 - (4) Airport hydrant fuel distribution systems; and
 - (5) UST systems with field-constructed tanks.
- (d) The release detection provisions in section 654-14 do not apply to any UST system that stores fuel solely for use by emergency power generators, except for those installed or replaced after the effective date of these regulations. The secondary containment provisions in section 654-5 do apply to new or replaced underground storage tanks and piping used for emergency power generation.

654-1a. Interim Prohibition for Deferred UST System

- (a) No person may install an UST system listed in section 654-1(c) for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction) meets the following requirements:
- (1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;
 - (2) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and
 - (3) Is constructed or lined with material that is compatible with the stored substance.
- (b) Notwithstanding paragraph (a) in this section, an UST system without corrosion protection may be installed at a site, if soil tests conducted in accordance with ASTM Standard G57-78, or another standard approved by the Department, show that soil resistivity in an installation location is 12,000 ohm/cm or more. Owners and operators must maintain records that demonstrate compliance with the requirements of this paragraph for the remaining life of the tank.

654-1b. Definitions

As used in this Chapter, citations to section 280 refer to federal regulations for Underground Storage Tanks, codified in 40 Code of Federal Regulations, Part 280.

- (a) "Abandoned underground storage tank" means an underground storage tank that is not intended to be returned to service; has been out of service for more than one year; has been rendered permanently unfit for use; or has not been subjected to tank closure consistent with the provisions of these regulations.
- (b) "Above-ground release" means any release of one or more regulated substances to the surface of the land or to surface water. This includes, but is not limited to, releases from the above-ground portion of an underground storage tank system and above ground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank system.
- (c) "Accidental release" means any release, sudden or nonsudden, of one or more regulated substances 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.
- (d) "Act" means the Virgin Islands Underground Storage Tank Act.
- (e) "Ancillary equipment" means any devices including, but not limited to, piping, fittings, flanges, valves, hoses, dispensers, and pumps used to distribute, meter, or control the flow of regulated substances to and from an underground storage tank.
- (f) "Below-ground release" means any release of one or more regulated substances to the subsurface of the land and/or to groundwater. This includes, but is not limited to, releases from the below-ground portions of an underground storage tank system and below-ground releases associated with overfills and transfer operations as the regulated substance move(s) to or from an underground storage tank system.
- (g) "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.
- (h) "Beneficial source of groundwater" means any private or public well drawing on groundwater with total dissolved solids ("TDS") less than 10,000 parts per million ("ppm") where that groundwater is intended for human use (e.g., for use as drinking water or for agricultural, industrial, or commercial uses).
- (i) "Bodily injury" shall have the meaning given to this term by applicable territorial 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.

- (j) "Cathodic protection" means 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.
- (k) "Cathodic protection tester" means 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 persons 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.
- (l) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
- (m) "Certification" means the recognition by the Department that a person is competent and thus authorized to perform or supervise the performance of any task consistent with the provisions of this chapter and such person's certificate classification.
- (n) "Change-in-service" means continued use of the UST or UST system to store a nonregulated substance.
- (o) "Chief Financial Officer" means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the company and/or territorial government, in the case of UST systems owned and operated by the territorial government.
- (p) "Closure" means the owner or operator has met all the program requirements of section 654-9 of these regulations. The term does not mean that the site is completely free of contaminants. Some acceptable level of contaminants may still be on-site.
- (q) "Commissioner" means the Commissioner of the Department of Planning and Natural Resources or the Commissioner's designee.
- (r) "Community Water System" means a public water system which serves at least 8 service connections used by year-round residents or regularly serves at least 20 year-round residents.
- (s) "Compatible" means 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 tank system under conditions likely to be encountered in the UST.

- (t) "Connected piping" means all underground piping, including valves, elbows, joints, flanges, and flexible connectors attached to a tank 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.
- (u) "Consumptive use" means consumed on the premises, with respect to use of heating oil.
- (v) "Controlling interest" means direct ownership of at least 50 percent of the voting stock of another entity.
- (w) "Corrective action" means those actions necessary to protect human health and the environment in the event of a release from an UST System. Corrective action includes those activities required for response to and cleanup of regulated substances from underground storage tanks, including initial response, initial abatement measures and site check, initial site characterization, free product removal, investigations and remedial actions to clean up soil, subsoil, surface water, and groundwater, and preparation and implementation of a corrective action plan which shall include actions necessary to monitor, assess and evaluate the effectiveness of remedial action after a release has occurred.
- (x) "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by 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 certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.
- (y) "Delivery Prohibition" means prohibiting the delivery, deposit, or acceptance of product to an underground storage tank that has been determined to be ineligible by EPA or the Department for such delivery, deposit, or acceptance.
- (z) "Department" means the Virgin Islands Department of Planning and Natural Resources.
- (aa) "DEP" means the Division of Environmental Protection at the Department of Planning and Natural Resources.

- (bb) “Dielectric material” means 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).
- (cc) “Director of the Implementing Agency” means the Commissioner of the Department of Planning and Natural Resources or his or her designee, such as the Director of the Division of Environmental Protection.
- (dd) “DPNR” means the Virgin Islands Department of Planning and Natural Resources.
- (ee) “Electrical equipment” means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.
- (ff) “Excavation zone” means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.
- (gg) “Ethanol” means an alcohol fuel mainly derived from materials such as grain or sugarcane, or other processes.
- (hh) “Existing,” for purposes of secondary containment, means that an underground tank, piping, motor fuel dispensing system, facility, community water system, or potable drinking water well is in place on or before the effective date of these regulations. .
- (ii) “Farm tank” means a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. “Farm” includes fish hatcheries, rangeland, and nurseries with growing operations.
- (jj) “Financial reporting year” means the most recent, consecutive twelve-month period for which any of the following reports used to support a financial test is prepared. “Financial reporting year” may thus comprise a fiscal or a calendar year period.
- (1) 10-K report submitted to the SEC;
 - (2) an annual report of tangible net worth submitted to Dun and Bradstreet; or

- (3) an annual report submitted to the Energy Information Administration or the Rural Electrification Administration.
- (kk) “Flow-through process tank” means 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.
- (ll) “Free product” means a regulated substance that is present as a non-aqueous phase liquid (i.e., liquid not dissolved in water.)
- (mm) “Gathering lines” means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.
- (nn) “Hazardous substance UST system” means an underground storage tank system that contains a hazardous substance defined in section 101(14) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act) or any mixture of such a substance and petroleum, and which is not a petroleum UST system.
- (oo) “Heating oil” means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 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.
- (pp) “Hydraulic lift tank” means 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.
- (qq) “Implementing agency” means the Virgin Islands Department of Planning and Natural Resources (“Department” or “DPNR”).
- (rr) “Installation of a New Motor Fuel Dispenser System” means the installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the underground storage tank system. It does not mean the installation of a motor fuel dispenser installed separately from the equipment needed to connect the dispenser to the underground storage tank system. For purposes of these regulations, the equipment necessary to connect the motor fuel dispenser to the underground storage tank system may include check valves, shear

valves, unburied risers or flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the underground piping.

- (ss) “Installer” means a person that installs part or all of an underground storage tank system in the Virgin Islands.
- (tt) “Interstitial monitoring” means a release detection method that monitors the interstitial space of an underground storage tank and piping. The term includes only those release detection systems that are capable of detecting a breach in the primary containment of the underground storage tank and piping component being monitored before the regulated substance or petroleum stored is release to the environment.
- (uu) “Legal defense cost” means any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:
- (1) By EPA or the Department of Planning and Natural Resources to require corrective action or to recover the costs of corrective action;
 - (2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or
 - (3) By any person to enforce the terms of a financial assurance mechanism.
- (vv) “Liquid trap” means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting 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.
- (ww) “Manufacturer” means a person that manufactures an underground storage tank or piping for an underground storage tank system that is installed in the Virgin Islands. For the purposes of the financial responsibility and certification requirements of these regulations, this definition does not apply to manufacturing of underground ancillary equipment or containment systems.
- (xx) “Maintenance” means normal operational upkeep to prevent an underground storage tank system from releasing product.
- (yy) “Motor fuel” means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No.1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

- (zz) "Monitoring system" means a system capable of detecting leaks or discharges, or both leaks and discharges, other than an inventory control system, used in conjunction with an UST system and tightness testing.
- (aaa) "New," for purposes of secondary containment, means an underground tank, piping, motor fuel dispensing system, facility, community water system, or potable drinking water well is in place after the effective date of these regulations.
- (bbb) "Noncommercial purposes" means not for resale, with respect to motor fuel.
- (ccc) "Non-operational underground storage tank" means any underground storage tank that contains no regulated substances or from which no regulated substances are dispensed.
- (ddd) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank. The definition of this term 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.
- (eee) "On the premises where stored" means UST systems located on the same property where the stored heating oil is used.
- (fff) "Operational life" means the period beginning when installation of the tank system has commenced until the time when the tank system is properly closed under section 654-9.
- (ggg) "Operational underground storage tank" means any underground storage tank that contains regulated substances and from which regulated substances are dispensed.
- (hhh) "Operator" means any person in control of, or having responsibility for, the daily operation of the UST system, including any type of recordkeeping or reporting, or a person who controls or monitors the dispensation or sale of regulated substances, or is responsible for initial response to alarms or releases.
- (iii) "Overfill release" means a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.
- (jjj) "Owner" means
- (1) In the case of an UST system in use on November 8, 1984, or brought into use or capable of being used after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

- (2) In case of any UST system in use before November 8, 1984, but no longer in use or capable of being used on that date, any person who owned such UST system immediately before the discontinuation of its use.
- (3) The term “owner” does not include any person who, without participation in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect that person’s security interest in the underground storage tank.
- (kkk) “Owner or Operator” when the owner and operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.
- (lll) “Person” means an individual, corporation, partnership, association, firm, commercial entity, consortium, joint venture, joint stock company, trust, federal agency, state, municipality, commission, political subdivision of a state, any interstate body, the United States Government, or the Government of the Virgin Islands or any department, agency, board, commission, authority, instrumentality or political subdivision of the Territory.
- (mmm) “Petroleum and Petroleum products” mean petroleum, including crude oil, or any fraction thereof which is liquefied at standard conditions of temperature and pressure, which means at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. The term includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.
- (nnn) “Petroleum marketing facilities” means all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.
- (ooo) “Petroleum marketing firms” means 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.
- (ppp) “Petroleum UST system” means 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.
- (qqq) “Pipe” or “piping” means the hollow cylinder or the tubular conduit constructed of non-earthen materials that routinely contains and conveys regulated substances from the underground tank(s) to the dispenser(s) 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 underground tank(s) to the dispenser(s). This definition does not include vent, vapor recovery, or fill lines.

- (rrr) "Pipeline facilities (including gathering lines)" means new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.
- (sss) "Potable Drinking Water Well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater, which supplies water for a non-community public water system, or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, other permanent or seasonal communities, or a public water system.
- (ttt) "Product Deliverer" means any person who delivers or deposits product into an underground storage tank. This term may include major oil companies, jobbers, petroleum transportation companies, or other product delivery entities.
- (uuu) "Property damage" 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 which are covered by the policy.
- (vvv) "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in sections 654-16(d) through 654-16(j), including a guarantor, insurer, risk retention group, surety, or issuer of a letter of credit.
- (www) "Public Water System ("PWS")" means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "non-community water system."
- (xxx) "Red Tag" means a tag, device, or mechanism on the tank's fill pipe that clearly identifies an underground storage tank as ineligible for product delivery. The tag or device is easily visible to the product deliverer and clearly states and conveys that it is unlawful to

deliver to, deposit into, or accept product into the ineligible underground storage tank. The tag, device, or mechanism is generally tamper resistant.

(yyy) "Regulated substance" means

- (1) 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 subtitle C of the Resource Conservation and Recovery Act;
- (2) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure 60 degrees Fahrenheit and 14.7 pounds per square inch absolute) and petroleum-based substances comprised of 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; and
- (3) Any other substance designated by regulation and promulgated by the Commissioner.

(zzz) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into groundwater, surface water, surface soils or subsurface soils.

(aaaa) "Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

(bbbb) "Repair" means to restore an underground tank, piping or dispenser to operating condition when such underground tank, piping or dispenser previously may have caused a release. Solely for purposes of determining when secondary containment is required by these regulations, a repair is any activity that does not meet the definition of replace.

(cccc) "Replace" means:

- (1) With respect to an underground tank, replace means to remove permanently an existing underground tank and install a new underground tank.
- (2) With respect to piping, replace means to remove permanently 50 percent or more of total, existing piping length connected to a single underground tank and to install new piping.
- (3) With respect to a motor fuel dispenser system, replace means to remove permanently an existing motor fuel dispenser and the equipment necessary to connect the dispenser to the underground storage tank system and to install a new motor fuel dispenser system. For

purposes of this definition, this equipment includes flexible connectors, risers, or other transitional components that are beneath the dispenser and connect the dispenser to the piping.

(dddd) “Residential tank” means a tank located on property used primarily for dwelling purposes.

(eeee) “SARA” means the Superfund Amendments and Reauthorization Act of 1986.

(ffff) “Secondary containment” means a release prevention and release detection system for an underground tank and/or piping. The release prevention part of secondary containment is an underground tank and/or piping having an inner and outer barrier. Between these two barriers is a space for monitoring. The release detection part of secondary containment is a method of monitoring the space between the inner and outer barriers for a leak or release of regulated substances from the underground tank and/or piping (called interstitial monitoring). Interstitial monitoring must meet the release detection requirements in 654-14(d)(6).

(gggg) “Septic tank” means a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such 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.

(hhhh) “Stormwater or wastewater collection system” means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off 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 stormwater and wastewater does not include treatment except where incidental to conveyance.

(iiii) “Substantial business relationship” means the extent of a business relationship necessary under applicable 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.

(jjjj) “Substantial governmental relationship” means the extent of a governmental relationship necessary under applicable law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued “incident to that relationship” if it arises from a clear commonality of interest in the event of an UST release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer,

or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

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

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

(mmmm) "Tank" means a stationary device constructed of non-earthen materials, such as steel, concrete, fiberglass, plastic, or other such materials that provide structural support, and are designed to contain an accumulation of regulated substances.

(nnnn) "Tank integrity test" means a test or a series of tests or other appropriate procedures prescribed by the Department to ascertain the conditions of an UST system.

(oooo) "TDS" means total dissolved (non-filterable) solids.

(pppp) "Termination" means, under section 654-16 (p)(2)(i) and section 654-16 (p)(2)(ii), only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

(qqqq) "Territory" means the United States Virgin Islands including St. Croix, St. Thomas, St. John, Water Island, and all associated islands and cays within the United States Virgin Islands waters as defined in section 2 (a) of the Revised Organic Act of the Virgin Islands.

(rrrr) "Territorial government" means the Government of the United States Virgin Islands.

(ssss) "Third party liability" means either of the following:

(1) in reference to bodily injury, third party liability is specific physical bodily injury approximately resulting from exposure, explosion, or fire caused by the presence of a release from a regulated UST system and is incurred by a person other than owner or operator, employees or agents of the landlord of an owner or operator; and

(2) in reference to property damage, third party liability is actual physical damage or damage due to specific loss of normal use of property owned by a person other than either the owner or operator of an underground storage tank from which a release has occurred or

the landlord of an owner or operator of the underground storage tank from which a release has occurred.

(ttt) “Under-Dispenser Containment (“UDC”)” means containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or groundwater. Such containment must:

- (1) Be liquid-tight on its sides, bottom, and at any penetrations;
- (2) Be compatible with the substance conveyed by the piping; and
- (3) Allow for visual inspection and access to the components in the containment system and/or be monitored.

(uuu) “Underground area” means an underground room, such as a basement, cellar, shaft, or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

(vvv) “Underground release” means any release below the ground surface.

(www) “Underground storage tank (“UST”)” means any one or combination of tanks (including underground pipes connected thereto) that is 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. This term does not include any of the following:

- (1) Farm or residential tank of 500 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (2) Heating oil tank used for consumptive use on the premises where the heating oil is stored;
- (3) Septic tank;
- (4) Pipeline facility including gathering lines regulated under Chapter 601 of Title 49 of the Code of Federal Regulations or which is an intrastate pipeline facility regulated under state laws, as provided in Chapter 601 of Title 49;
- (5) Surface impoundment, pit, pond, or lagoon;
- (6) Stormwater or wastewater collection system;
- (7) Flow-through process tank;

- (8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
- (9) Storage tank situated in an underground area (such as a basement, cellar, mine working, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "Underground Storage Tank," for purposes of secondary containment requirements, does not include tank combinations or more than a single underground pipe connected to a tank.

(xxxx) "Underground tank" means the same as "underground storage tank" for purposes of secondary containment except that such term does not include underground piping.

(yyyy) "Upgrade" means 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.

(zzzz) "UST system or Tank system" means an underground storage tank, connected piping, underground ancillary equipment, and containment system, if any.

(aaaaa) "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

(bbbbb) "Wellhead Protection Area" means the surface and subsurface area surrounding a water well or wellfield supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield. For the purposes of these regulations, the extent of a wellhead protection area necessary to provide protection from contaminants which may have any adverse effect on the health of persons is to be determined by the Department.

654-2. Registration of Underground Storage Tanks; Renewal; Fees

- (a) *Registration and notice.* Any person who owns and operates or intends to install an underground storage tank system or facility shall register each tank with or provide notice to the Department on forms provided by the Department and consistent with the following provisions:
 - (1) Any person who owns or operates an UST system that commenced use on or before the effective date of this chapter shall register each tank with the Department no later than 60 days following the effective date of this chapter.
 - (2) Any person who intends to install an UST system after the effective date of this chapter shall register each tank with the Department 45 days before the date of installation. A certification by the installer consistent with subparagraph (a)(9) of

this section shall be filed with the Department within 10 days of completion of installation.

- (3) Any person that owned or operated an underground storage tank that was removed from the ground on or after May 8, 1986, or any owner or operator of an abandoned or non-operational UST system shall provide notice of each tank within 90 days of the effective date of this chapter on forms provided by the Department.
- (4) Any owner or operator of an UST system who closes a tank system under section 654-9 of these regulations, temporarily or permanently, shall within 30 days of completing such action, submit notice of this action to the Department.
- (5) All owners and operators of UST systems who install a method of release detection under section 654-14 of these regulations shall, within 30 days of completing such action, submit notice of this action to the Department.
- (6) All registrants for existing or future UST systems shall ensure that the UST system meets the general operating requirements and reporting and recordkeeping requirements as described in sections 654-8 and 654-20 of these regulations as amended.
- (7) Owners may register or provide notice regarding several tanks using one registration or notice form, but owners who own tanks located at more than one place of operation must file a separate registration form for each separate place of operation.
- (8) An owner required to submit registration or notice under this section shall provide all the information required by the forms provided by the Department for each tank for which registration or notice is submitted.
- (9) All owners and operators of new UST systems must certify compliance with the following requirements:
 - (i) Installation of tanks and piping under section 654-5 of these regulations;
 - (ii) Cathodic protection of steel tanks and piping under section 654-5 of these regulations;
 - (iii) Financial responsibility under section 654-16 of these regulations; and
 - (iv) Release detection under section 654-14 of these regulations.
- (10) All owners and operators of UST systems must ensure that whomever performs the following activities on the UST system certifies that the methods used to perform the work on the tanks, piping, and/or secondary containment measures comply with the requirements of section 654-5 of these regulations:
 - (i) Installations;
 - (ii) Testing;
 - (iii) Upgrades;
 - (iv) Closures;
 - (v) Removals; and
 - (vi) Change-in-service.
- (11) Any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's registration/notification obligations under paragraph (a) of this section.
- (12) An owner or operator of an UST system that is
 - (i) in the ground on or after May 8, 1986; and

- (ii) not taken out of operational life on or before January 1, 1974; shall notify the Department of the service status of the UST system under 42 U.S.C. 6991a of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq., in effect on September 30, 1996, on a form provided by the agency for this notice.
- (b) *Renewal.* The Department requires renewal of underground storage tank registrations.
 - (1) Each registration for existing or planned UST systems will be valid for the time periods specified below, depending upon the type of registration. Each registration shall clearly indicate its expiration date.
 - (2) Completed applications for renewal of registration must be submitted at least 30 days prior to the registration's expiration date.
 - (3) Notwithstanding any registration's expiration date, an owner or operator must update and renew his registration pursuant to section 654-2 of these regulations if any significant construction, upgrading, replacement, restoration, change-in-service, closure, or removal work is done on the UST system.
 - (4) Registration durations are as follows:

Registration	Duration
Own/Operate	2 years
Construct/Upgrade	1 year
Close/Remove	1 year

- (c) *Fees.* The Department will establish and collect reasonable fees in amounts sufficient to cover the cost of processing registration applications and renewals.
 - (1) The Department may modify the fee schedule at any time.
 - (2) Registration and registration renewal fees may vary according to the type of registration sought or notice provided.
 - (3) The Department will make fee information available to the public via the Department's website and upon request.
 - (4) Registration and registration renewal fees are due at the time registration forms are submitted to the Department.
 - (5) All fees collected under this subsection shall be deposited into the Virgin Islands Underground Storage Tank Revolving Trust Impress Account in accordance with section 654-31 of these regulations.
- (d) *Penalties.* Any person who knowingly submits false information shall be subject to available criminal penalties. Any person who fails to submit a required registration or notice form shall be subject to available civil penalties.

654-3. Non-Transfer of Registration; Notice of Change of Registration Information

- (a) An underground storage tank registration issued by the Department is not transferable.
- (b) The owner or operator of an underground storage tank system shall notify the Department of any change in ownership of either the tank or the property upon which the tank is located within 30 days after the date of completing the property transfer. This notification requirement will be satisfied if the new owner or operator must update its registration form under section 654-2 of these regulations. The Department shall issue the new owner or operator a new registration consistent with the changes specified in the completed form.
- (c) To ensure information in possession of the Department is current, the owner or operator of an underground storage tank shall submit notice to the Department on a form provided by the Department of any modification of any information submitted to the Department pursuant to the registration or registration renewal process within 30 days of any modification occurring.
- (d) The modifications referred to in subsection (c) of this section include the following:
 - (1) installation, removal, or disabling of a monitoring system;
 - (2) substantial changes to or replacement of connected piping or ancillary equipment;
 - (3) a change in the type of regulated substance stored in the underground storage tank.
- (e) With respect to a change of ownership, the former owner must file a notice with the Department advising the Department of the change within 30 days of the date of closing.

654-4. Placement of New UST System

- (a) All UST systems installed after the effective date of this chapter shall be located a distance not less than 100 feet from a public water system or beneficial source of groundwater. When determining whether a UST system is within 100 feet from a public water system or beneficial source of groundwater, at a minimum, the owner or operator should measure the distance from the closest part of the new or replaced underground tank or piping or new motor fuel dispenser system to:
 - (1) The closest part of the nearest existing community water system, including such components as:
 - (i) The location of wellheads for groundwater;
 - (ii) The location of intake points for surface water;
 - (iii) Water lines, processing tanks, and water storage tanks;
 - (iv) Water distribution/service lines under the control of the community water system operator.
 - (2) The wellhead of the nearest existing water well unless such well has been intended to be used exclusively for monitoring contamination;
 - (3) The location of wellhead protection areas;
 - (4) Locations of water sources such as natural springs and surface waters;
 - (5) Locations of former sources of drinking water that could be reactivated in times of emergency;
 - (6) Foreseeable future sources of drinking water;

- (7) Planned locations for new community water systems and new potable drinking water wells;
- (8) Locations of groundwater with total dissolved solids (“TDS”) less than 35,000 ppm.
- (b) In areas where the groundwater level is less than six feet from the bottom of excavation for the installation of any UST system, a sheet of impermeable material shall be installed around the perimeter of the excavation.
- (c) All underground storage tanks installed in areas of occasional high water tables shall be properly secured to prevent the tank from floating.
- (d) An underground storage tank may not be installed below the water level of the area.

654-5. Performance Standards for New UST Systems; Permits

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 owners and operators of new UST systems must meet the following requirements:

- (a) *Tanks.* Each tank, whether of single or double-walled construction, must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified in paragraphs (a)(1) through (a)(3) of this section. In addition, all new or replaced tanks where installation began after the effective date of these regulations must be secondarily contained in accordance with section 654-5(c) and use interstitial monitoring in accordance with section 654-14(d)(6)
 - (1) The tank is constructed of one of the following:
 - (i) fiberglass-reinforced plastic; or

Note to paragraph (a)(1)(i): The following codes of practice may be used to comply with paragraph (a)(1) of this section:

(A) Underwriters Laboratories Standard 1316, “Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures”; or

(B) Underwriters Laboratories of Canada S615, “Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids.”

- (ii) Steel and cathodically protected in the following manner:
 - (A) The tank is coated with a suitable dielectric material;
 - (B) Field-installed cathodic protection systems are designed by a corrosion expert;
 - (C) Impressed current systems are designed to allow determination of current operating status as required in section 654-8(b)(3); and

- (D) Cathodic protection systems are operated and maintained in accordance with section 654-8(b) or according to guidelines established by the Department; or

Note to paragraph (a)(1)(ii): The following codes of practice may be used to comply with paragraph (a)(2) of this section:

(A) Steel Tank Institute Specification for sti-P3 Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks”;

(B) Underwriters Laboratories Standard 1746, “Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks”;

(C) Underwriters Laboratories of Canada S603, “Standard for Steel Underground Tanks for Flammable and Combustible Liquids,” and S603.1, “Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids,” and S631, “Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems”;

(D) Steel Tank Institute Standard F841, “Standard for Dual Wall Underground Steel Storage Tanks”; or

(E) NACE International Standard Practice SP0285, “External Corrosion Control on Metallic Buried, Partially Buried, or Submerged Liquid Underground Storage Systems by Cathodic Protection,” and Underwriters Laboratories Standard 58, “Standard for Steel Underground Tanks for Flammable and Combustible Liquids.”

- (iii) Steel and clad or jacketed with a non-corrodible material; or

Note to paragraph (a)(1)(iii): The following codes of practice may be used to comply with paragraph (a)(1)(iii) of this section:

(A) Underwriters Laboratories Standard 1746, “Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks”;

(B) Steel Tank Institute Specification F894, “ACT-100® “Specification for External Corrosion Protection of FRP Composite Steel USTs”;

(C) Steel Tank Institute Specification F961, “ACT-100-U® “Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks”; or

(D) Steel Tank Institute Specification F922, “Steel Tank Institute Specification for Permatank®”.

- (iv) Metal without additional corrosion protection measures provided that:
 - (A) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and
 - (B) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph (a)(1)(iv) for the remaining life of the tank; or
 - (v) 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 requirements in paragraph (a)(1) of this section.
- (2) The tank must be constructed such that it will prevent releases due to corrosion, structural failure, or manufacturing defects for the operational life of the tank.
 - (3) The material used in the construction or lining of the tank is compatible with the substance to be stored;

Note to paragraph (a)(3): The following codes of practice may be used to comply with paragraph (a)(3) of this section:

(A) Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids";

(B) Underwriters Laboratories Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures";

(C) Underwriters Laboratories Standard 1746, "Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks";

(D) Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks"; or

(E) Steel Tank Institute Specification F922, "Steel Tank Institute Specification for Permatank®".

(b) *Piping*. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified in paragraphs (b)(1) through (b)(4) of this section. In addition, except for suction piping that meets the requirements of 654-14(b)(2)(ii)(A) through (E) and piping associated with field-constructed tanks and airport hydrant fuel distribution systems, all new or replaced piping where installation began

after the effective date of these regulations must be secondarily contained in accordance with section 654-5(c) and use interstitial monitoring in accordance with section 654-14(d)(6). The entire piping run must be replaced when 50 percent or more of a piping run is replaced.

(1) The piping is constructed of a non-corrodible material; or

Note to paragraph (b)(1): The following codes of practice may be used to comply with paragraph (b)(1) of this section:

(A) Underwriters Laboratories Standard 971, "Standard for Non-Metallic Underground Piping for Flammable Liquids"; or

(B) Underwriters Laboratories of Canada Standard S660, "Standard for Non-Metallic Underground Piping for Flammable and Combustible Liquids".

- (2) The piping is constructed of steel 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 section 654-8(b)(3); and
 - (iv) Cathodic protection systems are operated and maintained in accordance with section 654-8(b) or guidelines established by the Department; or
- (3) The piping must be constructed such that it will prevent releases due to corrosion, structural failure, or manufacturing defects for the operational life of the piping.
- (4) The material used in the construction or lining of the piping is compatible with the substance to be stored;

Note to paragraph (b)(2): The following codes may be used to comply with paragraph (b)(2) of this section:

(A) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";

(B) Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe";

(C) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Petroleum Storage and Dispensing Systems";

(D) NACE International Standard Practice SP-01-69, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems"; or

(E) NACE International Standard Practice SP0285, "Corrosion Control of Underground Storage Systems by Cathodic Protection".

(5) The piping is constructed of metal without additional corrosion protection measures provided that:

- (i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it 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 paragraph (b)(5)(i) of this section for the remaining life of the piping; or

(6) 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 paragraphs (b) (1) through (3) of this section.

Note to paragraph (b)(5): The following codes of practice may be used to comply with paragraph (b)(5) of this section:

(A) Underwriters Laboratories Standard 971, "Standard for Non-Metallic Underground Piping for Flammable Liquids"; or

(B) Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe".

(c) *Secondary containment.*

In order to protect groundwater resources from contamination, all underground storage tanks and all connected piping installed or replaced after the effective date of these regulations must be equipped with secondary containment in accordance with this section and use interstitial monitoring in accordance with section 654-14(d)(6).

- (1) The term "secondarily contained" means a release detection and prevention system that meets the requirements of section 654-14(d)(6), but shall not include under-dispenser spill containment control systems.
- (2) The newly installed or replaced underground storage tank or piping, and secondary containment must meet the following standards:
 - (i) Can contain regulated substances released from the tank system until the regulated substance can be detected and removed;
 - (ii) Prevent the release of regulated substances to the environment at any time during the operational life of the underground storage tank system; and
 - (iii) Be monitored for evidence of a release by:
 - (A) being monitored for releases at least every 30 days; and
 - (B) pressure testing upon installation, again six months after installation, and every 36 months thereafter.

- (iv) Newly installed or replaced underground storage tanks must contain one of the following secondary containment systems:
- (A) A double-walled tank with a monitoring device that:
1. must be located in the interstitial space between the walls;
 2. is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and
 3. can detect a release from the inner wall in any portion of the tank that routinely contains product as required by 654-14(d)(6).
- (B) A secondary barrier system within the excavation zone with a sampling or testing method that can detect a release between the UST system and the secondary barrier by meeting each of the following requirements:
1. The secondary barrier around the underground storage tank consists of artificially constructed material that is sufficiently thick and impermeable (no more than 1×10^{-6} centimeters per second for water) to direct a release to an observation well and allow its detection.
 2. The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected.
 3. For cathodically protected tanks, the secondary barrier must be installed so that the secondary barrier does not interfere with the proper operation of the cathodic protection system.
 4. 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.
 5. The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain unless the barrier and observation well designs are for use under such conditions.
 6. For a single-walled tank, an observation well that meets the following requirements must be located in the excavation zone of the tank:
 - i. The observation well must be clearly marked and secured to prevent damage and unauthorized access and tampering.
 - ii. The slotted portion of the observation well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the accumulated water into the well under both high and low water conditions.
 - iii. The observation well must be sealed from the ground surface to the top of the filter pack.
 - iv. The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the accumulated water in the observation well.
 - v. At least one observation well must be placed downgradient of the underground storage tank or at the lowest point of the underground storage tank excavation zone.

7. The observation well must be monitored at least one time every 30 days for a release.
 8. The secondary barrier system is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.
 - (C) Other methods approved by the Department for secondary containment that provide substantially equal environmental protection.
- (d) *Spill and overflow prevention equipment.*
- (1) Except as provided in paragraph (d)(2) of this section, to prevent spilling and overflowing associated with product transfer to the new UST system, owners and operators must use the following spill and overflow prevention equipment:
 - (i) The following spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe:
 - (A) Minimum five gallon spill catchment basin, spill bucket, or other spill containment device with drain to tank; or
 - (B) Minimum 25 gallon spill catchment basin, spill bucket, or other spill containment device without drain to tank; and
 - (ii) Overflow prevention equipment that accomplishes one of the following:
 - (A) Automatically shut off flow into the tank when the tank is no more than 95% full; or
 - (B) Alert the transfer operator when the tank is no more than 90% full by restricting the flow into the tank or triggering a high-level alarm; or
 - (C) Restrict flow 30 minutes prior to overflowing, alert the transfer operator with a high level alarm one minute before overflowing, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overflowing.
 - (2) Owners and operators are not required to use the spill and overflow prevention equipment specified in paragraph (d)(1) of this section if one of the following is completed:
 - (i) Alternative equipment is used that is determined by the Commissioner to be not less protective of human health and the environment than the equipment specified in section 654-5(d)(1).
 - (ii) The UST system is filled by transfers of no more than 25 gallons at one time.
- (e) *Under-dispenser spill containment.* Under-dispenser spill containment is required for any of the following:
- (1) Any new motor fuel dispenser installed at a new underground storage tank facility;
 - (2) Any new motor fuel dispenser installed at a new location at an existing underground storage tank facility.
 - (3) Any replaced motor fuel dispenser installed at an existing underground storage tank facility where the replaced piping or equipment is added to the underground storage tank system to connect the replaced dispenser to the existing system.

- (f) *Installation.* The UST system must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions. An owner or operator must demonstrate compliance with this paragraph by providing a certification of compliance on the UST registration form in accordance with section 654-2 of these regulations.

NOTE: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of paragraph (f) of this section:

- (i) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System"; or
 - (ii) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or
 - (iii) American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," and American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System."
- (g) *Certification of installation.* All owners and operators must ensure that their installation has been performed by an installer that satisfies the certification, testing, or inspection requirements of the Department. Owners and operators must certify on their registration forms that all work performed on their UST systems satisfies at least one of the certification, testing, or inspection requirements below:
- (1) The installer has been certified or licensed by another state or territory;
 - (2) The installer has been certified by the tank and piping manufacturers;
 - (3) The installation has been certified by a registered professional engineer with education and experience in underground storage tank system installation;
 - (4) The installation has been inspected and approved by the Department; or
 - (5) The installation, which is an alternative method for ensuring compliance, is determined by the Commissioner to be not less protective of human health and the environment.
- (h) *Permits for new USTs.*
- (1) It is unlawful for an owner or operator to use or operate an underground storage tank system that is installed after the effective date of these regulations without first having obtained a permit issued by the Department.
 - (2) A permit to use or operate an UST system will not be issued unless the tank, piping, and spill and overfill prevention equipment have been properly installed according to the guidelines specified in paragraphs (a) through (f) of this section and approved by the Department. The requirements specified in this subsection do not affect the necessity to comply with any other applicable provisions of the Virgin Islands Code,

or rules and regulations promulgated thereunder, including the provisions of the Fire Prevention Code set forth in chapter 9 of title 23.

654-6. Existing UST System; Upgrade Requirements; Permits

- (a) *Alternatives allowed.* All existing UST systems must comply with one of the following requirements and may not be operated without having been issued a permit by the Commissioner indicating compliance with:
- (1) New UST system performance standards pursuant to the provisions of section 654-5 of this chapter;
 - (2) Tank upgrading requirements as specified by this section, of which continued operation of the UST system shall be subject to the issuance of a permit by the Commissioner; or
 - (3) Closure and corrective action requirements as provided by this chapter.
- (b) *Tank upgrading requirements.* A steel tank must be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory.
- (1) *Cathodic protection.* A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of section 654-5 (a)(2) 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 prior to installing the cathodic protection system; or
 - (ii) The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with section 654-14 (d) (methods of release detection for tanks); or
 - (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 section 654-14 (d)(2). The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three and six months following the first operation of the cathodic protection system; or
 - (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 paragraphs (b)(1)(i)-(iii) of this section.

NOTE: The following codes and standards may be used to comply with this section:

(A) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks;"

(A) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection;"

(B) NACE International Standard Practice SP0285, "External Corrosion Control on Metallic Buried, Partially Buried, or Submerged Liquid Underground Storage Systems by Cathodic Protection"; and

(C) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems."

(2) A tank is upgraded by a method that is determined by the Department to be no less protective of human health and the environment than the methods specified in paragraphs (1) and (2) of this section.

- (c) *Piping and upgrading requirements.* Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of section 654-5 (b)(2)(ii), (iii), and (iv).

NOTE: The codes and standards listed in the note following section 654-5 (b)(2) may be used to comply with this requirement.

- (d) *Spill and overflow prevention equipment.* To prevent spilling and overflowing associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overflow prevention equipment requirements specified in section 654-5 (d).
- (e) *Certification.* The owner or operator shall demonstrate compliance with this section by providing a certification of compliance on the registration form provided by the Department.
- (f) *Permits for existing USTs.*
- (1) It is unlawful for an owner or operator to use or operate an underground storage tank system that does not satisfy one of the alternatives listed in section 654-6 (a) after the effective date of these regulations and without first having obtained a permit issued by the Department.
- (2) A permit to use or operate an UST system will not be issued unless the tank, piping, and spill and overflow prevention equipment are in compliance with the provisions of paragraphs (a) through (d) of this section and approved by the Department. The requirements in this subsection do not affect the necessity to comply with any other applicable provisions of the Virgin Islands Code, or rules and regulations promulgated thereunder, including the provisions of the Fire Prevention Code set forth in chapter 9 of title 23.

654-7. Permit Applications, Duration of Permits, and Fees

- (a) All permit applications shall be submitted on forms provided by the Department obtained from the address noted below and containing the information specified in (b) below. The information in the application shall be current, presented concisely, and supported by

appropriate references to technical and other written material or documents made available to the Department. Permit applications shall be signed, dated, and returned to

The Department of Planning and Natural Resources
Division of Environmental Protection
45 Mars Hill
Frederiksted, VI 00840-4474

or

The Department of Planning and Natural Resources
Division of Environmental Protection
8100 Lindberg Bay, Suite 61
Cyril E. King Airport, Terminal Building 2nd Floor
St. Thomas, VI 00802

- (b) *Permit to own/operate.* Any owner or operator of an existing underground storage tank system that requires a Department issued permit shall certify the following:
- (1) The owner of the UST system;
 - (2) The operator of the UST system;
 - (3) General requirements for all UST systems are as follows:
 - (i) The storage tank is properly registered and a new updated form provided by the Department must be submitted along with the application.
 - (ii) Tank handling and inspection activities are performed by Department certified individuals, as specified in section 654-10 of these regulations.
 - (iii) The underground storage tank system is in compliance with applicable administrative, technical and operational requirements as specified in section 654-5 (relating to technical standards for UST's) and section 654-13 (relating to tank integrity testing).
 - (4) In addition to the requirements of paragraph (1) through (3) of this subsection, an owner of an underground storage tank system shall meet the applicable financial responsibility requirements of section 654-16.
- (c) *Permit to construct/upgrade.* Any owner or operator of an existing or proposed underground storage tank system that requires a permit shall:
- (1) Submit with the permit application copies of specifications of all equipment for the proposed installation and *three* copies of the plans for the proposed installation, modification, or upgrade of the underground storage tank system, signed and sealed by a professional engineer validly licensed, drawn to scale and depicting the top, front, and side views of the proposed or existing underground storage tank system. Plans submitted shall show all information and details necessary to indicate compliance with this chapter and shall include a certification in accordance with section 654-5 (g) and section 654-6 (e).

- (2) Submit a copy of the scaled site diagram showing the size and location of all underground storage tank systems, all existing structures on the site, and distances from lot lines.
 - (3) Submit information documenting soil permeability as required pursuant to section 654-14 (d).
 - (4) Submit documentation of depth to ground water as required pursuant to section 657 of the Act.
 - (5) Submit all corrosion system designs required pursuant to section 658 of the Act.
 - (6) Submit a detailed description of the upgrade, installation, or repair to be performed.
 - (7) Submit documentation demonstrating the precision of the performance of the release detection monitoring method chosen pursuant to section 654-14.
 - (8) Submit a scaled site diagram that indicates the location of all sampling and monitoring points in relation to all underground storage tank systems at the facility.
 - (9) Submit a certification signed by an installer certified by the Department pursuant to section 654-5, that the number and locations of all vapor or product monitoring points are sufficient to monitor the underground storage tank system should this method of monitoring be chosen.
 - (10) Submit the presence of guts, wetlands, sensitive water bodies, or coast located near or adjacent to proposed site.
 - (11) Submit the location and ownership of public or private groundwater supply wells within 100 feet of the proposed site for the installation of new UST systems.
- (d) *Permit to close/remove.* Any owner or operator who wishes to close permanently or to remove an existing UST or UST system pursuant to section 654-9 of these regulations shall first obtain a permit from the Department for such activity.
- (e) *Duration.* Permits issued pursuant to this chapter shall be issued for a specified term, as prescribed by the Department, but such a permit may not be issued for more than five years. Each permit will clearly state when it expires.
- (1) Duration of permits will vary depending upon such factors deemed relevant by the Department, such as the type of regulated substance stored, the age of the UST system, the location of the UST system, etc.
 - (2) Expiration of Permits. Upon expiration of a permit and reapplication by the owner or operator, the Department may issue a new permit following a review by the Department in accordance with this section.
 - (3) Reapplication. Owners and operators seeking to renew their permits must reapply for their permit at least 90 days prior to their current permit's expiration.
- (f) *Fees.* The Department will establish and collect reasonable fees in amounts sufficient to cover the cost of processing permit applications, renewal of permits, and for the processing of late applications for permit renewal.
- (1) Fees will be established by the Department. The Department reserves the right to alter the fees at any time.
 - (2) The Department will make fee information available to the public on its website and upon request.
- (g) Compliance with the permitting requirements in this section does not relieve a permittee from the obligation to comply with other Federal and local requirements.

654-8. Operating Requirements for All UST Systems

(a) *Spill and overfill control.*

- (1) Owners and operators must ensure that releases due to spilling or overfilling do not occur.
- (2) 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 before the transfer is made.
- (3) The owner and operator must ensure that the transfer operation is monitored constantly to prevent overfilling and spilling.

NOTE: The transfer procedures described in National Fire Protection Association Publication 385 may be used to comply with paragraph (a) of this section. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

- (4) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with section 654-15 (d) of these regulations.
- (5) Deliveries must be made through a drop tube that extends to within one foot of the tank bottom.

(b) *Operation and maintenance of corrosion protection.* All owners and operators of steel 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 that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.
- (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:
 - (i) *Frequency.* All cathodic protection systems must be tested within six months of installation or repair and at least every three years thereafter or according to another reasonable time frame established by the implementing agency; and
 - (ii) *Inspection criteria.* The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

NOTE: NACE International Standard Practice SP0285, "External Corrosion Control on Metallic Buried, Partially Buried, or Submerged Liquid

Underground Storage Systems by Cathodic Protection,” may be used to comply with paragraph (2)(ii) of this section.

- (3) UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly.
 - (4) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained (in accordance with section 654-20 of these regulations) to demonstrate compliance with the performance standards in this section. These records must provide the following:
 - (i) The results of the last three inspections required in paragraph (3) of this subsection; and
 - (ii) The results of testing from the last two inspections required in paragraph (2) of this subsection.
- (c) *Compatibility.*
- (1) Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.
 - (2) Owners and operators storing any regulated substance containing greater than 10 percent ethanol or greater than 20 percent biodiesel, or any other regulated substance identified by the Department, must use one or more of the following methods to demonstrate UST system compatibility with these regulated substances:
 - (i) Certification or listing of UST system components by a nationally recognized, independent testing laboratory for use with the regulated substance stored;
 - (ii) Equipment or component manufacturer approval. The manufacturer’s approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the component is compatible with, and be from the equipment or component manufacturer; or
 - (iii) Another method determined by the Department to be no less protective of human health and the environment than the methods listed in paragraphs (2)(i) or (2)(ii) of this section.
 - (3) Owners and operators must maintain the following records (in accordance with section 654-20) for the life of the equipment or component:
 - (i) Documentation of compliance with paragraph (2) of this section, as applicable; and
 - (ii) Records of all equipment or components installed or replaced after the effective date of these regulations. At a minimum, each record must include the date of installation or replacement, manufacturer, and model.
- (d) *Repairs allowed.* 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) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

NOTE: The following codes and standards may be used to comply with paragraph (1) of this section: National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code;” American Petroleum Institute Publication 2200, “Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines;” American Petroleum Institute Publication 1631, “Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks;” and National Leak Prevention Association Standard 631, “Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection.”

- (2) Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer’s authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.
- (3) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer’s specifications.
- (4) Repaired tanks and piping must be tightness tested in accordance with section 654-14 (d)(2) and section 654-14 (e)(2) within 30 days following the date of the completion of the repair except as provided in paragraphs (4)(i) through (4)(iii) of this section:
 - (i) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or
 - (ii) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in section 654-14 (d) 654-14(e); or
 - (iii) Another test method is used that is determined by the Department to be no less protective of human health and the environment than those listed above.
- (5) Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with section 654-8 (b)(2) and (3) to ensure that it is operating properly.
- (6) UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this section.
- (7) The owner and operator shall demonstrate compliance with this section by providing a certification of compliance on the registration form under section 654-2 of these regulations.

654-9. Non-Operational Underground Storage Tanks; Tank Closure

(a) *Temporary closure.*

- (1) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection and release detection in accordance with sections 654-8(b) and 654-14 of these regulations.

- (i) The owner and operator must comply with the requirements of sections 654-15 and 654-17 of these regulations if a release is suspected or confirmed.
 - (ii) Release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.
- (2) When an UST system is temporarily closed for three months or more, owners and operators must also comply with the following requirements:
- (i) Notify the Commissioner within 30 days before the temporary closure for three months;
 - (ii) Leave vent lines open and functioning; and
 - (iii) Cap and secure all other lines, pumps, man ways, and ancillary equipment.
- (3) An owner or operator must permanently close an UST system that has been temporarily closed for more than a 12-month period, unless the owner or operator certifies that the UST system meets the following requirements:
- (i) The UST system must meet the performance standards for new UST systems found in section 654-5 of these regulations; or
 - (ii) The UST system must meet the upgrading requirements found in section 654-6 of these regulations, except that the spill and overfill equipment requirements do not have to be met.
- (4) An owner or operator that fails to meet the requirements described in paragraph 3 above must permanently close a substandard UST system at the end of the 12-month period, unless the Commissioner grants an extension of the 12-month, temporary closure period. An owner or operator shall conduct a site assessment in accordance with section 654-9(c) of these regulations before the Commissioner may consider an application for such an extension.
- (5) An owner or operator shall demonstrate compliance with this section by providing a certification of compliance on the registration form under section 654-2 of these regulations.
- (b) *Permanent closure.*
- (1) At least 45 days before beginning either permanent closure or a change-in-service under paragraphs 2 and 3 of this subsection, an owner or operator shall obtain a permit to close permanently or make the change in service from the Department, unless such action is in response to corrective action. The owner or operator shall perform the required assessment of the excavation zone after notifying the Commissioner but before completion of the permanent closure or a change-in-service. The site assessment shall be in accordance with section 654-9(c) of these regulations.
 - (2) To close a tank permanently, an owner or operator shall empty and clean the tank by removing all liquids and accumulated sludges. All tanks taken out of service permanently must be either removed from the ground or filled with an inert, solid material.
 - (3) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, an owner or operator shall empty and

clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with sections 654-9(c) and 654-3(d)(3) of these regulations.

NOTE: The following cleaning and closure procedures may be used to comply with this section:

(A) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks;"

(B) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks;"

(C) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks;" and

(C) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard * * * Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

- (c) *Assessing the site at closure or change-in-service.* Before permanent closure or change-in-service is completed, an owner or operator shall measure for the presence of a release where contamination is most likely to be present at the UST site.
- (1) In selecting sample types, sample locations, and measurement methods, the owner or operator shall consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for detecting the presence of a release.
 - (2) The requirements of this section are satisfied if one of the external release detection methods allowed in section 654-14 (d)(5) and (6) is operating in accordance with the requirements in Section 654-14 (d) at the time of closure, and indicates no release has occurred. The requirements of this subsection shall be phased out within one year from the effective date of these regulations.
 - (3) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under paragraph (c) of this section or by any other manner, the owner or operator shall begin corrective action under section 654-17 of these regulations.
- (d) *Applicability to previously closed UST systems.* When directed by the Department, the owner and operator of an UST system permanently closed before the effective date of these Regulations, must assess the excavation zone and close the UST system in accordance with this section if releases from the UST may, in the judgment of the Department, pose a current or potential threat to human health and the environment.

- (e) The owner of real property on which an UST is located, except as otherwise provided, shall be responsible for performing the procedures for the temporary or permanent closure of an UST if:
 - (1) The Department is unable to compel the owner or operator to initiate or complete tank closure;
 - (2) The owner or operator is unknown or cannot be contacted or the underground storage tank is considered by the Department to be abandoned or;
 - (3) The real property owner refuses to allow access to the tank for purposes of tank closure by the owner or operator.
- (f) *Closure records.* The owner or operator of an UST shall maintain all records in accordance with sections 654-9(c) and 654-20 to demonstrate compliance with tank closure requirements under this section. An owner or operator shall retain the results of the excavation zone assessment for at least three years after completion of the permanent closure or change-in-service in one of the following ways:
 - (1) By the owner or operator who took the UST system out of service;
 - (2) By the current owners and operators of the UST system site; or
 - (3) By mailing these records to the Department of Planning and Natural Resources, Division of Environmental Protection at the following address, if they cannot be maintained at the closed facility:

The Department of Planning and Natural Resources
Division of Environmental Protection
45 Mars Hill
Frederiksted, VI 00840-4474

or

The Department of Planning and Natural Resources
Division of Environmental Protection
8100 Lindberg Bay, Suite 61
Cyril E. King Airport, Terminal Building 2nd Floor
St. Thomas, VI 00802

- (g) *Issuance of No Further Action letters.*

The Department shall issue No Further Action letters to the owners and operators of an UST system upon having reviewed reports, records and analytical data associated with the standards outlined in this section. The No Further Action letters shall be issued upon the Department's determination that the reports, records and analytical data meet Department standards for the temporary or permanent closure of an UST system on a property, as those standards are described in section 654-34.

654-10. Installer Certification; Renewal or Re-Certification; Reciprocity

- (a) Section 654-5 of these regulations imposes certification requirements for installation of new UST systems. This section applies those requirements to all persons who replace or add equipment to UST systems after the initial installation.
- (b) *Certification.* It is unlawful for any individual to design, install, retrofit, repair, maintain, conduct any type of tank testing or analysis, decommission, or temporarily or permanently close an UST system without complying with the certification, testing, or inspection requirements recognized by the Department. Owners and operators must certify on their registration forms that all work performed on their UST systems satisfies at least one of the certification, testing, or inspection requirements below:

All work on the UST system was done by a certified installer. For an installer to establish certification, the installer must meet one of the following requirements:

- (i) The installer has been certified or licensed by another state or territory;
 - (ii) The installer has been certified by the tank and piping manufacturers;
 - (iii) The installation has been certified by a registered professional engineer with education and experience in underground storage tank system installation;
 - (iv) The installation has been inspected and approved by the Department; or
 - (v) The installation, which is an alternative method for ensuring compliance, is determined by the Commissioner to be not less protective of human health and the environment.
- (c) *Re-certification.*
- (1) Each installer certification shall expire after five years, after which the installer is no longer considered certified by the Department.
 - (2) The installer may apply to the Department for renewal of its certification at least 90 days prior to the certification's expiration, so long as the installer's certification has not been permanently revoked by the Department under section 654-11.
- (d) *Reciprocity.*
- (1) The Commissioner may waive all or part of the certification requirements on a reciprocal basis with any state or territory that has substantially the same standards.
 - (2) The provisions in this section do not affect or alter the liability of any owner or operator of an underground storage tank system. Owners and operators must still comply with all applicable technical regulations. For example, they must comply with the requirements to report releases, perform necessary corrective action, and maintain financial responsibility to pay for corrective action and for compensation of third parties for bodily injury and property damage.

654-11. Denial, Suspension, or Revocation of Installer Certification

The Department may revoke a certification issued under section 654-5(g) or 654-10 at any time if the Department determines an installer has failed to comply with any aspect of these regulations. After a 24-month waiting period, the installer may reapply for certification. It will be within the Department’s discretion whether to approve recertification once a certification has been revoked.

654-12. Recording of UST in Land Records

- (a) If the owner of real property fails to comply with the provisions of this section, the Commissioner may record the required information.
- (b) For the purpose of placing future purchasers on notice, the owner of the property on which an underground storage tank is located shall record the existence and location of all underground storage tanks in the office of the Recorder of Deeds in the district where the UST is located. The following information must be recorded in a notice:
 - 1. Description of the Legal Property
 - 2. Description of the tank and piping on the property including but not limited to exact location, size, capacity, constructed material, product stored, size of excavation zone, and type of leak detection method (s) in place.
 - 3. The notice should be worded/formatted as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

NOTICE OF UNDERGROUND STORAGE TANK

PLEASE TAKE NOTICE that [name of property owner, mailing address] is the owner of the following real property located on the island of [name of island], United States Virgin Islands:

[Legal Property Description].

(“Property”)

The following described Underground Storage Tanks are located on the Property as indicated on the attached Property Plot Plan and Site Layout:

UNDERGROUND STORAGE TANKS

[describe tanks and piping on the Property, i.e. size, capacity, constructed material, stored product, size of pit area, any leak detection method(s) in place, etc.]

IN WITNESS WHEREOF, this instrument is executed this [day] day of [month], [year].

WITNESS

[NAME OF LAND OWNER]

By: _____

[name of owner or authorized agent]

ATTEST:

[name]

[officer/title]

NOTICE OF UNDERGROUND STORAGE TANK

[Date]

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ACKNOWLEDGMENT

TERRITORY OF THE VIRGIN ISLANDS)

DISTRICT OF [ISLAND]) ss:

ON THIS ____ day of _____, [year], before me, the undersigned officer, personally appeared [name of owner], known to me, or satisfactorily proven to be the person whose name is subscribed to the within instrument and said person acknowledged that he/she executed the same for the purposes therein contained and in said capacity.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Notary Public

My commission expires: _____

[Please attach property map with indicated tank location(s) and file with the Recorder of Deeds within the Lieutenant Governor's Office. The Department of Planning and Natural Resources-Division of Environmental Protection needs a copy of the final *filed and stamped* Notice for its

records. It should be mailed to the Department at the following address within 30 days of being recorded:

The Department of Planning and Natural Resources
Division of Environmental Protection
45 Mars Hill
Frederiksted, VI 00840-4474

or

The Department of Planning and Natural Resources
Division of Environmental Protection
8100 Lindberg Bay, Suite 61
Cyril E. King Airport, Terminal Building 2nd Floor
St. Thomas, VI 00802

654-13. Tank Integrity Tests

The Department may order the owner or operator of an UST system to perform a tank integrity test if:

- (a) There is reason to suspect that there is or has been a release of a regulated substance into the environment;
- (b) The age, operation, maintenance records, location or circumstance related to installation, or any other relevant factor so warrant the taking of this precaution to protect human health and the environment;
- (c) The tank integrity test is required by any provision of sections 654-1 through 654-35 of these regulations.

654-14. Release Detection

(a) *General requirements for all UST systems.*

(1) Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

- (i) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

- (ii) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and
 - (iii) In addition, the methods listed in 654-14(d)(2) through (4) and (e)(1) and (2) must be capable of detecting the leak rate or quantity specified for that method in the corresponding section of the rule with a probability of detection (Pd) of 0.95 and a probability of false alarm (Pfa) of 0.05.
- (2) When a release detection method operated in accordance with the performance standards in subsections (d) and (e) of this section indicates a release may have occurred, owners and operators must notify the Department in accordance with section 654-15 of these regulations.
- (3) Owners and operators of all UST systems must comply with the release detection requirements of this subpart.
- (b) *Requirements for petroleum UST systems.* 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 subsection (d)(4), (d)(6) and (d)(7) of this section except that:

UST systems that meet the performance standards in sections 654-5 and 654-6 of these regulations, and the monthly inventory control requirements in subsection (d)(1) or (2) of this section, may use tank tightness testing (conducted in accordance with subsection (d)(3)) at least every five years until ten years after the tank is installed or upgraded under section 654-6;
 - (2) *Piping.* Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:
 - (i) *Pressurized Piping.*
 - (A) Be equipped with an automatic line leak detector conducted in accordance with subsection (e)(1) of this section; and
 - (B) Have an annual line tightness test conducted in accordance with subsection (e)(2) of this section or have monthly monitoring conducted in accordance with subsection (e)(3) of this section.

- (ii) *Suction Piping.* Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every 3 years and in accordance with subsection (e)(2) of this section, or use a monthly monitoring method conducted in accordance with subsection (e)(3) of this section. No release detection is required for suction piping that is designed and constructed to meet the following standards:
 - (A) The below-grade piping operates at less than atmospheric pressure;
 - (B) 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;
 - (C) Only one check valve is included in each suction line;
 - (D) The check valve is located directly below and as close as practical to the suction pump; and
 - (E) A method is provided that allows compliance with paragraphs (2)(ii)(B)-(D) of this section to be readily determined.
- (c) *Requirements for hazardous substance UST systems.* 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 in subsection (b) of this section. All existing hazardous substance UST systems must meet the release detection requirements for new systems in paragraph (2) of this subsection.
 - (2) Release detection at new hazardous substance UST systems must meet the following requirements:
 - (i) Secondary containment systems must be designed, constructed, and installed to:
 - (A) Contain regulated substances released from the tank system until they are detected and removed;
 - (B) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and
 - (C) Be checked for evidence of a release at least every 30 days.

NOTE: The provisions of 40 CFR § 265.193, Containment and Detection of Releases, may be used to comply with these requirements.

- (ii) Double-walled tanks must be designed, constructed, and installed to:
 - (A) Contain a release from any portion of the inner tank within the outer wall; and
 - (B) Detect the failure of the inner wall.
- (iii) External liners (including vaults) must be designed, constructed, and installed to:
 - (A) Contain 100 percent of the capacity of the largest tank within its boundary;
 - (B) Prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and
 - (C) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).
- (iv) Underground piping must be equipped with secondary containment that satisfies the requirements of paragraph (c)(2)(i) 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 subsection (c)(1) of this section.
- (v) Other methods of release detection may be used if owners and operators:
 - (A) Demonstrate to the Department that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in subsection (d)(1) through (d)(6) of this section can detect a release of petroleum;
 - (B) 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,
 - (C) Obtain approval from the Department to use the alternate release detection method before the installation and operation of the new UST system.

(d) *Methods of release detection for tanks.* Each method of release detection for tanks used to meet the requirements of subsection (b) of this section must be conducted in accordance with the following:

(1) *Inventory control.* Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

- (i) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
- (ii) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
- (iii) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
- (iv) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;
- (v) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every five gallons of product withdrawn; and
- (vi) The measurement of any water in the tank is made to the nearest one-eighth of an inch at least once a month.

Note paragraph (1): Practices described in the American Petroleum Institute Recommended Practice RP 1621, "Bulk Liquid Stock Control at retail Outlets" may be used, where applicable, as guidance in meeting the requirements of this paragraph.

(2) *Manual Tank Gauging.* Manual tank gauging must meet the following requirements:

- (i) Only tanks of 550 gallons or less nominal capacity may use this as the sole method of release detection. Tanks of 551 to 2,000 gallons may use this method in place of manual inventory control in subsection (d)(1) of this section. Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this section.

- (ii) Tank liquid level measurements are taken 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;
- (iii) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;
- (iv) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
- (v) A release is suspected and subject to the requirements of section 654-15 of these regulations 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 four tests)
550 gallons or less.	10 gallons	5 gallons.
551—1,000 gallons.	13 gallons	7 gallons.
1,001—2,000 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.* 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 can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product.
 - (ii) The automatic tank gauging equipment must conduct inventory control in accordance with section 654-14(d)(1).
- (5) *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 are sufficiently porous (c.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, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is 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 device is not 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 will not interfere with the method used to detect releases from the tank;
 - (v) The vapor monitors are 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 is assessed to ensure compliance with the requirements in paragraphs (5)(i) through (5)(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; and
 - (vii) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
 - (viii) Vapor monitoring of soil gas will be phased out as a release detection method. Within one year of the effective date of these regulations, all UST systems utilizing vapor monitoring of soil gas to detect releases of regulated substances must install release detection as set forth in section 654-14(b)(1).
- (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:

- (i) For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product;

NOTE: The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled tanks.

- (ii) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier;

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

- (B) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

- (C) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

- (D) 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;

- (E) The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,

- (F) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

- (iii) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(7) *Other methods.* Any other type of release detection method, or combination of methods, can be used if:

- (i) It 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 more than 0.05; or
 - (ii) The Department may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (d)(3) through (6) of this section. In comparing methods, the Department 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 by the Department on its use to ensure the protection of human health and the environment.
- (e) *Methods of release detection for piping.* Each method of release detection for piping used to meet the requirements of subsection (b) must be conducted in accordance with the following:
- (1) *Automatic line leak detectors.* Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or 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 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.
 - (2) *Line tightness testing.* A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.
 - (3) *Applicable tank methods.* Any of the methods in paragraphs (d)(3) through (d)(6) 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.
- (f) *Release detection recordkeeping.* All UST system owners and operators must maintain records in accordance with section 654-20 demonstrating compliance with all applicable requirements of this subpart. These records must include the following:
- (1) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for five years from the date of installation;

- (2) The results of any sampling, testing, or monitoring must be maintained for at least five years, except that the results of tank tightness testing conducted in accordance with paragraph (d)(3) must be retained until the next test is conducted; and
- (3) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least five years after the servicing work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five years from the date of installation.

654-15. Release Reporting, Investigation, Assessment, and Confirmation; Spills and Overfills

- (a) *Reporting of suspected releases.* Owners and operators of UST systems must report to the Department within 24 hours and follow the procedures in section 654-15 (c) for any of the following conditions:
 - (1) The discovery of released regulated substances 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, and nearby surface water or groundwater).
 - (2) Unusual operating conditions observed by owners or operators (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; and
 - (3) Monitoring results from a release detection method required under sections 654-14 (b) and 654-14 (c) that indicate a release may have occurred unless:
 - (i) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or
 - (ii) In the case of inventory control, a second month of data does not confirm the initial result.
- (b) *Investigation due to off-site impacts.* When required by the Department, owners and operators of UST systems must follow the procedures in section 654-15 (c) to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free or dissolved product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters and groundwater) that has been observed by the Department or brought to its attention by another party.
- (c) *Release investigation and confirmation steps.* Unless corrective action is initiated in accordance with Section 654-17 of these regulations, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under paragraph (a) of this section within seven days, using either the following steps or another procedure approved by the Department:

- (1) *System test.* Owners and operators must conduct tests (according to the requirements for tightness testing in Section 654-14 (d)(3) and Section 654-14 (e)(2) of these regulations that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both.
 - (i) Owners and operators must repair, replace, or upgrade the UST system, and begin corrective action in accordance with section 654-17 of these regulations if the test results for the system, tank, or delivery piping indicate that a leak exists.
 - (ii) 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.
 - (iii) Owners and operators must conduct a site check as described in paragraph (2) 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.
 - (i) 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 section 654-17 of these regulations;
 - (ii) 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.
- (d) *Reporting and cleanup of spills and overfills.*
- (1) Owners and operators of UST systems must contain and immediately clean up a spill or overfill and report to the Department within 24 hours and begin corrective action in accordance with sections 654-15 and 654-17 of these regulations in the following cases:
 - (i) Spill or overfill of petroleum that results in a release to the environment that equals or exceeds 25 gallons or that causes a sheen on nearby surface water; and
 - (ii) Spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR § 302).
 - (2) Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons 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 Department.

NOTE: Pursuant to 40 CFR §§ 302.6 and 355.40, 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 territorial and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986.

(e) *Issuance of No Further Action letters.*

The Department shall issue No Further Action letters to the owners and operators of an UST system upon having reviewed reports, records and analytical data associated with the prevention, assessment, abatement, or cleanup and removal of any release or threatened release of a regulated or hazardous substance on the property of an UST owner or operator. The No Further Action letters shall be issued upon the Department's determination that the reports, records and analytical data meet Department standards for response and clean up of the release of regulated or hazardous substances released on a property, as those standards are described in section 654-34.

654-16. Financial Responsibility

(a) *Applicability.*

- (1) This section applies to owners and operators of all underground storage tank systems except as otherwise provided in this section.
- (2) Owners and operators of UST systems are subject to these requirements if they are in operation on or after the date for compliance established in subsection (b) of this section.
- (3) Territorial and Federal government entities whose debts and liabilities are the debts and liabilities of a territory or the United States are exempt from the requirements of this section.
- (4) The requirements of this section do not apply to owners and operators of any UST system described in section 654-1(b) or (c).
- (5) 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 the event of noncompliance.

(b) *Amount and scope of required financial responsibility.*

- (1) Owners or operators of UST systems, within 180 days of the effective date of these regulations, must establish and maintain evidence of financial responsibility as provided in this subsection for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks in at least the following per occurrence amounts:
 - (i) For all owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities or that own or operate five or more tanks or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year. \$2,000,000.

- (ii) For all other owners or operators of petroleum underground storage tanks, \$500,000.
- (2) Owners or operators of 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 underground storage tanks in at least the following annual aggregate amounts:
 - (i) For owners or operators of four or fewer tanks, an annual aggregate amount of \$1,000,000.
 - (ii) For owners or operators of five or more tanks, an annual aggregate amount of \$2,000,000.
 - (iii) Owners or operators of 10 or more tanks shall establish and maintain a level of financial responsibility as determined by the Commissioner.
- (3) For the purposes of paragraphs (2) and (6) of this subsection only, “underground storage tank” means a single containment unit and does not mean combinations of single containment units.
- (4) Except as provided in paragraph (5) of this subsection, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:
 - (i) Taking corrective action;
 - (ii) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or
 - (iii) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in paragraphs (1), (2), and (6) of this subsection.
- (5) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different 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.
- (6) Owners or operators shall review the amount of aggregate assurance provided whenever additional underground storage tanks are acquired or installed. If the number of 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 \$10 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 \$10 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.
- (7) The amounts of assurance required under this section exclude legal defense costs.
- (8) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

(c) *Allowable mechanisms and combinations of mechanisms.*

1. Subject to the limitations of paragraphs (2) and (3) of this subsection and subject to the approval of the Department,
 - i. an owner or operator, may use any one or combination of the mechanisms listed in sections 654-16 (d) through 654-16 (j) or any other reasonable and economically practicable means to demonstrate financial responsibility for one or more underground storage tanks
2. An owner or operator may use a guarantee under section 654-16 (e) or surety bond under section 654-16 (g) to establish financial responsibility only if the Attorney General of the Virgin Islands has submitted a written statement to the Department that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in the Virgin Islands.
3. Surety bonds shall be payable to the Government of the Virgin Islands, to include costs and expenses of the cleanup of any release, as well as damages incurred by the Government, consistent with the provisions of this chapter. Any bond filed with the Department must be issued by a bonding company authorized to do business within the Territory.
4. 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.

(d) *Financial test of self-insurance.*

1. An owner or operator, and/or guarantor, may satisfy the requirements of this subsection by passing a financial test as specified below. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of paragraph (2) or (3) of this subsection based on year-end financial statements for the latest completed fiscal year.
2. The owner or operator's and/or guarantor's tangible net worth:
 - i. The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:
 - A. The total of the applicable aggregate amount required by subsection (b) of this section, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to EPA and the Department;
 - B. The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility under 40 CFR §§ 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, 265.147 or to the Department under 40 CFR § 271; and
 - C. The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility under 40 CFR § 144.63 to the Department under 40 CFR § 145.
 - ii. The owner or operator, and/or guarantor, must have a tangible net worth of at least \$10 million.

- iii. The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in paragraph (4) of this subsection.
 - iv. The owner or operator, and/or guarantor, must either:
 - A. File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Utilities Service of the United States Department of Agriculture (formerly the Rural Electrification Administration); or
 - B. 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.
 - v. 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.
3. The owner or operator, and/or guarantor's financial test requirements:
- i. The owner or operator, and/or guarantor must meet the financial test requirements of 40 CFR § 264.147(f)(1), substituting the appropriate amounts specified in subsections (b)(2)(i), (b)(2)(ii), (b)(2)(iii), and (b)(6) of this section for the "amount of liability coverage" each time specified in that section.
 - ii. 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.
 - iii. The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
 - iv. The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in paragraph (4) of this subsection.
 - v. 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 Utilities Service of the United States Department of Agriculture (formerly 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. The independent certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/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.
4. To demonstrate that it meets the financial test under paragraph (2) or (3) of this subsection, 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 twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: “the financial test of self-insurance,” 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 storage tanks at the following facilities are assured by this financial test or a financial test under an authorized State program 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, and whether tanks are assured by this financial test or a financial test under a State program approved under 40 CFR § 281. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test or a financial test under a State program authorized under 40 CFR § 281 by the tank identification number provided in the notification submitted pursuant to 40 CFR § 280.22 or the corresponding State requirements.]

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 other EPA regulations or these regulations:

EPA Regulations Amount

- Closure (§§ 264.143 and 265.143) ... \$ _____
- Post-Closure Care (§§ 264.145 and 265.145) ...\$ _____
- Liability Coverage (§§ 264.147 and 265.147) ...\$ _____
- Corrective Action (§ 264.101(b)) ...\$ _____
- Plugging and Abandonment (§ 144.63) ...\$ _____
- Closure \$ _____
- Post-Closure Care\$ _____
- Liability Coverage\$ _____

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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 its financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of paragraph (2) of this subsection are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of paragraph (3) of this subsection 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 \$20 million? _____
8. Is line 6 at least 10 times line 3? _____

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- 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 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 |
|---------------------------------------|-----|-----|
| 8. Is line 6 at least \$20 million? | ___ | ___ |
| 9. Is line 6 at least 6 times line 3? | ___ | ___ |

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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 40 CFR § 280.95(d) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

5. 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.
6. The Commissioner may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the Commissioner 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 subsection (d)(2) or (d)(3) and (d)(4) of this subsection, the owner or operator must obtain alternate coverage within 30 days after notification of such a finding
7. 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 Commissioner of the implementing agency that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Commissioner of such failure within 10 days.

(e) *Guarantee.*

1. An owner or operator may satisfy the requirements of subsection (b) of this section by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:
 - i. A firm that:
 - A. possesses a controlling interest in the owner or operator;
 - B. possesses a controlling interest in a firm described under paragraph (1)(i)(A) of this subsection; or,
 - C. is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or,
 - ii. A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.
2. Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of subsection (d) of this section based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in subsection (d)(4) of this section 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. If the Commissioner notifies the guarantor that he no longer meets the requirements of the financial test of subsection (d)(2) or (3) and (4) of this section, the guarantor must notify the owner or operator within 10 days of receiving such notification from the Commissioner. 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 section 654-16 (m)(3).

3. 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 [state or territorial government], herein referred to as guarantor, to Commissioner, Virgin Islands Department of Planning and Natural Resources 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 in 12 V.I.R. & Regs. Sections 654-16 (d)(2) or (d)(3) and (d)(4) and agrees to comply with the requirements for guarantors as specified in section 654-16 (e)(2).

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 654-2, and the name and address of the facility.] This guarantee satisfies section 654 -16 requirements 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 DPNR 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 Commissioner has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee.

the guarantor, upon instructions from the Commissioner, shall fund a standby trust fund in accordance with the provisions of section 654-16 (k), in an amount not to exceed the coverage limits specified above.

In the event that the Commissioner determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with section 654-17, the guarantor upon written instructions from the Commissioner shall fund a standby trust in accordance with the provisions of section 654-16 (k), 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 Commissioner, shall fund a standby trust in accordance with the provisions of section 654-16 (k) 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 section 654-16 (d)(2) or (3) and (4), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under 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 these 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 section 654-16 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 workers' 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, loaded 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 an 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 section 654-16 (b).

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Virgin Islands Department of Planning and Natural Resources, 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 section 654-16 (e)(3) 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:

4. An owner or operator who uses a guarantee to satisfy the requirements of subsection (b) of this section 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 Commissioner under section 654-16 (k) of these regulations. This standby trust fund must meet the requirements specified in section 654-16 (j) of these regulations.

(f) *Insurance and risk retention group coverage.*

1. An owner or operator may satisfy the requirements of subsection (b) of this section 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.
2. Each insurance policy must be amended by an endorsement worded as specified in paragraph (2)(i) of this subsection, or evidenced by a certificate of insurance worded as specified in paragraph (2)(ii) of this subsection, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:
 - i. 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:

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

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 654-2 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"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

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

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

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

b. The [“Insurer” or “Group”] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the [“Insurer” or “Group”]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in section 654-16 (d) – (i).

c. Whenever requested by Commissioner of the Department of Planning and Natural Resources, the [“Insurer” or “Group”] agrees to furnish to Commissioner a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the [“Insurer” or “Group”], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the [“Insurer” or “Group”] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.] I hereby certify that the wording of this instrument is identical to the wording in section 654-16 (f)(2)(i) 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]

ii. 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:

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

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 654-2 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 “no sudden accidental releases” or “accidental releases”; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

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

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

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

b. The [“Insurer” or “Group”] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the [“Insurer” or “Group”]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in section 654-16 (d) –(i).

c. Whenever requested by the Commissioner of the Department of Planning and Natural Resources, the [“Insurer” or “Group”] agrees to furnish to Commissioner a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the [“Insurer” or “Group”], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the [“Insurer” or “Group”] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in section 654-16 (f)(2)(ii) 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]

[Type name]

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

[Address of Representative]

3. 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.

(g) *Surety bond.*

1. An owner or operator may satisfy the requirements of subsection (b) of this section by obtaining a surety bond that conforms to the requirements of this subsection. 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.
2. 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 notification submitted pursuant to section 654-2 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 Virgin Islands Department of Planning and Natural Resources, 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 section 654-17 and the Commissioner of the Virgin Islands Department of Planning and Natural Resource'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 section 654-16, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' 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 section 654-16 (b). 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 Commissioner of the Virgin Islands Department of Planning and Natural Resources that the Principal has failed to [“take corrective action, in accordance with section 654-17 and the Commissioner instructions,” and/or “compensate injured third parties”] as guaranteed by this bond, the Surety(ies) shall either perform [“corrective action in accordance with section 654-17 and the Commissioner’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 Regional Administrator or the Commissioner under section 654-16 (k).

Upon notification by the Commissioner 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 Commissioner has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Commissioner under section 654-16 (l).

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in section 654-16 (g)(2) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Names(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

[State of Incorporation: _____]

[Liability limit: \$ _____]

[Signature(s)]

[Names(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: \$ _____

3. 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.
4. The owner or operator who uses a surety bond to satisfy the requirements of subsection (b) of this section 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 Commissioner under section 654-16 (k). This standby trust fund must meet the requirements specified in section 654-16 (j).

(h) *Letter of credit.*

1. An owner or operator may satisfy the requirements of subsection (b) of this section 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.
2. 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 Commissioner of the Virgin Islands Department of Planning and Natural Resources]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ___ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation [insert, if more than one Commissioner of a state implementing agency is a beneficiary, "by any one of you"] of

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

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Resource Conservation and Recovery Act 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 address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 654-2 and the name and address of the facility.]

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

(a) Any obligation of [insert owner or operator] under a workers' 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 section 654-16 (b).

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 section 654-16 (h)(2) as such regulations were constituted on the date shown immediately below.

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

[Date]

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

3. An owner or operator who uses a letter of credit to satisfy the requirements of subsection (b) of this section 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 Commissioner will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Commissioner under section 654-16 (k). This standby trust fund must meet the requirements specified in section 654-16 (j).
4. 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.

(i) *Trust fund.*

1. An owner or operator may satisfy the requirements of section 654-16 (b) 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 the Virgin Islands government.
2. The wording of the trust agreement must be identical to the wording specified in section 654-16 (j)(2)(i), and must be accompanied by a formal certification of acknowledgement as specified in section 654-16 (j)(2)(ii).
3. 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.
4. 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 Commissioner for release of the excess.
5. If other financial assurance as specified in this section is substituted for all or part of the trust fund, the owner or operator may submit a written request to the Commissioner for release of the excess.

6. Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraph (4) or (5) of this subsection, the Commissioner will instruct the trustee to release to the owner or operator such funds as the Commissioner specifies in writing.

(j) *Standby trust fund.*

1. An owner or operator using any one of the mechanisms authorized by subsections (c), (g), or (h) of this section 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 Division of Environmental Protection.
 - i. The standby trust agreement, or trust agreement, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [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 United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standpoint 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 Virgin Islands Department of Planning and Natural Resources. 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 Commissioner 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 Virgin Islands Department of Planning and Natural Resources.

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

The Trustee shall make payments from the Fund as Commissioner 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 workers’ 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 section 654-16 (b). The Trustee shall reimburse the Grantor, or other persons as specified by Commissioner, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as Commissioner shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as Commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

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

Section 6. Trustee Management

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

(i) Securities or other obligations of the Grantor, or any other 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, state, or territorial government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal, state, or territorial government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

(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 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 not 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 Commissioner of the Virgin Islands Department of Planning and Natural Resources to the Trustee shall be in writing, signed by the Commissioner,

and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Commissioner 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 Commissioner, 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 Commissioner if the Grantor ceases to exist.

Section 15. Irrevocability and Termination

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

Section 16. Immunity and Indemnification

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

Section 17. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the United States Virgin Islands, 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 section 654-16 (j)(2)(i) 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]

(ii) The standby trust agreement, or trust agreement must be accompanied by a formal certification of acknowledgement similar to the following.

Territory 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]

2. The Commissioner will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Commissioner determines that no additional 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.
 3. An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.
- (k) *Substitution of financial assurance mechanisms by owner or operator.*
1. An owner or operator may substitute any alternate financial assurance mechanisms as specified in this section, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of subsection (b) of this section.
 2. After obtaining alternate financial assurance as specified in this section, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.
- (l) *Cancellation or nonrenewal by a provider of financial assurance.*
1. 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.
 - i. 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.
 - ii. Termination of insurance or risk retention coverage, except for non-payment or misrepresentation by the insured, or state-funded assurance 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. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
 2. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in section 654-16 (q), 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 Commissioner of the implementing agency of such failure and submit:
 - i. The name and address of the provider of financial assurance; and
 - ii. The effective date of termination.
- (m) *Reporting by owner or operator.*
1. An owner or operator must submit the appropriate forms listed in Section 654-16 (n)(2) documenting current evidence of financial responsibility to the Commissioner:

- i. Within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under section 654-15 (d) or section 654-17 (b) of these regulations;
 - ii. If the owner or operator fails to obtain alternate coverage as required by this section, 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,
 - D. Other incapacity of a provider of financial assurance; or
 - iii. As required by subsections (d)(7) of this section and section 654-16 (l)(2).
2. An owner or operator must certify compliance with the financial responsibility requirements of this part as specified in the new tank registration form when notifying the Department of the installation of a new underground storage tank under Section 654-2 of these regulations.
 3. The Commissioner may require an owner or operator to submit evidence of financial assurance as described in section 654-16 (n)(2) or other information relevant to compliance with this section at any time.

(n) *Recordkeeping.*

1. Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this section for an underground storage tank until released from the requirements of this section under section 654-16 (p). An owner or operator must maintain such evidence at the underground storage tank site or the owner's or operator's place of work. Records maintained off-site must be made available upon request of the Department.
2. An owner or operator must maintain the following types of evidence of financial responsibility:
 - i. An owner or operator using an assurance mechanism specified in subsections (d) through (i) of this section must maintain a copy of the instrument worded as specified.
 - ii. 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.
 - iii. 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.
 - iv. 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.

- v. An owner or operator covered by a territorial fund or other territorial assurance must maintain on file a copy of any evidence of coverage supplied by or required by the territory under 40 C.F.R. § 280.101(d).
- vi. Certification of financial responsibility:
 - A. An owner or operator using an assurance mechanism specified in sections 654-16 (d) through (j) 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 section 654-16.

The financial assurance mechanism(s) used to demonstrate financial responsibility under section 654-16 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]

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

(o) *Drawing on financial assurance mechanisms.*

1. Except as specified in paragraph (4) of this section, the Commissioner shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Commissioner, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:
 - i. The conditions of clauses (A) and (B) below are completed as follows:
 - 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 Commissioner determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the Commissioner pursuant to sections 654-16 and 654-17 of these regulations of a release from an underground storage tank covered by the mechanism; or
 - ii. The conditions of paragraph (2)(i) or (2)(ii) (A) or (B) of this subsection are satisfied.
2. The Commissioner may draw on a standby trust fund when:
 - i. The Commissioner makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under section 654-17 of these regulations; or
 - ii. The Commissioner has received either:
 - A. 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 \$[amount of money].

[Signatures]

Owner or Operator

Attorney for Owner or Operator

(Notary)

Date

[Signatures]

Claimant(s)

Attorney(s) for Claimant(s)

(Notary)

Date

- B. Or 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 section and the Commissioner determines that the owner or operator has not satisfied the judgment.
3. If the Commissioner determines that the amount of corrective action costs and third-party liability claims eligible for payment under paragraph (2) 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 Commissioner shall pay third party liability claims in the order in which the Commissioner receives certifications under paragraph (2)(ii)(A) of this subsection, and valid court orders under paragraph (2)(ii)(B) of this subsection.
- (p) *Release from the requirements.*
An owner or operator is no longer required to maintain financial responsibility under this section 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 section 654-9 of these regulations.
- (q) *Bankruptcy or other incapacity of owner or operator or provider of financial assurance.*
1. 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 Commissioner by certified mail of such commencement and submit the appropriate forms listed in section 654-16 (n)(2) documenting current financial responsibility.
 2. 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 subsection (f) of this section.
3. 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, letter of credit, or state-required mechanism. The owner or operator must obtain alternate financial assurance as specified in this section 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 Commissioner.
 4. Within 30 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.
- (r) *Replenishment of guarantees, letters of credit, or surety bonds.*
1. If at any time after a standby trust is funded upon the instruction of the Commissioner with funds drawn from a guarantee, guarantee with standby trust, 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:
 - i. Replenish the value of financial assurance to equal the full amount of coverage required, or
 - ii. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.
 2. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by subsection (c) of this section. 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.
- (s) Any claim for costs incurred by the Government of the Virgin Islands for taking emergency, preventive, corrective or enforcement action may be filed directly against the bonding company, the insurer, the guarantor, or any other person providing evidence of financial responsibility. Any amount collected or awarded under this subsection shall be paid into the Virgin Islands Underground Storage Tank Trust Fund.
- (t) An owner or operator of an UST system shall designate a person within the United States Virgin Islands as his resident agent for service of process, and such designation shall be filed on the owner's or operator's registration.
- (u) The financial responsibility amounts required by this section, or any portion of such an amount, may be satisfied by utilization of the Virgin Islands Underground Storage Tank Revolving Trust Impress Account established pursuant to section 684 of the Act, at the discretion of and in a manner determined by the Commissioner.

654-17. Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

- (a) *General.* 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 section 654-1(b) and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended.
- (b) *Initial response.* Upon confirmation of a release in accordance with section 654-15 (c) or after a release from the UST system is identified in any other manner, owners and operators must perform the following initial response actions within 24 hours of a release or within another reasonable period of time determined by the Department:
 - (1) Report the release to the Department's Division of Environmental Protection;
 - (2) Take immediate action to prevent any further release of the regulated substance into the environment; and
 - (3) Identify and mitigate fire, explosion, and vapor hazards.
 - (4) Mitigate to the extent practicable adverse effect to human health and the environment.
- (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:
 - (i) Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;
 - (ii) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and groundwater;
 - (iii) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or cisterns);
 - (iv) 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 territorial requirements;
 - (v) 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 section 654-15 (c)(2) or the closure site assessment of section 654-9 (c). 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; and
 - (vi) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with subsection (c) of this section.

- (2) Within 20 days after release confirmation, or within another reasonable period of time determined by the Department, owners and operators must submit a report to the Department summarizing the initial abatement steps taken under subsection (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 abatement measures in subsections (b) and (c) of this section. This information must include a title page that identifies the consultant performing the work, the date the report was prepared, and the following information (but is not necessarily limited to the following):
- (i) Data on the nature, site-specific location, and estimated quantity of release;
 - (ii) Data from available sources and/ or site investigations concerning the following factors: 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;
 - (iii) Results of the site check required under subsection (c)(1)(iv and v) of this section; and
 - (iv) Results of the free product investigations required under subsection (c)(1)(vi) of this section, to be used by owners and operators to determine whether free product must be recovered under subsection (e) of this section.
 - (v) Known or expected extent of the contaminant or contaminants.
 - (vi) Any information requested by the Commissioner.
- (2) Within 45 days of release confirmation or another reasonable period of time determined by the Department, owners and operators must submit the information collected in compliance with paragraph (1) of this section to the Department in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the Department
- (3) The Commissioner may approve an alternative procedure for initial site characterization only if the procedure provides substantially equal protection for human health and the environment as the initial site characterization in paragraphs (1) and (2) of this subsection.
- (e) *Free product removal.* At sites where investigations under subsection (c)(1)(vi) 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 Department while continuing, as necessary, any actions initiated under subsections (b) through (d) of this section, and preparing for actions required under subsections (f) through (g) of this section. In meeting the requirements of this section, owners and operators must:
- (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 byproducts in compliance with applicable Territorial, 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; and
 - (4) Unless directed to do otherwise by the Commissioner, prepare and submit to the Department, within 45 days after confirming a release, a free product removal report that provides at least the following information:
 - (i) The name of the person(s) responsible for implementing the free product removal measures;
 - (ii) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;
 - (iii) The type of free product recovery system used;
 - (iv) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
 - (v) The type of treatment applied to, and the effluent quality expected from, any discharge;
 - (vi) The steps that have been or are being taken to obtain necessary permits for any discharge; and
 - (vii) The disposition of the recovered free product.
- (f) *Investigations for soil and groundwater cleanup.*
- (1) In order 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 if any of the following conditions exist:
 - (i) There is evidence that groundwater wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);
 - (ii) Free product is found to need recovery in compliance with subsection (c) of this section;
 - (iii) There is evidence that contaminated soils may be in contact with groundwater (e.g., as found during conduct of the initial response measures or investigations required under subsections (a) through (c) of this section); and
 - (iv) The Department requests a further investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources.
 - (2) During the further site investigation, the owner or operator must do the following if evidence exists that a contaminant exceeds the cleanup objectives under section 654-34 of these regulations.
 - (i) Install a minimum of three groundwater monitoring wells, if at least three wells were not installed during the initial site investigation under subsection (d) of this section. One groundwater monitoring well shall be located

- upgradient of the release and two groundwater monitoring wells shall be located downgradient of the release. Additional monitoring wells may be required to define fully the extent of contamination.
- (ii) Take a groundwater sample from each of the monitoring wells and report the analytical results to the agency.
 - (iii) Provide a description of the method for collecting the groundwater samples.
 - (iv) Monitoring wells must be screened across water table fluctuation and not placed in a straight line.
 - (v) Monitoring wells must be installed consistent with all applicable territorial requirements.
- (3) Owners and operators must submit the information collected under paragraphs (1) and (2) of this subsection as soon as practicable or in accordance with a schedule established by the Department, including the following information:
- (i) Hydraulic conductivity.
 - (ii) Transmissivity.
 - (iii) Storativity.
 - (iv) Confined or unconfined condition.
 - (v) Porosity of the aquifer or aquifers involved.
 - (vi) The average linear velocity of the groundwater in the aquifer or aquifers involved.
- (4) Provide a complete discussion of effective remediation alternatives, including the following for each alternative:
- (i) Overall effectiveness of technology.
 - (ii) Ability to achieve cleanup criteria.
 - (iii) Expected treatment duration.
 - (iv) Treatment reliability.
 - (v) Permits that will be required.
- (g) *Corrective action plan.*
- (1) At any point after reviewing the information submitted in compliance with subsections (b) through (f) of this section, the Department may require owners and operators to submit additional information or to develop and submit a corrective action plan 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 may, after fulfilling the requirements of subsections (b) through (f) of this section, choose to submit a corrective action plan 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 plan as necessary to meet this standard.
- (2) The Department will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the Department will consider the following factors as appropriate:

- (i) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
 - (ii) The hydrogeologic characteristics of the facility and the surrounding area;
 - (iii) The proximity, quality, and current and future uses of nearby surface water and groundwater;
 - (iv) The potential effects of residual contamination on nearby surface water and groundwater;
 - (v) The proximity of potential contaminant receptors, including adjacent residences, wells, well fields, or wellhead protection areas;
 - (vi) An exposure assessment;
 - (vii) Any information assembled in compliance with this section; and
 - (viii) The suitability of the chosen remediation method for site conditions.
- (3) Upon approval of the corrective action plan 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 a schedule and 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:
- (i) Notify the Department of their intention to begin cleanup;
 - (ii) Comply with any conditions imposed by the Department, including halting cleanup or mitigating adverse consequences from cleanup activities; and
 - (iii) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the Department for approval.
- (h) *Public participation.*
- (1) For each confirmed release that requires a corrective action plan, the Department 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, publication in a register, letters to individual households, or personal contacts by field staff.
 - (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 there is sufficient public interest, or for any other reason.
 - (4) The Department must give public notice that complies with paragraph (1) of this subsection if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the Department.

654-18. Cost Recovery by the Government

In the event of any discharge or threatened discharge of a regulated substance from an UST system, the Government of the Virgin Islands, or any of its agencies or instrumentalities, may recover in a civil action from any owner, operator, or other responsible person of an UST system all costs incurred in the prevention, assessment, abatement, or cleanup and removal of any release or threatened release of a regulated substance, including reasonable attorney fees and any other necessary costs of response incurred by the Government of the Virgin Islands or any of its departments, divisions or agencies. The Government of the Virgin Islands shall have a lien on the real property on which the UST system that caused the discharge is located, even if owned by a person other than the owner or operator, if the owner or operator is in privity with the real property owner.

654-19. Environmental Assurance Fee

- (a) Owners and operators of petroleum UST systems must submit an annual environmental assurance fee form for each UST system and the required fee, payable to “the Virgin Islands Underground Tank Fund.” The form and fee shall be mailed or hand delivered to

The Department of Planning and Natural Resources
Division of Environmental Protection
45 Mars Hill
Frederiksted, VI 00840-4474

- (b) The amount of the fee shall be calculated by multiplying the total gallons of motor fuel sold from each UST system by the amount indicated on the annual environmental assurance fee form.
- (c) The environmental assurance fee form must include a certification stating that “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America and the United States Virgin Islands that the foregoing is true and correct. Executed on (date). (Signature).”
- (d) The owner and operator of each petroleum UST system shall maintain proof of the amount of motor fuel sold from each UST system for a period of not less than three years and proof that the annual environmental assurance fee form and fee were received by the Department prior to June 30 of each year.
- (e) All fees received pursuant to this section shall be deposited into the Virgin Islands Underground Storage Tank Revolving Trust Impress Account.

654-20. Recordkeeping; Furnishing Information

All owners and operators of UST systems shall maintain records and information relating to tanks, their associated equipment, their contents, repairs, tank system testing, monitoring, analysis, and release detection, including inventory controls, for the operating life of the UST system. All required records and information, including records regarding tank closure, shall be kept at the UST site or at a readily available alternative site and made immediately available for inspection and copying by an authorized employee of the Department.

654-21. Inspection; Right of Entry

The Commissioner, an authorized employee of the Department, or an authorized contractor or agent of the Department, upon presentation of his credentials, shall have the right to enter upon or through premises of persons subject to these regulations, under the following circumstances:

- (a) The Department or its authorized agent is conducting systematic inspections of all facilities subject to the requirements of the Act and/or these regulations in a manner designed to determine compliance or non-compliance, to verify the accuracy of information submitted by owners or operators of regulated UST systems, and to verify adequacy of methods utilized by owners or operators in developing that information;
- (b) A violation of the Act and/or these regulations is reasonably believed to be occurring or is reasonably believed to be about to occur, and it is necessary to investigate, take samples of, and copy all records relating to the storage of regulated substances in underground storage tanks, and to inspect for compliance with the Act, and these regulations, or to determine whether such a violation or threatened violation exists; or
- (c) A release of a regulated substance in violation of the Act and/or these regulations is reasonably believed to be occurring or is reasonably believed to have previously occurred, and it is necessary to investigate, take samples, copy all records relating to storage of regulated substances in underground storage tanks, and inspect for compliance with the requirements imposed under the Act, and these regulations, or the regulations and to determine whether such a current release is occurring or past release has occurred and to have the Department order or conduct appropriate corrective action for any release which may currently exist or may have existed.

654-22. Prohibited Acts

- (a) It is unlawful for any person to engage in the storage of regulated substances in underground storage tanks except in such a manner so as to conform to and comply with any provisions of the Act and these regulations, and orders issued pursuant thereto.
- (b) It is a violation of this chapter to:

- (1) Cause or permit the release of a regulated substance from an underground storage tank into the environment; or
- (2) Install an underground storage tank that does not meet the minimum standards in accordance with the provisions of the Act and these regulations.

654-23. Emergency Orders

Upon receiving information that the operation, maintenance, or condition of an underground storage tank or the surrounding area may present a threat or a hazard to the health of persons or to the environment, or may present an actual or threatened violation of any provision of the Act or these regulations, the Commissioner may issue to the owner or operator an emergency order establishing reasonable and proper methods for the control of the activity, tank closure, removal of contaminated materials, and/or the management of substances in the tank and/or the surrounding area in order to reduce or eliminate the hazard or the violation. Such order shall become effective upon issuance. Any person to whom such order is directed shall comply therewith immediately but on application to the Commissioner shall be afforded a hearing within 48 hours. On the basis of such hearing, the Commissioner may continue such an order in effect, revoke it, or modify it.

654-24. Administrative Proceedings

- (a) Whenever the Commissioner has reason to believe that a violation of any provision of the Act, these regulations, or any order or citation issued thereunder has occurred, the Commissioner may cause written notice to be served upon the alleged violator or violators.
 - (1) The notice shall specify the provision of the Act, these regulations, or any order or citation issued thereunder alleged to be violated, the facts alleged to constitute a violation thereof, and may include any order for necessary corrective action and any penalty assessed pursuant to section 680 of the Act or section 654-27 of these regulations. An order for corrective action is effective upon issuance.
 - (2) Any person named therein may request in writing, within 15 days after receipt of the notice or order, a hearing before the Commissioner. The request does not act as a stay of the Commissioner's order unless so ordered and directed by the Commissioner or by a Court of competent jurisdiction.
- (b) The Commissioner shall afford an opportunity for a hearing to the alleged violator at a time and place designated by the Commissioner. On the basis of the evidence produced at the hearing, the Commissioner, shall make findings of fact and conclusions of law and enter such order as in his opinion will best further the purposes of this chapter. The Commissioner, before entering his order on the basis of the record and recommendations, shall provide an opportunity to the parties to submit for consideration exceptions to the recommended findings of facts and conclusions of law and supporting reasons for such exceptions. The parties shall submit written exceptions within 10 days after the hearing.

Written notice of such order shall become final and binding on all parties unless appealed to the appropriate court as provided for in section 676 of the Act.

- (c) Any person who has had a certificate, license, or registration denied, modified, suspended, or revoked shall be afforded an opportunity for a hearing pursuant to the provisions of this section upon written application to the Commissioner within 30 days after receipt of notice from the Commissioner of such denial, modification, suspension or revocation.
- (d) The Commissioner may provide an expedited hearing to an aggrieved party, if specifically requested by the alleged violator and if circumstances so warrant.
- (c) The Commissioner may order testimony to be taken by deposition in any proceedings pending before him. Any person may be compelled to appear, testify and produce papers or documents in the same manner and consistent with same rules as witnesses may be compelled to appear, testify, and produce documentary evidence before the Superior Court.

654-25. Review

Any person aggrieved by any action, decision, or order of the Commissioner may obtain a review thereof by filing a written petition in the appropriate division of the Superior Court within 30 days after the date of the action, decision or order, and the petition shall include such information as required by the applicable rules of the Superior Court.

654-26. Enforcement

- (a) *Compliance orders.* Whenever, on the basis of any information, the Commissioner determines that any person is in violation of any requirement of these regulations, the Commissioner may issue an order requiring compliance within a reasonable, specified time period or the Commissioner may initiate a civil action for appropriate relief, including temporary or permanent injunction.
- (b) *Civil action.* In addition to any other provisions or procedures set forth in these regulations, if the Commissioner finds that a person is in violation of the Act or these regulations, or has failed to comply with any provisions of these regulations or any order issued thereunder, the Commissioner may refer the matter to the Office of the Attorney General, so that the Attorney General may file suit in the Superior Court, in the district where the noncompliance has occurred, to enjoin the act, obtain compliance, and/or impose a penalty. The Court may issue injunctive relief or such other relief as may be appropriate and may exercise all plenary powers available to it, including but not limited to:
 - (1) enjoining the threat of or any further releases;
 - (2) ordering design, construction, installation, or operation of alternate facilities;
 - (3) ordering the removal of facilities, equipment, contaminated water and soils, and the restoration of the environment;
 - (4) assessing and ordering compensation for any public or private property destroyed, damaged or injured;

- (5) assessing and ordering the payment of damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release;
- (6) assessing and awarding punitive damages; and
- (7) ordering reimbursement to any agency or department of the federal or territorial government from any person whose acts caused governmental expenditures pursuant to this chapter.

654-27. Penalties

- (a) Civil penalties
 - (1) Any person who violates any provision of the Act, these regulations, or any order or citation issued thereunder, shall be subject to available civil penalties.
 - (2) Civil penalties provided under this section may be assessed administratively by the Commissioner against any person who violates any provision of the Act, these regulations, or any order or citation issued thereunder.
- (b) Criminal penalties
 - (1) Any person who knowingly or intentionally violates any provision of the VI UST statute, these regulations, or any order or citation issued thereunder, shall, upon conviction, be subject to available criminal penalties.
 - (2) Any person who knowingly or intentionally makes any false statement, representation or certification in any application, record, report, plan or other documents filed or required to be maintained under the Act, or these regulations, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under the Act, these regulations, or any order or citation issued thereunder, shall be subject to available criminal penalties.
- (c) Each violation is a separate and distinct offense and in the case of a continuing violation, continuance of each day thereof may be considered a separate and distinct offense.

654-28. Public Participation

- (a) *Public hearing.* Public notice shall be given of applications for permits to operate new, abandoned or non-operational UST systems by publication at least twice in a newspaper of general circulation in the district in which the UST will be or is located and by posting a notice on the property involved. Costs for public notice shall be borne by the applicant. Such notice shall set forth the purpose, date, time and place of the public hearing. The first notice shall occur 30 days prior to the public hearing and the second notice shall occur 15 days after the first newspaper notification. Any person who feels the granting of the application would be detrimental to his or her rights may appear at the public hearing and state his or her objections.
 - (1) The public hearing shall be held no more than 60 days after the application has been deemed complete.

- (2) The Department shall provide notice to individual households, businesses and agencies within 500 feet of the proposed UST system in any of the following ways:
 - (i) Letters.
 - (ii) Personal contacts by field staff.
 - (3) All testimony, objections thereto, and ruling thereon shall be transcribed by a reporter employed by the Department or recorded by a recording machine or other persons assigned for such purpose.
 - (4) Within 30 days of the public hearing, the DEP shall transmit to the Commissioner a report containing any recommendation or special conditions to be imposed on the proposed UST system. All special conditions shall be based on existing requirements of the Act and these regulations.
 - (5) The Commissioner may reject or accept any recommendation or special conditions contained in the DEP report. In the event that the Commissioner accepts any of the special conditions, those conditions shall be included in the permit for the owner and operator of the UST system.
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- (b) Upon timely application any person whose interests may be adversely affected by a release or threatened release from an UST system shall be allowed to intervene as of right in any civil action when the applicant claims an interest relating to the property or transaction which is the subject of the action, and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest. The Department or any other department or agency of the Government of the Virgin Islands may not oppose any such intervention on the ground that the applicant's interest is adequately represented by the Government.
 - (c) Any person may maintain an action for declaratory and equitable relief to restrain any violation of this chapter. On a prima facie showing of a violation of this chapter, a preliminary injunction shall be issued to restrain any further violation of the chapter. No bond is required for an action under this subsection.
 - (d) Any person may maintain an action to compel the performance of duties specifically imposed on the Commissioner or on the Department under this chapter; except, no such action may be initiated prior to 30 days after written notice has been given to the Commissioner by complainant specifying the duties that the complainant alleges have not been performed. No bond is required for an action under this subsection.
 - (e) The Department shall provide notice and opportunity for public comment on all proposed settlements of civil enforcement actions, except when immediate action is necessary to protect human health and the environment adequately.
 - (f) The Department shall investigate and provide prompt responses to citizen complaints about violations.

654-29. Confidentiality

- (a) Any records, reports, or information obtained from any persons under these regulations shall be available to the public, except that upon a showing satisfactory to the

Commissioner by any person that records, reports, or information, or a particular part thereof, to which the Commissioner or any officer, employee, or representative thereof has access, if made public would divulge information entitled to protection as confidential under 3 V.I.C. § 881, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees or authorized representatives of the territory concerned with carrying out the provisions of the Act, or these regulations, or when relevant in any proceeding under this chapter. If confidential information is used in a proceeding, efforts shall be taken to maintain confidentiality (e.g., file document under seal).

- (b) Any person who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to available criminal penalties.
- (c) In submitting data under these regulations, a person required to provide such data may:
 1. designate the data which such person believes in good faith is entitled to protection; and
 2. submit such designated data separately from other data submitted under these regulations.

654-30. Field Citation Authorization

The Department or an authorized employee or representative of the Department has the authority to issue citations and orders on behalf of the Commissioner to any owner or operator of an UST system who violates any provisions of the Act, or these regulations.

654-31. Virgin Islands Underground Storage Tank Revolving Trust Impress Account

- (a) There is established the Virgin Islands Underground Storage Tank Revolving Trust Impress Account (the "Account"). The Commissioner shall be the responsible for the account.
- (b) The account shall consist of all underground storage tank registration fees collected pursuant to section 654-2 of these regulations, all initial certification service fees, re-certification fees and late filing fees collected pursuant to section 654-10 of these regulations, all other fees and funds collected under these regulations, all fund disbursements that have been recovered pursuant to the provisions of this chapter, all funds available for use through the Federal Leaking Underground Storage Tank Trust Fund or any other funding available through federal law or from any other funding source.
- (c) Disbursements from the account shall be made from the Account by the Commissioner only for the following purposes:
 - (1) In the event of a release or threat of release of a regulated substance from a petroleum UST system, to take emergency action necessary to assure that the public health or safety is not threatened;

- (2) Where the owner or operator has not been identified or is unable or unwilling to perform corrective action, to take preventative or corrective action where the release of a regulated substance presents an actual or potential threat to human health or the environment;
 - (3) To provide compensation for the property damage of third parties affected by items (1) and (2) of this subsection. However,
 - (i) A property owner shall not be considered a third party if the property was transferred by the owner or operator of an UST system in anticipation of damage due to a release;
 - (ii) Third party liability property damage shall be reimbursed based on the rental costs of comparable property during the period of loss of use up to a maximum amount of \$25,000;
 - (iii) In the case of property that has been destroyed as a result of a regulated substance, reimbursement shall be an amount necessary to replace, restore or repair the destroyed property, whichever is less;
 - (iv) Loss of business or damages as a result thereof is not recoverable under the provisions of this section;
 - (v) Compensation under the provisions of this item shall not include any claim for attorney's fees, punitive damages, or damages for mental anguish;
 - (4) To pay all necessary costs for the administration of the account;
 - (5) To reimburse eligible owners or operators who have completed and provided corrective action as provided under the provisions of this chapter; and
 - (6) To provide payments to contractors hired by the Department to provide corrective action for regulated substances from UST systems.
- (d) The Commissioner shall provide to the Governor and the Legislature an accounting of all of the deposits and disbursements from the account on an annual basis.

654-32. Operator Training

- (a) The guidelines in this section specify training requirements for:
 - (1) Persons having primary responsibility for on-site operation and maintenance of underground storage tank systems (“Class A”);
 - (2) Persons having daily on-site responsibility for the operation and maintenance of underground storage tank systems (“Class B”); and
 - (3) Daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system (“Class C”).
- (b) All persons subject to the requirements for operator training contained in this section shall:
 - (1) Meet the training requirements of this section at least once every three years; and
 - (2) Repeat the applicable training requirements of this section if the tank for which they have primary daily on-site management responsibilities is determined to be out of compliance with a requirement of these regulations. This retraining requirement

applies to both Class A and Class B operators responsible for a noncompliant UST system.

- (i) Retraining must occur within 30 days of the discovery of noncompliance.
 - (ii) Retraining must include the areas in which the UST for which the operator was responsible was found to be noncompliant.
- (c) The owner or operator of an underground storage tank system or group of underground storage tank systems at a facility must designate persons who will serve as Class A, Class B, and Class C operators.
 - (1) All individuals designated as a Class A, B, or C operator must be trained according to this section.
 - (2) Separate individuals may be designated for each class of operator described above or an individual may be designated to more than one of the above operator classes. An individual who is designated to more than one operator class must be trained in each operator class for which he or she is designated.
 - (3) Even if there are occasions when a Class A, Class B, or Class C operator will not be present at the facility, these operators are still responsible for operation and maintenance activities or responding to emergencies and must be trained according to these guidelines.
- (d) *Class A operator.*
 - (1) The Class A operator's responsibilities include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.
 - (2) The Class A operator is generally concerned with broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the UST system. The Class A operator typically ensures that appropriate individuals:
 - (i) Properly operate and maintain the UST system;
 - (ii) Maintain appropriate records;
 - (iii) Are trained to operate and maintain the UST system and keep records;
 - (iv) Properly respond to emergencies caused by releases or spills from UST systems at the facility;
 - (v) Make financial responsibility documents available to DPNR.
 - (3) The Class A operator must be trained in the following:
 - (i) A general knowledge of UST system requirements so he or she can make informed decisions regarding compliance and ensure appropriate individuals are fulfilling operation, maintenance, and recordkeeping requirements and standards of these regulations regarding:
 - (A) Spill prevention;
 - (B) Overfill prevention;

- (C) Release detection;
 - (D) Corrosion protection
 - (E) Emergency response;
 - (F) Product compatibility.
 - (ii) Financial responsibility documentation requirements.
 - (iii) Notification requirements.
 - (iv) Release and suspected release reporting.
 - (v) Temporary and permanent closure requirements.
 - (vi) Operator training requirements.
- (e) *Class B operator.*
- (1) The Class B operator implements the requirements of these regulations in the field. This individual implements day-to-day aspects of operating, maintaining, and recordkeeping for USTs at one or more facilities.
 - (2) The Class B operator monitors, maintains, and ensures:
 - (i) Release detection method, recordkeeping, and reporting requirements are met.
 - (ii) Release prevention equipment, recordkeeping, and reporting requirements are met.
 - (iii) All relevant equipment complies with performance standards.
 - (iv) Appropriate individuals are trained to properly respond to emergencies caused by releases or spills from UST systems at the facility.
 - (3) Training for the Class B operator will provide a more in-depth understanding of operation and maintenance aspects, but may cover a more narrow breadth of applicable regulatory requirements.
- (f) *Class C operator.*
- (1) A Class C operator is an employee and is, generally, the first line of response to events indicating emergency conditions. This individual is responsible for responding to alarms or other indications of emergencies caused by spills or releases from UST systems. This individual notifies the Class B or Class A operator and appropriate emergency responders when necessary.
 - (2) Not all employees at an UST facility are necessarily Class C operators.
 - (3) The Class C operator typically:
 - (i) Controls or monitors the dispensing or sale of regulated substances, or
 - (ii) Is responsible for initial response to alarms or releases.
 - (4) The Class C operator must be trained to take action in response to emergencies, such as situations posing an immediate danger or threat to the public or to the environment and that require immediate action, or alarms caused by spills or releases from an UST system.

- (g) All Class A, Class B, and Class C operators must be trained according to the requirements of this section within one year of the effective date of these regulations. Operators must be trained as follows:
 - (1) Class A and Class B operators must be trained within 30 days after assuming operation and maintenance responsibilities at the UST system.
 - (2) Class C operators must be trained before assuming responsibility for responding to emergencies.
- (h) *Verification.* Owners and operators must maintain proof of Class A, Class B, and Class C operator training and compliance on-site and present it to the Department or its agent during each inspection and when requested.
- (i) *Reciprocity.* The Commissioner may waive all or part of the operator certification requirements of this section on a reciprocal basis with any state or territory that has substantially the same standards, and may issue a certificate on the basis of reciprocity.

654-33. Delivery Prohibition

- (a) *Decision process.*
 - (1) The Department or one of its authorized agents shall prohibit delivery, deposit, or acceptance of product to an underground storage tank system when the Department or one of its authorized agents determines that the UST system is in significant violation of one or more of the following requirements of these regulations:
 - (i) Registration;
 - (ii) UST performance standards
 - (iii) Spill prevention;
 - (iv) Overfill protection;
 - (v) Release detection;
 - (vi) Corrosion protection;
 - (vii) Financial responsibility; and/or
 - (viii) Operator training.
 - (2) The Department or one of its authorized agents may prohibit delivery, deposit, or acceptance of product if the owner or operator of a UST system has been issued a written warning or citation under any of the following circumstances and the owner or operator has failed to take corrective action after a reasonable time frame that is determined by the Department and indicated on the written warning or citation:
 - (i) Failure to properly operate and/or maintain leak detection equipment;
 - (ii) Failure to properly operate and/or maintain spill, overfill, or corrosion protection equipment;
 - (iii) Failure to maintain financial responsibility; and/or
 - (iv) Failure to protect a buried metal flexible connector from corrosion.
 - (3) Upon discovery of a significant violation of these regulations and the failure of an operator to achieve compliance after a reasonable period, the Department employee or agent who made the discovery will alert the supervisor at the Department who will

review the case and make a final determination regarding whether delivery prohibition should be initiated or whether another enforcement mechanism employed.

- (4) In an emergency situation where a Department representative in the field discovers a violation that constitutes an immediate threat to human health or the environment, the Department employee or authorized agent may initiate delivery prohibition immediately and provide immediate notice to the owners and operators.

(b) *Notification.*

- (1) If the Department decides to initiate a delivery prohibition, the Department will notify the owner and operator as soon as practicable of its decision in writing that the UST system cannot receive new deliveries of product.
- (2) The Department's written notice to the owner and operator will contain the following information:
- (i) The written notice will state the violations and actions that must be taken to achieve compliance.
 - (ii) The notice will state how the owners and operators can inform DPNR of achieving compliance.
 - (iii) The notice will state the consequences of violating the delivery prohibition, either by continuing to receive product or by removing the red tag.
 - (iv) The notice will be delivered by certified mail or delivered by hand by a Department representative.
- (3) The Department will make a good faith effort to identify as soon as practicable the delivery company that delivers regulated substances to the subject UST or UST system. If identified, the Department will provide a copy of the delivery ban notice that was issued to the UST owner and operator. The Department will also post the facility name, address, and existence of the ban on its website.
- (4) Upon notification by the Department that a delivery prohibition is in place, a person shall not deliver or receive a regulated substance into any delivery prohibited UST system.
- (5) The Department may authorize the delivery or deposit of product to an UST system that is subject to a delivery prohibition if such activity is necessary to test or calibrate the UST or dispenser system or in times of emergency.
- (6) The Department may, in its discretion, consider not treating an UST system as ineligible for delivery, deposit, or acceptance of a regulated substance despite its noncompliance if such treatment would jeopardize the availability of fuel in a rural or remote area. In making this determination, the Commissioner will consider whether the UST system's noncompliance poses any threat to human health or the environment.

(c) *Physical prohibition.*

- (1) Once the Department has made a determination to initiate a delivery prohibition, the Department will affix a red tag, lock clip and/or padlock to the fill pipe of the noncompliant UST system.

- (2) The red tag will be marked "Do Not Fill" and provide the Department's contact information upon it. The red tag will clearly indicate to owners and operators and product deliverers that the subject UST system is ineligible to receive product.
 - (3) Should the fill pipe be in a condition where locking or tagging is not feasible, the Department may plug and label the fill pipe in such a manner that alerts a delivery company of the prohibition but does not damage the fill port.
 - (4) Additional stickers or labels may be affixed to locations at the UST facility where the Department deems it warranted to alert a delivery company of the prohibition.
 - (5) Unless the Department makes the specific determination that there is an immediate threat to human health, safety, or the environment by continued dispensation from the subject UST system, the owner and operator may continue to dispense the remaining regulated substances from the subject UST system until that UST system is empty.
 - (6) A person shall not tamper with, remove, or disregard a red tag or other stickers or labels announcing the delivery prohibition that are affixed to the UST system.
- (d) *Compliance.*
- (1) When an owner and operator subject to a delivery prohibition properly notifies the Department in writing with a certification subject to penalties of perjury that the subject UST system is in compliance, the Department shall review compliance data and/or visit the site to confirm compliance as soon as practicable. If any deficiencies that led to the delivery prohibition remain, the Department will notify the owner and operator.
 - (2) Removal of the red tag, locks, or other stickers or labels can only be performed by the Department or its agent.
 - (3) A certified technician, testing company, or owner or operator may temporarily remove red tags, stickers, or labels if necessary to conduct repairs, upgrade, test, or remove product. Temporary removal of red tags, stickers, or other labels may only be done after the Department has been notified and the Department has approved of the temporary removal.
 - (4) Once the Department has confirmed that the subject UST system is in compliance, the Department will provide a written notification of compliance to the owner and operator and any delivery companies involved, remove the red tag, stickers, or other labels from the subject UST system and facility, and remove the facility's name from its website.

UNDERGROUND STORAGE TANKS

654-34. Target Cleanup Levels

The Department shall use the soil and water cleanup target levels contained in this section to determine whether a No Further Action letter should be issued to the owner and/or operator of a UST system who has fulfilled the requirements for closure described in section 654-9(b)-(g) or the prevention, abatement, cleanup and removal of a regulated or hazardous substance at a property described in section 654-15(a)-(e); and to guide risk-based assessments for some properties with UST systems.

Soil Cleanup Target Levels

Contaminants	CAS#s	Direct Exposure	Leachability Based on Groundwater Criteria	Leachability Based on Freshwater Surface Water Criteria	Leachability Based on Marine Surface Water Criteria	Leachability Based on Groundwater of Low Yield/Poor Quality	Target Organs/Systems or Effects
Acenaphthene	83-32-9	Commercial/ Residential	(mg/kg)	(mg/kg)	(mg/kg)	(mg/kg)	
		Industrial	(mg/kg)				
Acenaphthylene	208-96-8	2400	20000	2.1	0.3	21	-Liver
Anthracene	120-12-7	1800	20000	27	NA	270	-Liver
		21000	30000	2500	0.4	25000	-None Specified

UNDERGROUND STORAGE TANKS

Contaminants	CAS#s	Direct Exposure	Leachability Based on Groundwater Criteria	Leachability Based on Freshwater Surface Water Criteria (mg/kg)	Leachability Based on Marine Surface Water Criteria (mg/kg)	Leachability Based on Groundwater of Low Yield/Poor Quality (mg/kg)	Target Organs/Systems or Effects
Arsenic	NOCAS	2.1	12	***	***	***	-Carcinogen – Cardiovascular – Skin
Benzene	71-43-2	1.2	1.7	0.5	0.5	0.07	-Blood –Carcinogen
Benzo(a)anthracene	56-55-3	#	#	NA	NA	8	-Carcinogen
Benzo(a)pyrene	50-32-8	0.1	0.7	NA	NA	80	-Carcinogen
(Benzo(b)fluoranthene	205-99-2	#	#	NA	NA	24	-Carcinogen
Benzo(g,h,i)perylene	191-24-2	2500	52000	NA	NA	32000	-Neurological
Benzo(k)fluora	207-08-	#	#	NA	NA	240	-Carcinogen

UNDERGROUND STORAGE TANKS

Contaminants	CAS#s	Direct Exposure	Leachability Based on Groundwater Criteria	Leachability Based on Freshwater Surface Water Criteria (mg/kg)	Leachability Based on Marine Surface Water Criteria (mg/kg)	Leachability Based on Groundwater of Low Yield/Poor Quality (mg/kg)	Target Organs/Systems or Effects
nthene	9						
Cadmium	7440-43-9	82 (mg/kg)	7.5	NA	14	75	-Carcinogen – Kidney
Chromium (total)	NOCAS	210 (mg/kg)	38	4.2	19	380	-Carcinogen
(b,g)							
Chrysene	218-01-9	#	77	NA	NA	770	-Carcinogen
Dibenz (a,h) Anthracene	53-70-3	#	0.7	NA	NA	7	-Carcinogen

UNDERGROUND STORAGE TANKS

Contaminants	CAS#s	Direct Exposure	Leachability Based on Groundwater Criteria	Leachability Based on Freshwater Surface Water Criteria	Leachability Based on Marine Surface Water Criteria	Leachability Based on Groundwater of Low Yield/Poor Quality	Target Organs/Systems or Effects
Dichloroethane, 1,2- [or EDC]	107-06-2	0.5	0.01	0.2	0.2	0.1	-Carcinogen –None Specified
Ethanol	64-17-5	* (mg/kg)	40	NA	NA	400	-Developmental
Ethylbenzene	100-41-4	1500 (mg/kg)	0.6	12	12	6	-Developmental – Kidney –Liver
Fluoranthene	206-44-0	3200	1200	1.3	1.3	12000	-Blood –Kidney – Liver
Fluorene	86-73-7	2600	160	17	17	16000	-Blood
Indeno(1,2,3-cd)pyrene	193-39-5	#	6.6	NA	NA	66	-Carcinogen

UNDERGROUND STORAGE TANKS

Contaminants	CAS#s	Direct Exposure	Leachability Based on Groundwater Criteria	Leachability Based on Freshwater Surface Water Criteria (mg/kg)	Leachability Based on Marine Surface Water Criteria (mg/kg)	Leachability Based on Groundwater Yield/Poor Quality (mg/kg)	Target Organs/Systems or Effects
Lead	7439-92-1	400	1400	NA	***	***	-Neurological
Methylnaphthalene, 1-	90-12-0	200	1800	10	10	31	-Nasal
Methylnaphthalene, 2-	91-57-6	210	2100	9.1	9.1	85	-Nasal
Methyl tert-butyl ether [or MTBE]	1634-04-4	4400	24000	150	150	0.9	-Eye –Kidney –Liver
Tertiary Butyl Alcohol (TBA)	!			Tertiary Butyl Alcohol (TBA)	!		
Naphthalene	91-20-3	55	300	1.2	2.2	12	-Nasal
Phenanthrene	85-01-8	2200	36000	NA	NA	2500	-Kidney

UNDERGROUND STORAGE TANKS

Contaminants	CAS#s	Direct Exposure	Leachability Based on Groundwater Criteria	Leachability Based on Freshwater Surface Water Criteria	Leachability Based on Marine Surface Water Criteria	Leachability Based on Groundwater of Low Yield/Poor Quality	Target Organs/Systems or Effects
Pyrene	129-00-0	2400 (mg/kg)	880 (mg/kg)	1.3	1.3	8800 (mg/kg)	-Kidney
TRPH	NOCAS	460 (mg/kg)	340	340	340	3400	-Multiple Endpoints -Mixed Contaminants
Xylenes, total	1330-20-7	130 (mg/kg)	0.2	3.9	3.9	2	-Neurological

Water Cleanup Target Levels

Contaminant of Concern	Groundwater Cleanup Criteria (µg/L)	Freshwater Surface Water Cleanup Criteria (µg/L)*	Other Surface Water Criteria (µg/L)
PAHs:			
Acenaphthene	20	3	3
Acenaphthylene	210	.0028	.031
Anthracene	2,100	0.3	0.3
Benzo(a)anthracene	0.05	.0028	.031
Benzo(a)pyrene	0.2	.0028	.031
Benzo(b)fluoranthene	0.05	.0028	.031
Benzo(g,h,i)perylene	210	.0028	.031
Benzo(k)fluoranthene	0.5	.0028	.031
Chrysene	4.8	.0028	.031
Dibenz(a,h)anthracene	0.005	.0028	.031
Fluoranthene	280	0.3	0.3
Fluorene	280	30	30
Indeno(1,2,3-cd) pyrene	0.05	.0028	.031
1-Methylnaphthalene	28	95	95
2- Methylnaphthalene	28	30	30
Naphthalene	14	26	26
Phenanthrene	210	.0028	.031
Pyrene	210	0.3	0.3
OTHER ORGANICS:			
Benzene	1	1.18	71.28
Ethylbenzene	700	610	610
Toluene	1000	480	480
Xylenes, total	10000	370	370
1,2-Dibromoethane (EDB)	0.02	13	13
1,2-Dichloroethane (EDC)	3	37	37
Methyl Tertiary Butyl Ether (MTBE)	13!	13!	34000
Diisopropyl Ether (DIPE)	5*****		
Tertiary Butyl Alcohol (TBA)	50!		
Ethanol	10000	NA	NA
TRPHs	5000	5000	5000
INORGANICS:			
Arsenic	10	10	50
Cadmium	5	**	8.8
Chromium	100	11	50

UNDERGROUND STORAGE TANKS

Lead	15	**	8.5
Chloride	250,000!	NA	****
Sulfate	250,000!	NA	NA
Total Dissolved Solids (TDS)	500,000!		
PHASE SEPARATED PETROLEUM HYDROCARBONS	***	***	***

* TDS<10,000 mg/L

** As provided in Chapter 62-302, F.A.C.

*** No phase separated petroleum hydrocarbons shall be present.

**** Not increased more than 10% above normal background. Normal daily and seasonal fluctuations shall be maintained.

***** NJ Standard

! Not Florida Standard. The standard is based upon a different state standard.

654-35. Public Record

The Department shall comply with EPA's "Grant Guidelines to States for Implementing the Public Record Provision of the Energy Policy Act of 2005" or EPA's most recent guidance regarding public record requirements for states and territories.