



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

# **Underground Storage Tank Regulations**

## **Chapter 173-360A WAC**

### **Proposed Rule**

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*Text with Tracked Changes to Preliminary Draft*

January 24, 2018

**For more information about the proposed rule and how to comment:**

Visit Ecology's Underground Storage Tank Rulemaking webpage at  
<https://ecology.wa.gov/Regulations-Permits/Laws-rules/Rulemaking/WAC-173-360-Mar16>.

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# **Part 1:**

## **Purpose and Scope**

## Crosswalk of Sections

TOPIC	AMENDED RULE §	CURRENT RULE §	FEDERAL RULE §
Purpose and scope	Part 1	Parts 1 & 5	Subpart A
Purpose of chapter	0100	100	--
Applicability of chapter	0110	110	10, 11
Preemption of local programs	0120	500	--
<del>Local delegation of state program</del> [DELETED] <sup>1</sup>	--	500	--
Approval of more stringent local requirements	0130	510-530	--
Intergovernmental agreements	0140	105	--
Definitions	0150	120	12, 250, Subpart I
Severability	0190	--	--

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<sup>1</sup> Eliminated Ecology's authority to delegate state program responsibilities to local governments, consistent with the change in statutory authority (RCW 90.76.030 repealed in 1998).



**WAC 173-360A-0100 Purpose of chapter**

This chapter is promulgated under the authority of chapter 90.76 RCW and establishes a state-wide underground storage tank program that is intended, at a minimum, to meet the legislature's intent to:

- (1) Address the serious threat to human health and the environment posed by leaking underground storage tanks containing petroleum and other regulated substances;
- (2) Meet the requirements for delegation of the federal underground storage tank program of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901~~7~~ et seq.);
- (3) Be consistent with and no less stringent than the requirements in the federal regulations and the Underground Storage Tank Compliance Act of 2005 (42 U.S.C. Sec. 15801 et seq., Energy Policy Act of 2005, P.L. 109-58, Title XV, ~~s~~Subtitle B);<sup>2</sup> and
- (4) Allow for the establishment of local requirements more stringent than the state-wide requirements to protect environmentally sensitive areas.

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<sup>2</sup> Incorporated changes to statement of purpose in RCW 90.76.005 and 90.76.020 to include requirement that state program be consistent with and no less stringent than requirements in the Underground Storage Tank Compliance Act of 2005.

**WAC 173-360A-0110    Applicability of chapter**

The requirements of this chapter apply to all owners and operators of an UST system, except as otherwise provided in this section.

- (1)    Exempt UST systems.** The following UST systems are exempt from all of the requirements of this chapter:
- (a)    Any UST system holding hazardous wastes subject to Subtitle C of the Solid Waste Disposal Act (42 U.S.C. Sec. 6921 through 6939e), or a mixture of such hazardous waste and other regulated substances;
  - (b)    Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under ~~s~~Section 307(b) or 402 of the Clean Water Act (33 U.S.C. Sec. 1317(b) or 1342);
  - (c)    Any storage tank situated in an underground area (such as a basement, cellar, vault, mineworking, drift, shaft, or tunnel) upon or above the surface of the floor so that routine physical inspection of the exterior of the tank is possible;<sup>3</sup>
  - (d)    Any UST system ~~that stores heating oil~~used solely for heating structures on the property where the system is located;<sup>4 5</sup>
  - (e)    Any farm or residential UST system with a capacity of one thousand one hundred gallons or less used for storing motor fuel for noncommercial purposes;
  - (f)    Any UST system with a capacity of one hundred ten gallons or less;
  - (g)    Any UST system that contains a de minimis concentration of regulated substances;<sup>6</sup>
  - (h)    Any emergency spill or overflow containment UST system that is expeditiously emptied after use;
  - (i)    Any equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
  - (j)    Any flow-through process tank;

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<sup>3</sup> Incorporated definition of “underground area” into exemption where term used. This was the only use of the term in the rule.

<sup>4</sup> Clarified that heating oil exemption is limited to UST systems used solely for heating structures on the property where the system is located. The exemption does not apply to UST systems used for other purposes, such as for powering generators. Also incorporated into the provision the existing definitions of “consumptive use” and “on the premises where stored.” This exemption was the only use of the terms in the rule.

<sup>5</sup> Eliminated requirement that UST systems storing in excess 1,100 gallons of heating oil are subject to release reporting requirements of the UST rule. Releases from such systems must be reported under the MTCA cleanup regulations (WAC 173-340-300(2)).

<sup>6</sup> To be consistent with §280.10(b)(5) of the federal rule, changed description of de minimis concentration exemption and eliminated definition of term “de minimis concentration” that confused “concentration” with “amount.”

- (k) Any septic tank;
- (l) Any stormwater or wastewater collection system;
- (m) Any surface impoundment, pit, pond, or lagoon;
- (n) Any liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and
- (o) Any pipeline facility (including gathering lines):
  - (i) Which is regulated under 49 U.S.C. chapter 601; or
  - (ii) Which is an intrastate pipeline facility regulated under state laws as provided in 49 U.S.C. chapter 601, and which is determined by the Secretary of Transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline.<sup>7</sup>

**(2) Partially exempt UST systems.**

- (a) The following UST systems are partially exempt and subject only to the requirements of this chapter specified in (b) of this subsection:
  - (i) Any wastewater treatment tank system not regulated under ~~s~~Section 307(b) or 402 of the Clean Water Act (33 U.S.C. Sec. 1317(b) or 1342);
  - (ii) Any UST system containing radioactive material that is regulated under the Atomic Energy Act of 1954 (42 U.S.C. Sec. 2011 et seq.);
  - (iii) Any UST system that is part of an emergency power generator system at a nuclear power generation facility licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including ~~but not limited to~~ 10 C.F.R. Part 501,<sup>8</sup> and
  - (iv) Any aboveground storage tanks associated with previously deferred UST systems, as defined in WAC 173-360A-0150(53).<sup>9</sup>

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<sup>7</sup> Consistent with changes to the definition of “underground storage tank” in §280.12 of the federal rule, updated description of pipeline facility exemption.

<sup>8</sup> Consistent with §280.10(c)(4) of the federal rule, updated description of partial exemption for emergency power generator UST systems at nuclear power generation facilities.

<sup>9</sup> Consistent with §280.10(c)(2) of the federal rule, eliminated partial exemption for airport hydrant fuel distribution systems and UST systems with field-constructed tanks, except for aboveground storage tanks associated with such systems. These systems are defined and referred to in the rule as “previously deferred UST systems.”

- (b) The partially exempt UST systems identified in (a) of this subsection are subject only to the following requirements ~~in the following sections or Parts~~ of this chapter:<sup>10</sup>
- (i) WAC 173-360A-0200 (~~L~~Licensing of UST systems);
  - (ii) WAC 173-360A-0210 (~~F~~Fees for UST systems);
  - (iii) WAC 173-360A-0220 (~~F~~Facility compliance tags);
  - (iv) WAC 173-360A-0240(3) (Availability of records);
  - ~~(iv) — WAC 173-360A-230(7) (notice upon sale or lease);~~
  - (v) WAC 173-360A-0250 (~~e~~Compliance monitoring, investigation, and access);
  - (vi) WAC 173-360A-0270 (~~e~~Enforcement);
  - (vii) WAC 173-360A-0280 (~~d~~Delivery prohibition);<sup>11</sup>
  - (viii) WAC 173-360A-0290 (~~c~~Civil penalties);
  - (ix) WAC 173-360A-0300(~~1) through (7)~~ (installation of UST systems and components);<sup>12</sup>
  - (x) WAC 173-360A-0340 (~~p~~Performance standards for partially exempt UST systems), except for:
    - (A) Aboveground storage tanks associated with previously deferred UST systems;<sup>13</sup> and
    - (B) UST systems for which installation commenced on or before December 22, 1988;
  - (xi) WAC 173-360A-0400(1) and ~~WAC 173-360A-0405(1) (transfer of~~ Authority to deliver or deposit regulated substances);
  - ~~(xii) — WAC 173-360A-410 (changes in regulated substances);~~
  - (xiii) WAC 173-360A-0750 (~~r~~Reporting and cleanup of confirmed releases); ~~and~~
  - (xiii) WAC 173-360A-0810(5) (Partially exempt UST systems – notice of permanent closure);

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<sup>10</sup> To be consistent with §280.10(c) of the federal rule, eliminated the applicability of the following requirements to partially exempt UST systems: notifying buyers, notice of changes in regulated substances, notice of changes in release detection methods; notice of temporary closure and return to service; permanent closure and change-in-service, except notice; and site assessment upon closure or change-in-service.

<sup>11</sup> For partially exempt UST systems, clarified that delivery prohibition requirements are applicable.

<sup>12</sup> Added requirement that installation records must be maintained until the partially exempt UST system is permanently closed or undergoes a change-in-service.

<sup>13</sup> Consistent with §280.11 of the federal rule, exempted aboveground storage tanks associated with previously deferred UST systems from the performance standards in WAC 173-360A-0340.

(xiv) WAC 173-360A-0820(5) (Partially exempt UST systems – notice of change-in-service); and

(xiv) ~~For aboveground storage tanks associated with previously deferred UST systems,~~ Part 10 of this chapter (~~f~~Financial responsibility).<sup>14</sup>

**(3) Previously deferred UST system compliance dates.<sup>15</sup>**

- (a) Owners and operators of previously deferred UST systems, as defined in WAC 173-360A-0150(53), installed on or before **[effective date of rule]** shall comply with the requirements of this chapter in accordance with the schedule in **Table 0110-1.**

**Table 0110-1: Previously ~~d~~Deferred UST ~~s~~System ~~e~~Compliance ~~d~~Dates**

Requirements	Compliance Date
<u>Part 1 (purpose and scope)</u>	<b>[effective date of rule]</b>
Part 2 (administration and enforcement)	<b>[effective date of rule]</b> <sup>16</sup>
Part 3 (installation and performance standards)	<del>[within three years of]</del> <b>after effective date of rule</b>
Part 4 (operation and maintenance)	<del>[within three years of]</del> <b>after effective date of rule</b>
Part 5 (operator training)	<del>[within three years of]</del> <b>after effective date of rule</b>
Part 6 (release detection)	<del>[within three years of]</del> <b>after effective date of rule</b>
Part 7 (release reporting, confirmation, and cleanup)	<b>[effective date of rule]</b>
Part 8 (closure)	<b>[effective date of rule]</b>
Part 9 (service providers)	<b>[effective date of rule]</b> <sup>17</sup>

<sup>14</sup> Consistent with §280.10(c) and §280.90(d) of the federal rule, added financial responsibility as an applicable requirement for aboveground storage tanks associated with previously deferred UST systems. Unlike the federal rule, added financial responsibility as an applicable requirements for all other partially exempt UST systems (unless owner or operator is state or federal government entity).

<sup>15</sup> Established compliance dates for previously deferred UST systems in accord with §280.251(a) of the federal rule, except as otherwise noted.

<sup>16</sup> Specified compliance date for Part 2 (administration and enforcement) as effective date of rule. The federal rule specifies within 3 years of effective date. All previously deferred UST systems are already required to be licensed under state rule.

<sup>17</sup> Specified compliance date for Part 9 (service providers) as effective date of rule. The federal rule does not include service provider requirements.

Requirements	Compliance Date
Part 10 (financial responsibility)	[effective date of rule] <sup>18</sup>

- (b) Owners and operators of previously deferred UST systems installed after [effective date of rule] shall comply with the requirements of this chapter upon installation.

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<sup>18</sup> Specified compliance date for Part 10 (financial responsibility) as effective date of rule. The federal rule specifies within 3 years of effective date. All previously deferred UST systems are already licensed and have demonstrated financial responsibility.

**WAC 173-360A-0120 Preemption of local programs<sup>19</sup>**

This chapter supersedes and preempts any state or local underground storage tank law, ordinance, or resolution governing any aspect of regulation covered by this chapter except:

- (1) Provisions of the ~~i~~International ~~f~~Fire ~~e~~Code adopted under chapter 19.27 RCW that are not more stringent than and do not directly conflict with the provisions of this chapter;
- (2) Local laws, ordinances, and resolutions pertaining to local authority to take immediate action in response to a release of a regulated substance;
- (3) Local laws, ordinances, and resolutions pertaining to permits and fees for the use of underground storage tanks in street right of ways that were in effect on July 1, 1990;
- (4) City, town, or county underground storage tank ordinances that are more stringent than the federal regulations and the uniform fire code adopted under chapter 19.27 RCW and were in effect on November 1, 1988. Under chapter 90.76 RCW, local jurisdictions were required to notify the department of the existence of such ordinances by July 1, 1989. The department received notification from the city of Redmond, and city of Renton, the city of Spokane, Spokane ~~e~~County, and Tacoma-Pierce ~~e~~County; and
- (5) Local laws, ordinances, and resolutions pertaining to the protection of environmentally sensitive areas that are more stringent than the requirements of this chapter and have been approved by the department under WAC 173-360A-0130.

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<sup>19</sup> Incorporated statutory preemption of local programs in RCW 90.76.110, which is included in the note under Part 5 of the current rule.

**WAC 173-360A-0130 Approval of more stringent local requirements<sup>20</sup>**

A city, town, or county may adopt ordinances or resolutions establishing requirements for UST systems within an environmentally sensitive area that are more stringent than the state-wide requirements of this chapter, if approved by the department under this section. Designation of an environmentally sensitive area under this section is solely for the purposes of implementing chapter 90.76 RCW.

**(1) Application.** Any city, town, or county may apply to the department to have an area within its jurisdictional boundaries designated an environmentally sensitive area. A city, town, or county may also submit a joint application with any other city, town, or county for joint administration under chapter 39.34 RCW of a single environmentally sensitive area located in both jurisdictions.

**(a) Required information.** The application for designation of an environmentally sensitive area and approval of more stringent UST system requirements shall consist of a concise, factual report that provides sufficient information for the department to make a determination. The application must include the following:

- (i) A description and map of the area to be designated and where within the area the more stringent UST system requirements would apply;
- (ii) A description of the physical characteristics of the area, including any available maps of underground water resources and recharge areas, and an explanation of why those characteristics make it especially vulnerable to the threats posed by releases from UST systems, considering the criteria in subsection (2) of this section;
- (iii) A description of the more stringent requirements that would apply to UST systems in the area, and an explanation of why more stringent requirements are necessary to protect the area, considering:
  - (A) The possible impacts of contaminated groundwater on human health and the environment;
  - (B) Whether the statewide requirements of this chapter are sufficient to prevent releases that may contaminate the groundwater; and
  - (C) A description of any other measures in place or considered to protect groundwater or surface water from environmental threats;
- (iv) Any written comments submitted by the public on the proposed designation under subsection (3) of this section, and an explanation of how those comments were addressed; and
- (v) Documentation of coordination with affected state and local agencies and water user groups under subsection (3) of this section.

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<sup>20</sup> This section incorporates and merges together WAC 173-360-510 through 173-360-530.



(b) **Additional information.** The department may require additional information from the applicant if necessary to adequately evaluate the proposal. This information may include, ~~but is not limited to,~~ the following:

- (i) The geographic limits of the groundwater recharge zone;
- (ii) The geographic limits of the underground water resource;
- (iii) The geology within both the recharge zone and the underground water resource;
- (iv) The location, yield, well depth, and present use of wells within the limits of the threatened underground water resource;
- (v) The estimated capacity of the underground water resource;
- (vi) The location, type, and number of UST systems in the area; and
- (vii) Such other information the department deems necessary.

(2) **Designation criteria.** When applying to the department to designate an environmentally sensitive area, the applicant must demonstrate that the physical characteristics of the area make it especially vulnerable to the threats posed by releases from UST systems and that more stringent requirements for UST systems are necessary to protect the area. To do this, the applicant must demonstrate either:

(a) ~~That~~ The the area is designated as a sensitive area for the purposes of protecting groundwater or surface water from pollution under another statute or regulation. If this demonstration is made, then the department shall approve its designation as an environmentally sensitive area. Those areas include, ~~but are not limited to,~~ the following:

- (i) An aquifer identified as the primary source of supply for public water supply systems;
- (ii) An aquifer underlying a critical water supply service area where the coordinated water system plan established pursuant to chapter 70.116 RCW has identified a need for a groundwater management program;
- (iii) An aquifer designated as a sole source aquifer by the U.S. Environmental Protection Agency;
- (iv) An area designated as a certified groundwater management area ~~identified~~ under chapter 173-100 WAC; and
- (v) An area designated as an aquifer protection area, under chapter 36.36 RCW; or

(b) ~~That~~ The the area meets one or more of the following criteria. If this demonstration is made, then the department shall evaluate the application based on the overall sensitivity of the environment and the need for more stringent requirements:

- (i) The groundwater underlying the area is vulnerable to releases from UST systems based on the hydrogeological characteristics of the area, including ~~but not limited to~~ the following:
    - (A) Whether the area is a recharge area for underlying groundwater;
    - (B) The depth to groundwater;<sup>21</sup>
    - (C) The permeability of the soils;
    - (D) The amount of precipitation;
    - (E) The direction and quantity of groundwater flow; and
    - (F) The presence of aquitards;
  - (ii) Proximity of the area to surface water that is hydrogeologically connected to groundwater if releases from an UST system may reasonably reach such groundwater based on the hydrogeological characteristics of the area;
  - (iii) Proximity of the area to surface water<sup>22</sup> and wetlands;
  - (iv) The area is located within a ~~100~~one hundred-year flood plain; or
  - (v) Other criteria published by the department.
- (3) Public involvement.** Before submitting an application for designation and approval of more stringent UST system requirements under subsection ~~(2)~~(1) of this section, the applicant must:
- (a) Provide the public, affected local, state, and tribal agencies, and affected water user groups adequate notice and opportunity to comment on the application; and
  - (b) Hold at least one public hearing for the purpose of receiving comments on the application from such persons.
- (4) Review and approval.**
- (a) Completeness.** Within thirty days of receiving an application, the department shall review the application for completeness and request any additional information needed in order for the application to be complete.
  - (b) Public hearing.** Before approving or disapproving the application, the department may, at its discretion, hold an additional public hearing in the jurisdiction where the environmentally sensitive area is proposed.
  - (c) Determination.** The department shall approve or disapprove the application. The department's determination shall be based on:

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<sup>21</sup> Added depth to groundwater to the non-exclusive list of hydrogeological characteristics.

<sup>22</sup> Added proximity to surface water to the non-exclusive list of factors.

- (i) Review of the application and any comments received;
  - (ii) Whether the area to be designated meets the definition of an environmentally sensitive area, based on the criteria specified in this section; and
  - (iii) Whether the proposed more stringent UST system requirements are necessary and reasonably consistent with previously approved local regulations for similar environmentally sensitive areas.
- (d) Resubmittal.** Applications disapproved by the department may be modified by the local government and resubmitted to the department for approval.
- (5) Applicability of approved programs.** Proposed local ordinances and resolutions shall become effective when approved by the department. An approved local ordinance or resolution may only apply to UST systems installed after the effective date of the ordinance or resolution.<sup>23</sup>
- (6) Local tank fees.** A city, town, or county with an approved ordinance or resolution under this section may establish an annual local tank fee in the environmentally sensitive area, subject to the approval of the department. To be approved, the annual local tank fee must not exceed fifty percent of the annual state tank fee, and must be demonstrated to be necessary for enhanced program administration and enforcement. Annual local tank fees authorized and collected under this section shall be deposited in the state underground storage tank account, established under RCW 90.76.100.

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<sup>23</sup> Eliminated provision that allowed Ecology-approved local ordinances or resolutions to apply to “existing UST systems” if the local jurisdiction applied within five years of the adoption of the original state rule. The deadline passed without any applications. The provision was changed to reflect a change in the authorizing statute in RCW 90.76.040.

**WAC 173-360A-0140 Intergovernmental agreements**

In order to fully implement this chapter, and to protect surface and ground-water resources that may cross jurisdictional boundaries, the department may negotiate and enter into cooperative agreements with Indian tribal governments, adjacent states, and Canadian governmental agencies. Such cooperative agreements shall not affect the regulatory jurisdiction of any party thereto with regard to any civil or criminal matters otherwise exercised by any party. Intergovernmental agreements shall further the purpose of this chapter, serve to establish a framework for intergovernmental coordination and cooperation, and serve to minimize duplication and efficiently utilize program resources to manage underground storage tanks and protect surface and ground-water resources.

**WAC 173-360A-0150 Definitions**

For the purposes of this chapter, the following definitions shall apply unless the context clearly requires otherwise.

~~() — "Aboveground release"~~<sup>24</sup>

~~() — "Accidental release"~~<sup>25</sup>

(1) **"Airport hydrant fuel distribution system" or "airport hydrant system"** means an UST system which fuels aircraft and operates under high pressure with large-diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail-car, or other motor fuel carrier.<sup>26</sup>

(2) **"Ancillary equipment"** means any devices including, ~~but not limited to,~~ spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment, containment sumps, and such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.<sup>27</sup>

~~() — "Belowground release"~~<sup>28</sup>

~~() — "Beneath the surface of the ground"~~<sup>29</sup>

~~() — "Bodily injury"~~<sup>30</sup>

(3) **"Cathodic protection"** means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, an UST system can be cathodically protected through the application of either galvanic anodes or impressed current.

(4) **"Cathodic protection tester"** means an individual 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 individuals must have sufficient education in and experience in with soil resistivity, stray current, structure-to-soil potential, component electrical isolation measurements of buried metal piping and tank systems. Such individuals must be certified in accordance with WAC 173-360A-~~920(4)~~0930(6).<sup>31</sup>

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<sup>24</sup> Deleted term "aboveground release" because not used in rule. The term is only used in the MTCA cleanup regulations in WAC 173-340-450, which addresses cleanup of releases from UST systems.

<sup>25</sup> Moved term "accidental release" to Part 10 (Financial Responsibility).

<sup>26</sup> Added term "airport hydrant fuel distribution system" and defined as specified in §280.12 of the federal rule.

<sup>27</sup> Clarified that term "ancillary equipment" includes specific UST system components, consistent with EPA's interpretation of the federal rule.

<sup>28</sup> Deleted term "belowground release" because not used in rule. The term is only used in the MTCA cleanup regulations in WAC 173-340-450, which addresses cleanup of releases from UST systems.

<sup>29</sup> Deleted term "beneath the surface of the ground" and incorporated definition into the definition of "UST," which is the only usage of the term.

<sup>30</sup> Moved term "bodily injury" to Part 10 (Financial Responsibility).

<sup>31</sup> Added term "cathodic protection tester" and defined as specified in §280.12 of the federal rule.

~~( ) — "CERCLA"~~<sup>32</sup>

~~( ) — "Certified UST supervisor"~~<sup>33</sup>

- (5) **"Change-in-service"** means to change the substances stored in an UST system from regulated substances to unregulated substances.
- (6) **"Class A operator"** means an individual designated by an UST system owner or operator as having primary responsibility for the operation and maintenance of the system. The Class A operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.
- (7) **"Class B operator"** means an individual designated by an UST system owner or operator as having control of or responsibility for the day-to-day operation and maintenance of the system. The Class B operator typically performs or ensures the performance of operation and maintenance activities at an UST facility, maintains records of those activities, and reports those activities to the department.
- (8) **"Class C operator"** means an individual responsible for initially responding to alarms or other indications of emergencies caused by spills, overfills, leaks, or releases from an UST system. The Class C operator typically controls or monitors the dispensing or sale of regulated substances from the system.<sup>34</sup>
- ~~( ) — "Closure"~~<sup>35</sup>
- (9) **"Code of practice"** means the most recent edition of a code of practice developed by a nationally or internationally recognized association or independent testing laboratory available at the time an UST system service is performed.<sup>36</sup>
- (10) **"Compatible"** means the ability of two or more substances or materials to maintain their respective physical and chemical properties upon contact with one another for the design life of the UST system under conditions likely to be encountered in the UST system.<sup>37</sup>
- (11) **"Connected piping"** means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to an UST system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

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<sup>32</sup> Deleted term "CERCLA" because only referenced once in rule.

<sup>33</sup> Replaced existing term "certified UST supervisor" with new term "service provider."

<sup>34</sup> Consistent with §280.12 of the federal rule, changed definition of term "Class C operator" to eliminate requirement that the person be an employee.

<sup>35</sup> Deleted term "closure" because definition is not needed. The existing definition is also not entirely correct because the term is not synonymous with the term "decommission."

<sup>36</sup> Added term "code of practice" to avoid defining each time term is used in the rule.

<sup>37</sup> Consistent with §280.12 of the federal rule, clarified definition of term "compatible" to include equipment other than tanks and piping.

~~() — "Consumptive use"~~<sup>38</sup>

- (12) **"Containment sump"** means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).<sup>39</sup>

~~() — "Controlling interest"~~<sup>40</sup>

- (13) **"Corrosion expert"** means an individual who, by reason of a 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 individuals must be certified in accordance with WAC 173-360A-~~920(2)~~0930(5).<sup>41</sup>

- (14) **"Decommission"** means to permanently ~~remove from operation~~take a tank or pipe out of operation.<sup>42</sup>

~~() — "Deferral"~~<sup>43</sup>

~~() — "Delegated agency"~~<sup>44</sup>

~~() — "De minimis concentration"~~<sup>45</sup>

- (15) **"Department"** means the department of ecology.

- (16) **"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).

~~() — "Director"~~<sup>46</sup>

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<sup>38</sup> Deleted term "consumptive use" and incorporated definition under exemption in WAC 173-360A-0110(1)(d), which is the only place where the term was used.

<sup>39</sup> Added term "containment sump" and defined as specified in §280.12 of the federal rule.

<sup>40</sup> Moved term "controlling interest" to Part 10 (Financial Responsibility).

<sup>41</sup> Moved certification requirements from definition of term "corrosion expert" to Part 9 (Service Providers).

<sup>42</sup> Changed definition of term "decommission" to clarify that it does not include temporarily closure activities, which do not require service provider.

<sup>43</sup> Deleted term "deferral" because no longer used in the rule.

<sup>44</sup> Deleted term "delegated agency" because no longer used in the rule.

<sup>45</sup> Deleted term "de minimis concentration," which was used to specify the exemption in WAC 173-360A-0110(1)(g), to resolve issues identified by EPA regarding which UST systems are exempted under the rule. The term confuses "concentrations" with "amounts." The term is not defined in the federal rule.

<sup>46</sup> Deleted term "director" because no longer used in the rule except in WAC 173-360A-0270 (enforcement). In Part 10 (financial responsibility), the term has been replaced by the term "department."

- (17) **"Dispenser"** means a device used to dispense<sup>47</sup> regulated substances from an UST system.
- (18) **"Dispenser system"** means a dispenser and the aboveground equipment necessary to connect the dispenser to an UST system, including check valves, shear valves, unburred risers, flexible connectors, and other transitional components.
- (19) **"Double-walled tanks" and "double-walled piping"** mean tanks and piping consisting of an inner wall and an outer wall with an interstitial space capable of being monitored for leaks.
- (20) **"Electrical equipment"** means, for the purposes of the exemption described in WAC 173-360A-0110(1)(i), underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.<sup>48</sup>
- ~~(1) **"Emergency power generator"**~~
- ~~(1) **"Emergency power generator tank"**~~<sup>49</sup>
- (21) **"Environment"** means the term as defined in ~~chapter 173-340 WAC~~ WAC 173-340-200.<sup>50</sup>
- (22) **"Excavation zone"** means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.
- (23) **"Existing UST system"** means an UST system used to contain an accumulation of regulated substances or for which installation had commenced on or before December 22, 1988. Installation is considered to have commenced if:
- (a) The owner or operator had obtained all federal, state, and local approvals or permits necessary to begin physical construction at the UST facility or installation of the UST system; and
  - (b) Either a continuous on-site physical construction or installation program had begun or the owner or operator had entered into contractual obligations—which cannot be canceled or modified without substantial loss—for physical construction at the UST facility or installation of the UST system to be completed within a reasonable time.
- (24) **"Facility compliance tag"** means a white-colored metal plate with a green-colored identification number issued by the department for display at an UST facility in a location clearly visible to the product deliverer and persons withdrawing waste oil. Each UST facility is identified by a facility compliance tag. Except as otherwise provided in this chapter, it is unlawful for regulated

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<sup>47</sup> Clarified term "dispenser" to reflect fact that not all dispensers meter flow.

<sup>48</sup> Clarified definition of term "electrical equipment" applies only to the usage in the exemption described in WAC 173-360A-0110(1)(i).

<sup>49</sup> Deleted terms "emergency power generator" and "emergency power generator tank" because terms no longer used in rule to identify specific requirements for such systems. Notably, the rule no longer includes different release detection requirements for such systems. The terms are not defined in the federal rule.

<sup>50</sup> Added term "environment" and defined as specified in the MTCA cleanup regulations (chapter 173-340 WAC).



substances to be delivered or deposited into an UST system, or withdrawn from a waste oil UST system, at an UST facility without a valid and properly displayed facility compliance tag.

~~( )~~ ~~"False alarm"~~<sup>51</sup>

(25) **"Farm UST system"** means an UST system located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm UST system must be located on the farm property and used for farm purposes. "Farm" includes fish hatcheries, rangeland, and nurseries with growing operations. It does not include laboratories where animals are raised, land used to grow timber, pesticide aviation operations, retail stores or garden centers where nursery products are marketed but not grown, cemeteries, golf courses, or other facilities dedicated primarily to recreation or aesthetics, or other nonagricultural activities.

(26) **"Field-constructed tank"** means an underground storage tank that is constructed in the field. For example, the following are considered field-constructed tanks: ~~a~~<sup>A</sup> tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field.<sup>52</sup>

~~( )~~ ~~"Financial reporting year"~~<sup>53</sup>

~~( )~~ ~~"Firm"~~<sup>54</sup>

(27) **"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.

(28) **"Free product"** means the term as defined in ~~chapter 173-340 WAC~~<sup>WAC 173-340-200</sup>.<sup>55</sup>

(29) **"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.

(30) **"Groundwater"** means the term as defined in ~~chapter 173-340 WAC~~<sup>WAC 173-340-200</sup>.<sup>56</sup>

(31) **"Hazardous substance"** means any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601(14)). However, the term does not include any substance regulated as a hazardous waste under Subtitle C of the

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<sup>51</sup> Deleted term "false alarm" and incorporated definition where term used in rule.

<sup>52</sup> Consistent with §280.12 of the federal rule, clarified definition of term "field-constructed tank" and included examples.

<sup>53</sup> Moved term "financial reporting year" to Part 10 (Financial Responsibility).

<sup>54</sup> Deleted term "firm" to avoid confusion. The term is used to refer to more than just service providers.

<sup>55</sup> Clarified definition of term "free product" to make consistent with definition in the MTCA cleanup regulations (chapter 173-340 WAC), which was amended in 2001.

<sup>56</sup> Clarified definition of term "groundwater" to make consistent with definition in the MTCA cleanup regulations (chapter 173-340 WAC). There is no change to the definition.

Solid Waste Disposal Act (42 U.S.C. Sec. 6921 through 6939e) or any mixture of such hazardous wastes and other regulated substances.<sup>57</sup>

(32) **"Hazardous substance UST system"** means an UST system that contains a hazardous substance or any mixture of such substances and petroleum, and which is not a petroleum UST system.<sup>58</sup>

~~( ) — "Heating oil"~~<sup>59</sup>

~~(33) — "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.~~

(34) **"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.

~~( ) — "Immiscible"~~<sup>60</sup>

(35) **"Include"** means including, but not limited to.<sup>61</sup>

(36) **"Install"** means placing an UST system or any UST system component in position and preparing it to be placed into operation.<sup>62</sup>

(37) **"Interstitial space"** means the space between the primary and secondary containment systems (e.g., the space between the inner and outer walls of a tank or pipe).

~~( ) — "Legal defense cost"~~<sup>63</sup>

(38) **"License"** means the business license underground storage tank endorsement issued by the department of revenue under chapter 19.02 RCW.<sup>64</sup>

(39) **"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.

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<sup>57</sup> Extracted definition of "hazardous substance" from definition of "hazardous substance UST system" and "regulated substance."

<sup>58</sup> Extracted definition of "hazardous substance" from definition of "hazardous substance UST system" and "regulated substance."

<sup>59</sup> Deleted term "heating oil" because term no longer used in the rule. The term was used to describe the exemption in WAC 173-360A-0110(1)(d).

<sup>60</sup> Deleted term "immiscible" because definition not needed. The term is used only once in Part 6 (Release Detection) and dictionary definition is sufficient.

<sup>61</sup> Added term "include" to avoid repetition of definition (including, but not limited to) each time term used in rule.

<sup>62</sup> Clarified definition of term "install" to reflect that not all equipment is placed in the ground.

<sup>63</sup> Moved term "legal defense cost" to Part 10 (Financial Responsibility).

<sup>64</sup> Added term "license" and used definition in RCW 90.76.010(1)(f).

(4039) **"Maintenance"** means the normal operational upkeep to prevent an UST system from releasing a regulated substance.

(4140) **"Motor fuel"** means a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances (for example: ~~motor~~ Motor gasoline blended with alcohol).<sup>65</sup>

(4241) **"New UST system"** means an UST system that will be used to contain an accumulation of regulated substances and for which installation commenced after December 22, 1988. (See also "existing tank system.")

(4342) **"Noncommercial purposes"** with respect to motor fuel means not for resale.

~~( )~~ **"Occurrence"**<sup>66</sup>

~~( )~~ **"On the premises where stored"**<sup>67</sup>

(4443) **"Operational life"** means the period beginning when installation of an UST system has commenced and ending when the UST system is permanently closed or undergoes a change-in-service.<sup>68</sup>

(4544) **"Operator"** means any person in control of, or having responsibility for, the daily operation of the UST system.

~~( )~~ **"Overfill release"**<sup>69</sup>

(4645) **"Owner"** means:

- (a) In the case of an UST system in use before November 8, 1984, but no longer in use on that date, any person who owned the UST system immediately before the discontinuation of its use;
- (b) In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who:
  - (i) Currently owns the UST system; or
  - (ii) Owned the UST system immediately before its permanent closure or change-in-service;<sup>70</sup> and

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<sup>65</sup> Consistent with §280.12 of the federal rule, clarified definition of term "motor fuel" to include biofuels.

<sup>66</sup> Moved term "occurrence" to Part 10 (Financial Responsibility).

<sup>67</sup> Incorporated definition of term "on the premises where stored" under description of exempt UST system in WAC 173-360A-0110(1)(d), which is the only place where the term is used.

<sup>68</sup> Clarified definition of term "operational life" to include periods of temporary closure, consistent with EPA's interpretation of federal rule.

<sup>69</sup> Deleted term "overfill release" because not used in existing or new rule.

<sup>70</sup> Clarified definition of "owner" to include owners during temporary closure and owners at the time of permanent closure or change-in-service, consistent with EPA's interpretation of federal rule.

(c) In the event that the owner of an UST system cannot be physically located, the “owner” shall be the person who owns the property where the UST system is located. The term “owner” does not include<sup>71</sup>

~~(i) Any~~any person who holds indicia of ownership primarily to protect the person's security interest in the UST system or the UST facility or property where the UST system is located. The person holding indicia of ownership cannot participate in the management of an UST system or be engaged in petroleum production, refining, and marketing<sup>71</sup>  
and

~~(ii) Any agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to a release or threatened release of a regulated substance from the UST system.~~<sup>72</sup>

~~(i) “Owner or operator”~~<sup>73</sup>

~~(i) “Party”~~<sup>74</sup>

~~(47)~~<sup>46</sup> “Permanently closed UST system” means:

- (a) In the case of an UST system taken out of operation before December 22, 1988, the UST system was substantially emptied of regulated substances or permanently altered structurally to prevent reuse;
- (b) In the case of an UST system taken out of operation on or after December 22, 1988, and before December 29, 1990, the UST system was permanently closed in accordance with 40 C.F.R. Sec. 280; and
- (c) In the case of an UST system taken out of operation on or after December 29, 1990, the UST system was permanently closed in accordance with this chapter.

~~(48)~~<sup>47</sup> “Person” means an individual, trust, firm, joint stock company, corporation, association, partnership, consortium, joint venture, commercial entity, state, municipality, commission, political subdivision of a state, interstate body, federal government, or agency of the federal government.<sup>75</sup>

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<sup>71</sup> To comply with the requirements for state program approval in §281.38(a)(2) of the federal rule, changed lender liability exclusion.

<sup>72</sup> To comply with the requirements for state program approval in Part 281 of the federal rule, eliminated exclusion for an agency of the state or a unit of local government that acquired ownership or control involuntarily.

<sup>73</sup> Moved term “owner or operator” to Part 10 (Financial Responsibility).

<sup>74</sup> Deleted term “party” because definition not needed.

<sup>75</sup> Clarified definition of “person” to include “associations” and “partnerships,” consistent with chapter 173-340 WAC (MTCA cleanup regulations).

(4948) **"Petroleum"** means crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute) and any product comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils. The term does not include propane or asphalt or any other product that is not liquid at standard conditions of temperature and pressure.<sup>76 77</sup>

~~( ) — "Petroleum marketing facilities"~~<sup>78</sup>

~~( ) — "Petroleum marketing firms"~~<sup>79</sup>

(5049) **"Petroleum UST system"** means an UST 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.

(5150) **"Pipe" or "piping"** means a hollow cylinder or tubular conduit that is constructed of nonearthen materials.

(5251) **"Pipeline facilities (including gathering lines)"** means any new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

(5352) **"Piping run"** means all underground piping connecting an individual submersible pump or suction stub to an associated dispenser systems or other end-use equipment.

(5453) **"Previously deferred UST system"** means an UST system with field-constructed tanks or an airport hydrant fuel distribution system.<sup>80</sup>

(5554) **"Product deliverer"** means any person who delivers or deposits product into an UST system. This term includes major oil companies, jobbers, petroleum transportation companies, or other product delivery entities.

~~( ) — "Property damage"~~<sup>81</sup>

~~( ) — "Provider of financial assurance"~~<sup>82</sup>

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<sup>76</sup> Extracted definition of "petroleum" from definition of "regulated substance."

<sup>77</sup> Consistent with §280.12 of the federal rule, changed definition of "petroleum" to include petroleum derived from non-crude oil products.

<sup>78</sup> Moved term to Part 10 (Financial Responsibility).

<sup>79</sup> Deleted term "petroleum marketing firms" because no longer used in Part 10 (Financial Responsibility), consistent with changes to §280.92 of the federal rule.

<sup>80</sup> Added term "previously deferred UST system" to avoid repeating definition each time used in rule.

<sup>81</sup> Moved term "property damage" to Part 10 (Financial Responsibility).

<sup>82</sup> Moved term "provider of financial assurance" to Part 10 (Financial Responsibility).

- (~~56~~55) **"Rectifier adjustment"** means any adjustment or maintenance of a rectifier that is part of an impressed current cathodic protection system, including any adjustment of voltage or amperage or replacement of fuses or diodes. Rectifier adjustments are a type of repair.<sup>83</sup>
- (~~57~~56) **"Red tag"** means a red-colored tag or device on the fill pipe of an UST system that clearly identifies the system as ineligible for product delivery or waste oil withdrawal. The tag or device is tamper resistant and is easily visible to the product deliverer and persons withdrawing waste oil. The tag or device clearly states and conveys, as applicable, that it is unlawful for regulated substances to be delivered or deposited into an UST system or withdrawn from a waste oil UST system.
- (~~58~~57) **"Regulated substance"** means:
- (a) Petroleum;
  - (b) Hazardous substances; and
  - (c) Mixtures of petroleum and hazardous substances.<sup>84</sup>
- (~~59~~58) **"Release"** means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching, or disposing of regulated substances from an UST system into the environment.<sup>85</sup>
- (~~60~~59) **"Release detection"** means determining whether a release of a regulated substance has occurred from the UST system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary containment.<sup>86</sup>
- (~~61~~60) **"Remedial action"** means the term as defined in ~~chapter 173-340 WAC~~WAC 173-340-200.<sup>87</sup>
- (~~62~~61) **"Repair"** means to restore to proper operating condition a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment, containment sump, or other UST system component that has caused a release of a regulated substance from the UST system or has failed to function properly.<sup>88</sup>
- (~~63~~62) **"Residential UST system"** means an UST system located on property used primarily for dwelling purposes. Such properties do not include dormitories, convents, mobile parks, apartments, hotels and similar facilities, unless the UST system is used by the owner solely for his or her own personal use, rather than to maintain the overall facility.

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<sup>83</sup> Added term "rectifier adjustment" to help clarify who may perform such services.

<sup>84</sup> Extracted definitions of "petroleum" and "hazardous substance" from definition of "regulated substance."

<sup>85</sup> Clarified definition of term "release" to include any entry of regulated substances into the environment, consistent with definition and use of other terms, such as release detection.

<sup>86</sup> Consistent with §280.12 of the federal rule, clarified definition of "release detection" to include leaks into interstitial spaces. Also eliminated reference to "secondary barriers," which are no longer allowed as a type of secondary containment under the state rule.

<sup>87</sup> Replaced federal term "corrective action" with state term "remedial action" to make usage consistent with chapter 173-340 WAC (MTCA cleanup regulations).

<sup>88</sup> Consistent with §280.12 of the federal rule, changed definition of term "repair" to include the restoration of any component that is not functioning properly.

~~() — "Retrofitting"~~<sup>89</sup>

(~~64~~63) **"Secondary containment"** means a release prevention system for tanks and piping consisting of an inner barrier and an outer barrier with an interstitial space capable of being monitored for leaks. This term includes containment sumps when used for interstitial monitoring of piping.<sup>90</sup>

(~~65~~64) **"Septic tank"** means a water-tight covered receptacle designed and used 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.

(~~66~~65) **"Service provider"** means an individual who is certified to perform or directly supervise the performance of UST system services under WAC 173-360A-0920 and 173-360A-0930.<sup>91</sup>

(~~67~~66) **"Site assessment"** means an investigation of the environment around an UST system to determine whether there has been a release of regulated substances from the system into the environment and whether a release may pose a threat to human health or the environment.<sup>92</sup>

(~~68~~67) **"Site check"** means a type of site assessment performed when a release from an UST system is suspected.<sup>93</sup>

(~~69~~68) **"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.

~~() — "Structural defect"~~<sup>94</sup>

~~() — "Substantial business relationship"~~<sup>95</sup>

~~() — "Supervisor"~~<sup>96</sup>

(~~70~~69) **"Surface impoundment"** means a natural topographic depression, excavation, or diked area formed primarily of earthen materials (although it may be lined with synthetic materials) that is not an injection well.

~~() — "Tangible net worth"~~<sup>97</sup>

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<sup>89</sup> Deleted term "retrofitting" because term no longer used in rule.

<sup>90</sup> Consistent with §280.12 of the federal rule, changed definition of term "secondary containment" to clarify that it includes containment sumps used for interstitial monitoring.

<sup>91</sup> Replaced term "certified UST supervisor" and "supervisor" with term "service provider."

<sup>92</sup> Changed definition of "site assessment" to include any investigation of the environment, including "site checks."

<sup>93</sup> Changed definition of "site check" to define as a type of "site assessment."

<sup>94</sup> Deleted term "structural defect" because the term is no longer used in the rule. The term was used in a provision that required upgrades of existing UST systems upon any repair to a structural defect of such systems.

<sup>95</sup> Moved term "substantial business relationship" to Part 10 (Financial Responsibility).

<sup>96</sup> Replaced term "supervisor" with term "service provider."

<sup>97</sup> Moved term "tangible net worth" to Part 10 (Financial Responsibility).



(~~71~~70) **"Tank"** is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

(~~)~~ ~~"Tank permit"~~<sup>98</sup>

(~~)~~ ~~"Tank services"~~<sup>99</sup>

(~~72~~71) **"Temporarily closed UST system"** means an UST system that has been ~~removed from~~taken out of operation and will be returned to operation, undergo a change-in-service, or be permanently closed in the future.

(~~)~~ ~~"Termination"~~<sup>100</sup>

(~~)~~ ~~"Testing"~~<sup>101</sup>

(~~73~~72) **"Tightness testing"** means a procedure for testing the ability of an UST system component to prevent an inadvertent release of regulated substances into the environment or an intrusion of groundwater into an UST system.<sup>102</sup>

(~~74~~73) **"Under-dispenser containment" or "UDC"** means containment underneath a dispenser system designed to prevent leaks from the ~~dispenser system~~dispenser and piping within or above the UDC from reaching the environment.<sup>103</sup>

(~~)~~ ~~"Underground area"~~<sup>104</sup>

(~~)~~ ~~"Underground release"~~<sup>105</sup>

(~~75~~74) **"Underground storage tank" or "UST"** means any one tank 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 ten percent or more beneath the ground surface or otherwise covered by ~~-earthen~~ materials.<sup>106 107</sup>

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<sup>98</sup> Replaced term "tank permit" with the terms "license" and "facility compliance tag."

<sup>99</sup> Replaced term "tank services" with the term "UST system services."

<sup>100</sup> Moved term "termination" to Part 10 (Financial Responsibility).

<sup>101</sup> Deleted term "testing" because definition is not needed. The term is not defined in the federal rule.

<sup>102</sup> Clarified definition of "tightness testing" to include tightness testing of any UST system component (not just tanks and piping), consistent with new operation and maintenance requirements in Part 4 of the rule.

<sup>103</sup> Clarified that "under-dispenser containment" is designed to prevent any release to the environment, consistent with definitions of "release" and "release detection."

<sup>104</sup> Deleted term "underground area" and incorporated definition in description of exempt UST system in WAC 173-360A-0110(1)(c), which is the only place where the term is used.

<sup>105</sup> Deleted term "underground release" because not used in rule.

<sup>106</sup> Deleted term "beneath the surface of the ground" and incorporated definition into the definition of "underground storage tank." This is the only use of the term.

<sup>107</sup> Deleted statement from definition of "underground storage tank" that excludes exempt UST systems. The applicability of the rule to UST systems is set forth in WAC 173-360A-0110, not in this definition.



(~~76~~75) **"Upgrade"** means the addition or retrofit of an UST system component, such as corrosion protection equipment, release detection equipment,<sup>108</sup> or spill and overfill prevention equipment, to improve the ability of an UST system to prevent the release of regulated substances.

(~~77~~76) **"UST facility"** means the location where one or more UST systems are or will be installed. The term encompasses all contiguous real property under common ownership associated with the operation of the UST system or systems.<sup>109</sup>

(~~78~~77) **"UST site" or "site"**<sup>110</sup>

(~~78~~77) **"UST system" or "tank system"** means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

(~~79~~78) **"UST system component"** means a component of an UST system, including any underground storage tanks, connected underground piping, underground ancillary equipment, and containment systems.<sup>111</sup>

(~~80~~79) **"UST system services"** means the services performed on an UST system requiring the use of a service provider as specified in WAC 173-360A-0920.<sup>112</sup>

(~~81~~80) **"Wastewater treatment tank system"** means a tank system that is designed to receive and treat ~~an~~ influent wastewater through physical, chemical, or biological methods.

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<sup>108</sup> Clarified definition of term "upgrade" to include release detection equipment.

<sup>109</sup> Replaced term "UST site" with term "UST facility" to reflect usage of term facility in statute and throughout rule.

<sup>110</sup> Replaced term "UST site" with term "UST facility" to reflect usage of term facility in statute and throughout rule.

<sup>111</sup> Added term "UST system component" to reflect increased usage throughout rule.

<sup>112</sup> Replaced term "tank services" with term "UST system services." The new term is defined to include services involving cathodic protection systems.

**WAC 173-360A-0190 Severability<sup>113</sup>**

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances ~~shall~~<sup>is</sup> not ~~be~~ affected.

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<sup>113</sup> Added severability clause.

## **Part 2:**

# **Administration and Enforcement**

## Crosswalk of Sections

TOPIC	AMENDED RULE §	CURRENT RULE §	FEDERAL RULE §
Administration and enforcement	Part 2	In Part 1	In Subparts B and K
Licensing of UST systems	0200	130(1)-(3), (8)-(10) 200(2)-(4), (6)	20(e) 22(a)-(f) 251(b)
Fees for UST systems	0210	190	--
Facility compliance tags	0220	--	--
Reporting requirements	0230	200(7) 210(1)	22(g) 34(a)
Recordkeeping requirements	0240	200(2)-(3)	34(b)-(c)
Compliance monitoring, investigation, and access	0250	140 150 In 210	--
Information sharing	0260	In 180	--
Enforcement	0270	160 In 180	--
Delivery prohibition	0280	165	--
Civil penalties	0290	170	--

**WAC 173-360A-0200 Licensing of UST systems<sup>114</sup>**

- (1) Requirement for a license.** An owner or operator shall maintain a license for each tank until the UST system has undergone permanent closure or a change-in-service. Without the prior written authorization of the department, an UST system may not be operated without a license for each tank. Possession of a license does not preclude enforcement against owners and operators under this chapter, chapter 90.76 RCW, or other laws.
- (2) Eligibility for a license.** To be eligible for a license, an UST system must be in compliance with the requirements of this chapter and chapter 90.76 RCW.
- (3) Application for a license.**
  - (a) An owner or operator must apply for a license within thirty days of the following:
    - (i) Installation of an UST system or tank; or
    - (ii) Change in the owner or operator ~~holding a license~~ that is the licensee.
  - (b) To apply for a license, an owner or operator must submit the following to the department of revenue:
    - (i) Business license application;
    - (ii) Underground storage tank addendum;
    - (iii) ~~Proof of financial responsibility~~ Certification of financial responsibility and, if applicable, certificate of insurance or endorsement (WAC 173-360A-1045(1)(a));
    - ~~(iv) — Certification of installation, if applying upon installation of an UST system or tank (WAC 173-360A-300(6)); and~~
    - ~~(v)(iv)~~ Annual tank fees (WAC 173-360A-0210(1)) and any other applicable fees identified by the department of revenue (WAC 458-02-200(2)); and
    - (v) When applying upon installation of an UST system or a tank, the documentation required under WAC 173-360A-0300(5)(a).
  - (c) Applications for UST systems located at different UST facilities must be submitted using separate forms, one for each facility.
- (4) Notification of changes in financial assurances.** Upon any change in the financial assurance mechanism(s) used to demonstrate financial responsibility or upon receipt of a notice of cancellation or termination of any such mechanism, the owner or operator must immediately notify the department of revenue in accordance with WAC 173-360A-1045(1)(b) and (c). Licenses will not be renewed and may be revoked without proof of financial responsibility.

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<sup>114</sup> Incorporated licensing facility compliance tag requirements for UST systems specified in RCW 90.76.020(4) and (5). Processes reflect current practice under the statute.

- (5) **Notification of changes in owners or operators that are not licensees.** ~~Within thirty days of any change in the owner or operator not holding a license, the owner or operator must notify the department of ecology using the applicable form provided by the department of ecology.~~ When the owner or operator that is not the licensee changes, the owner or operator must notify the department of ecology in writing within thirty days.
- (6) **Renewal of a license.**
- (a) Licenses must be renewed annually. To renew a license, the owner or operator must submit the following to the department of revenue:
- (i) Renewal application; and
- (ii) Annual tank fees (WAC 173-360A-0210~~(1)~~) and any other applicable fees identified by the department of revenue (WAC 458-02-200(2)).
- (b) If a license is not renewed by the expiration date, the department of revenue may assess a delinquency fee (WAC 458-02-200(2) and (8)(b)). The department of ecology may also assess a penalty under WAC 173-360A-0290.
- (7) **Display of a license.** Licenses must be displayed in a conspicuous place at the UST facility where the tanks are located (RCW 90.76.020(4) and WAC 458-02-200(7)).
- (8) **Revocation and appeals.** The department of ecology may revoke a license if an UST system is violating any requirement of this chapter or chapter 90.76 RCW. The revocation of a license may be appealed to the pollution control hearings board in accordance with chapter 43.21B RCW.

**WAC 173-360A-0210 Fees for UST systems**

- (1) Payment.** Annually, the owner of an UST system shall pay the following fees for each tank until the system has undergone permanent closure or a change-in-service.<sup>115</sup>

  - (a) The state tank fee specified by the department under subsection (3) of this section; and
  - (b) Any applicable local tank fee approved by the department under WAC 173-360A-0130(6).
- (2) Disposition.** State and local tank fees collected under this section shall be deposited in the account established under RCW 90.76.100.
- (3) State tank fees.** Effective July 1, 2018, the state tank fee is one hundred seventy-three dollars and eighty cents per tank.<sup>116</sup> Annually, upon a finding by the department that a fee increase is necessary, the department may increase the state tank fee up to the fiscal growth factor for the next year. The fiscal growth factor is calculated by the office of financial management under RCW 43.135.025. The department shall publish the new fee by March 1st before the year for which the new fee is effective. The new fee is effective from July 1st to June 30th of every year.
- (4) Preemption of local tank fees.** Except as provided under WAC 173-360A-0130(6), no local government may levy an annual tank fee on the ownership or operation of an underground storage tank.<sup>117</sup>

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<sup>115</sup> Eliminated requirement that owners must pay fees after an UST system has undergone permanent closure or a change-in-service until any releases have been cleaned up.

<sup>116</sup> Incorporated changes to the state tank fee authorized under RCW 90.76.090 since the rule was last amended.

<sup>117</sup> Addressed authorization of local tank fees in WAC 173-360A-0130.

WAC 173-360A-0220 Facility compliance tags<sup>118</sup>

- (1) **Requirement for tag.** Without the prior written authorization of the department, regulated substance may not be delivered or deposited into an UST system, or withdrawn from a waste oil UST system, at an UST facility without a valid and properly displayed facility compliance tag.
- (2) **Eligibility for tag.** To be eligible for a facility compliance tag, an UST facility must be in compliance with the requirements of this chapter and chapter 90.76 RCW.
- (3) **Issuance of tag.** The department will issue a facility compliance tag for an UST facility upon the initial issuance of a license for an UST system at the facility under WAC 173-360A-0200.
- (4) **Display of tag.** A facility compliance tag must be displayed at an UST facility in a location that is clearly visible to product deliverers and persons withdrawing waste oil.
- (5) **Revocation and appeals.** The department may revoke a facility compliance tag if an UST facility is violating any requirement of this chapter or chapter 90.76 RCW. The revocation of a facility compliance tag may be appealed to the pollution control hearings board in accordance with chapter 43.21B RCW.
- (6) **Return upon temporary closure of facility.** ~~If all UST systems at an UST facility are temporarily closed more than ninety days, then~~Within thirty days of the temporary closure all UST systems at an UST facility, owners and operators must return the facility compliance tag to the department ~~within one hundred and twenty days of temporary closure~~ if the systems will be closed for more than ninety days. The department will reissue a facility compliance tag ~~to~~for the UST facility in accordance with WAC 173-360A-0800(5)~~(d)~~(c).
- (7) **Return upon permanent closure or change-in-service of facility.** Within thirty days of the permanent closure or change-in-service of all UST systems at an UST facility, owners and operators must return the facility compliance tag to the department.

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<sup>118</sup> Incorporated facility compliance tag requirements for UST systems, as specified in RCW 90.76.020(5). Processes reflects current practices under the statute.



**WAC 173-360A-0230 Reporting requirements**

- (1) **Licensing of UST systems.** An owner or operator shall apply for and renew licenses for UST systems and provide notice of any change in the owner or operator of an UST system in accordance with WAC 173-360A-0200.
- (2) **Changes to UST systems.** Owners and operators shall notify the department of the following changes in the status of an UST system in accordance with the applicable requirements of this chapter:<sup>119</sup>
- (a) Intent to install an UST system or a tank or piping run (WAC 173-360A-0300(1));
  - (b) Change in the regulated substance stored in an UST system and, if applicable, demonstration of compatibility (WAC 173-360A-0410~~(1)~~);
  - (c) Change in the release detection method used for a tank or pipe (WAC 173-360A-0600(4));
  - (d) Temporary closure of an UST system (WAC 173-360A-0800(1)~~and (2)~~);
  - (e) Emptying of a temporarily closed UST system (WAC 173-360A-0800(2));
  - ~~(e)~~(f) Return to operation of a temporarily closed UST system (WAC 173-360A-0800(5)(b)~~(ii)~~);
  - ~~(f)~~(g) Intent to permanently close an UST system or a tank or piping run (WAC 173-360A-0810(1)); ~~and~~
  - (h) Permanent closure of a partially exempt UST system (WAC 173-360A-0810(5));
  - ~~(g)~~(i) Intent to undertake a change-in-service of an UST system (WAC 173-360A-0820(1))~~;~~ and
  - (j) Change-in-service of a partially exempt UST system (WAC 173-360A-0820(5)).
- (3) **UST system services.** Owners and operators shall report the following UST system services to the department in accordance with the applicable requirements of this chapter:<sup>120</sup>
- ~~(a) — Types. All UST system services must be certified and reported in accordance with (b) of this subsection, including:~~
- ~~(i)~~(a) Installations of ~~an~~ UST systems s or ~~an~~ UST system components s (WAC 173-360A-0300~~(5)~~);
  - (b) Assessments of corrosion potential (WAC 173-360A-0310(3)(c));
  - ~~(ii)~~(c) Upgrades of existing UST systems (WAC 173-360A-0320~~(1)(b)~~);
  - ~~(iii)~~(d) Upgrades of previously deferred UST systems (WAC 173-360A-0330~~(1)(b)~~);

<sup>119</sup> Updated the list of UST system changes that must be reported based on changes elsewhere in the chapter (such as changes in regulated substances stored in the UST system).

<sup>120</sup> Updated the list of UST system services that must be certified and reported based on changes elsewhere in the chapter (such as new operation and maintenance testing and inspections).

- ~~(iv)~~(e) Tests of cathodic protection systems (WAC 173-360A-0430(2)~~(e)~~);
- ~~(v)~~(f) Internal inspections of lined tanks (WAC 173-360A-0440~~(4)~~);
- ~~(vi)~~(g) Tightness tests of containment sumps used for interstitial monitoring of piping (WAC 173-360A-0450~~(3)~~);
- ~~(vii)~~(h) Tightness tests of spill prevention equipment (WAC 173-360A-0460~~(3)~~);
- ~~(viii)~~(i) Inspections of overfill prevention equipment (WAC 173-360A-0470~~(3)~~);
- ~~(ix)~~(j) Tests of electronic or mechanical release detection equipment (WAC 173-360A-0480~~(4)~~);
- (k) Repairs of UST system components (WAC 173-360A-0490);
- ~~(x)~~(l) Tightness tests of secondary containment areas of tanks or piping used for interstitial monitoring (WAC 173-360A-0490~~(6)~~(4)(c));
- ~~(xi) Repairs of UST systems or components (WAC 173-360A-490(4));~~
- ~~(xii)~~(m) Tightness tests of tanks (WAC 173-360A-0635~~(2)~~~~(e)~~);
- ~~(xiii)~~(n) Tightness tests of piping (WAC 173-360A-0650~~(2)~~~~(e)~~);
- ~~(xiv)~~(o) Site evaluations for vapor or groundwater monitoring systems (WAC 173-360A-0660~~(1)(f)~~(2) ~~and or~~ 173-360A-0665~~(1)(f)~~(2));
- ~~(xv)~~(p) Site assessments, including site checks (WAC 173-360A-0730~~(7)~~);
- ~~(xvi)~~(q) Decommissioning of ~~an~~ UST systems, or ~~a~~ tanks or piping runs that are part of an UST system, upon permanent closure (WAC 173-360A-0810~~(3)(e)~~(2)); and
- ~~(xvii)~~(r) Decommissioning of ~~an~~ UST systems upon a change-in-service (WAC 173-360A-0820~~(3)(e)~~(2)).
- ~~(b) Reporting. All UST system services must be certified and reported within thirty days of completion of the services as follows.~~
  - ~~(i) Checklists. For all UST system services:~~
    - ~~(A) The service provider must complete the applicable checklist provided by the department of ecology; and~~
    - ~~(B) An owner or operator must sign and submit the completed checklist as follows:~~
      - ~~(I) For installations of UST systems or tanks, to the department of revenue when applying for a license (WAC 173-360A-200(3)); and~~
      - ~~(II) For all other UST system services, to the department of ecology.~~

~~(ii) — Reports. For site assessments (WAC 173-360A-730) and site evaluations for vapor or groundwater monitoring systems (WAC 173-360A-660(1)(f) or 173-360A-665(1)(f)):~~

~~(A) — The service provider must complete a report meeting the applicable requirements of this chapter; and~~

~~(B) — The owner or operator must submit the completed report to the department with the applicable checklist.~~

**(4) Releases from UST systems.** Owners and ~~operations~~operators shall notify the department of the following in accordance with the applicable requirements of this chapter:

- (a) All suspected releases (WAC 173-360A-0700);
- (b) All spills and overfills resulting in a release that may pose a threat to human health or the environment or that have not been cleaned up within twenty-four hours (WAC 173-360A-0740); and
- (c) All confirmed releases that may pose a threat to human health or the environment (WAC 173-360A-0750(1)).

**(5) Cleanups of releases from UST systems.** Owners and operators shall report remedial actions to the department in accordance with chapter 173-340 WAC or as otherwise directed by the department under chapter 90.48 RCW (WAC 173-360A-0750(4)).

**(6) Financial responsibility for UST systems.**

- (a) Owners or operators shall ~~certify~~demonstrate compliance with financial responsibility requirements in accordance with WAC 173-360A-1045(1) and WAC 173-360A-0200(3) and (4).
- (b) Owners or operators shall submit ~~evidence of~~ financial responsibility records in accordance with WAC 173-360A-1045(2) and (3) and 173-360A-0750(3).

**(7) Requirements for sellers and lessors.**

- (a) Any person who sells a tank ~~must~~shall notify the new owner of the licensing requirements in WAC 173-360A-0200.<sup>121</sup>
- (b) Any person who leases a tank ~~must~~shall notify the new operator of the licensing requirements in WAC 173-360A-0200.<sup>122</sup>

**(8) Requirements for service providers.** Service providers shall ~~comply with the reporting requirements in WAC 173-360A-930.~~

<sup>121</sup> Eliminated requirement that persons who sell property containing UST systems must notify buyer of licensing requirements. Persons who sell tanks, whether new or installed, must still notify buyer.

<sup>122</sup> Added requirement that any person who leases tank must notify lessees.

- (a) Document the UST system services specified in subsection (3) of this section in accordance with the applicable requirements of this chapter (WAC 173-360A-0940(4));
  - (b) Notify owners and operators when they determine that the UST system for which they are providing services is not in compliance with the requirements of this chapter in accordance with WAC 173-360A-0940(5); and
  - (c) Report confirmed releases from UST systems to owners and operators and to the department in accordance with WAC 173-360A-0940(6).
- (9) **Requirements for product deliverers and waste oil collectors.** Product deliverers and waste oil collectors shall report any spill or overfill of regulated substances to the owner or operator in accordance with WAC 173-360A-0405(4).

**WAC 173-360A-0240 Recordkeeping requirements**

- (1) **Records.** Owners and operators shall maintain records of the following in accordance with the applicable requirements of this chapter:<sup>123</sup>
- (a) Installations of UST systems and UST system components (WAC 173-360A-0300~~(8)~~);
  - (b) Assessments of corrosion potential (WAC 173-360A-0310(3)(c));
  - (c) Upgrades of existing UST systems (WAC 173-360A-0320);
  - (d) Upgrades of previously deferred UST systems (WAC 173-360A-0330);
  - (e) Compatibility of UST system components (WAC 173-360A-0350);
  - ~~(b)~~(f) Periodic walk-through inspections, ~~and if applicable, delivery records~~ (WAC 173-360A-0420~~(4)~~);
  - ~~(c)~~(g) Tests of cathodic protection systems (WAC 173-360A-0430(2)~~(d)~~);
  - ~~(d)~~(h) Rectifier inspections (WAC 173-360A-0430(3)~~(d)~~);
  - ~~(e)~~(i) Internal inspections of lined tanks (WAC 173-360A-0440~~(5)~~);
  - ~~(f)~~(j) Periodic monitoring and tightness tests of containment sumps used for interstitial monitoring of piping (WAC 173-360A-0450~~(4)~~);
  - ~~(g)~~(k) Periodic monitoring and tightness tests of spill prevention equipment (WAC 173-360A-0460~~(4)~~);
  - ~~(h)~~(l) Inspections of overfill prevention equipment (WAC 173-360A-0470~~(4)~~);
  - ~~(i)~~(m) Operation and maintenance, including tests, of release detection equipment (WAC 173-360A-0480~~(5)~~);
  - ~~(k)~~(n) Repairs of UST systems and UST system components (WAC 173-360A-0490~~(8)~~);
  - ~~(j)~~(o) Tightness tests of secondary containment areas of tanks and piping used for interstitial monitoring (WAC 173-360A-0490~~(6)~~(4)(c));
  - ~~(k)~~ Repairs of UST systems and UST system components (WAC 173-360A-490~~(8)~~);
  - ~~(h)~~(p) Current operation and maintenance plans (WAC 173-360A-0545~~(5)~~);
  - ~~(m)~~(q) Currently designated operators and training (WAC 173-360A-0560);
  - ~~(h)~~(r) Compliance with release detection requirements (WAC 173-360A-0600~~(9)~~);
  - ~~(e)~~(s) Site assessments, including site checks (WAC 173-360A-0730~~(9)~~);

<sup>123</sup> Updated list of records that must be maintained based on changes elsewhere in the chapter.

~~(p)~~(t) Investigation and cleanup of confirmed releases (WAC 173-360A-0750(4) and 173-340-850); and

~~(q)~~(u) Compliance with financial responsibility requirements (WAC 173-360A-1040).

**(2) Retention of records.** Records must be maintained for the period specified by the rules in effect at the time the records were created.

**~~(2)~~(3) Availability of records.** Owners and operators shall make all records required under subsection (1) of this section readily available for inspection upon request by the department.<sup>124 125</sup>

**~~(3)~~(4) Transfer of records.** Owners and operators shall transfer all records required under subsection (1) of this section to new owners and operators.<sup>126</sup>

**~~(4)~~(5) Service providers.** Service providers shall maintain records of their certification in accordance with WAC 173-360A-~~930~~0940(1)(b).

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<sup>124</sup> Eliminated specific requirement about where records must be maintained. Clarified that records only need to be made readily available for inspection upon request.

<sup>125</sup> Eliminated requirement that decommissioning records must be maintained since such records must already be submitted to Ecology upon permanent closure or change-in-service.

<sup>126</sup> Added requirement that records must be transferred upon changes in ownership or operation.

**WAC 173-360A-0250 Compliance monitoring, investigation, and access.**<sup>127</sup>

- (1) The department's compliance monitoring program, including procedures for inspections and recordkeeping, shall be consistent with and no less stringent than the program required by 40 C.F.R. Sec. 281.40, as amended, and section 9005 of the Solid Waste Disposal Act (42 U.S.C. Sec. 6991d).<sup>128</sup>
- (2) If necessary to determine compliance with the requirements of this chapter or chapter 90.76 RCW, an authorized representative of the state engaged in compliance inspections, monitoring or testing may, by request, require an owner or operator to submit relevant information or documents. The department may subpoena witnesses, documents, and other relevant information that the department deems necessary. In the case of any refusal to obey the subpoena, the superior court for any county in which the person is found, resides, or transacts business has jurisdiction to issue an order requiring the person to appear before the department and give testimony or produce documents. Any failure to obey the order of the court may be punished by the court as contempt.
- (3) Any authorized representative of the state may require an owner or operator to conduct monitoring or testing.
- (4) Upon reasonable notice, an authorized representative of the state may enter a premises or UST facility subject to regulation under this chapter or in which records relevant to the operation of an UST system are kept. In the event of an emergency or in circumstances where notice would undermine the effectiveness of an inspection, notice is not required. The authorized representative may copy records, obtain samples of regulated substances, and inspect or conduct monitoring or testing of an UST system.
- (5) Owners and operators of UST systems shall cooperate fully with inspections, monitoring, and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator under this section.
- (6) For purposes of this section, the term "authorized representative" or "authorized representative of the state" means an enforcement officer, employee, or representative of the department.

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<sup>127</sup> Combined WAC 173-360-140 and 173-360-150, and first sentence of WAC 173-360-210.

<sup>128</sup> Added requirement that compliance monitoring program must be consistent with, and no less stringent than, the program required by the underground storage tank compliance act of 2005, consistent with changes to RCW 90.76.005 and 90.76.020.

**WAC 173-360A-0260    Information sharing**

The department's procedures for sharing information with the U.S. Environmental Protection Agency shall be consistent with and no less stringent than those required by 40 C.F.R. Sec. 281.43, as amended.<sup>129</sup>

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<sup>129</sup> Moved the portion of the current provision in WAC 173-360-180 addressing public participation in the enforcement process to WAC 173-360A-0270 (enforcement).



**WAC 173-360A-0270 Enforcement**

- (1) **Authority.** The director of the department of ecology may seek appropriate injunctive or other judicial relief by filing an action in Thurston County ~~S~~superior ~~C~~court or issuing such order as the director deems appropriate to:
- (a) Enjoin any threatened or continuing violation of this chapter or chapter 90.76 RCW;
  - (b) Restrain immediately and effectively a person from engaging in unauthorized activity that results in a violation of any requirement of this chapter or chapter 90.76 RCW and is endangering or causing damage to public health or the environment;
  - (c) Require compliance with requests for information, access, testing, or monitoring under WAC 173-360A-0250 or RCW 90.76.060;
  - (d) Prohibit the delivery, deposit, or acceptance of a regulated substance to an UST system identified by the department to be ineligible for such delivery, deposit, or acceptance in accordance with WAC 173-360A-0280 and chapter 90.76 RCW; or
  - (e) Assess and recover civil penalties authorized under WAC 173-360A-0290 and RCW 90.76.080.
- (2) **Procedures.** The department's enforcement procedures shall be consistent with and no less stringent than those required by 40 C.F.R. Sec. 281.41, as amended, and section 9012 of the Solid Waste Disposal Act (42 U.S.C. Sec. 6991k).
- (3) **Appeals.** A person subject to an order issued under this chapter may appeal the order to the pollution control hearings board in accordance with RCW 43.21B.310.
- (4) **Public participation.** The department's procedures for public participation in the state enforcement process shall be consistent with and no less stringent than those required by 40 C.F.R. Sec. 281.42, as amended.<sup>130</sup> The department will not oppose intervention of right under Superior Court Civil Rule 24(a)(2) in a civil enforcement action taken under this chapter or chapter 90.76 RCW on the grounds that the person's interest is adequately represented by the state.<sup>131</sup>

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<sup>130</sup> Incorporated the portion of the current provision in WAC 173-360-180 addressing public participation in the enforcement process.

<sup>131</sup> To comply with state program approval requirements in §281.42, clarified how the state will ensure public participation in the enforcement process.

**WAC 173-360A-0280 Delivery prohibition**

- (1) **Authority.** If the department determines the owners and operators of an UST system are violating any requirement of this chapter or chapter 90.76 RCW, the department may prohibit the delivery, deposit, or acceptance of regulated substances to the system or the entire UST facility where the system is located.
- (2) **Procedures.** The department's procedures for enforcing delivery prohibition shall be consistent with and no less stringent than those required by 40 C.F.R. Sec. 281.42, as amended, and section 9012 of the Solid Waste Disposal Act (42 U.S.C. Sec. 6991k).
- (3) **Identification.** The department may identify an UST system subject to delivery prohibition by either:

  - (a) Affixing a red tag to the fill pipe of the system; or
  - (b) Revoking the facility compliance tag of the UST facility where the system is located.
- (4) **Prohibition.** Without the prior written authorization of the department, product deliverers may not deliver or deposit, and owners and operators may not accept the delivery or deposit of, regulated substances into an UST system if:

  - (a) A red tag is attached to the fill pipe of the system; or
  - (b) A valid facility compliance tag is not properly displayed at the UST facility where the system is located.
- (5) **Withdrawal of waste oil.** Without the prior written authorization of the department, persons may not withdraw, and owners and operators may not allow the withdrawal of, regulated substances from a waste oil UST system subject to delivery prohibition.
- (6) **Unauthorized removal of red tags.** No person may remove or alter a red tag without the prior written authorization of the department. The unauthorized removal or alteration of a red tag constitutes a violation of this chapter.

**WAC 173-360A-0290 Civil penalties**

- (1) ~~Any~~A person who fails to notify the department pursuant to the notification requirements of this chapter, or who submits false information, is subject to a civil penalty not to exceed five thousand dollars per violation.
- (2) ~~Any~~A person who violates this chapter or chapter 90.76 RCW is subject to a civil penalty not to exceed five thousand dollars for each tank per day of violation.
- (3) ~~Penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.~~A person incurring a penalty under this chapter or chapter 90.76 RCW may apply to the department in writing for the remission or mitigation of the penalty as set out in RCW 43.21B.300. A person also may appeal a penalty directly to the pollution control hearings board in accordance with RCW 43.21B.300.<sup>132</sup>

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<sup>132</sup> Consistent with changes to RCW 90.76.080(3) in the authorizing statute, changed options for appealing penalties incurred under this chapter.

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## **Part 3:**

# **Installation and Performance Standards**

## Crosswalk of Sections

TOPIC	AMENDED RULE §	CURRENT RULE §	FEDERAL RULE §
Installation <del>requirements</del> <u>and performance standards</u>	Part 3	In Parts 2, 3, 8	In Subparts A, B, C, D, K
Installation of UST systems <u>and components</u>	0300	305(4)-(5) 200(1), (3), (5)	20(d)-(e) In 22
Performance standards for new UST systems	0310	305(1)-(3) 340 810 820 830	20(a)-(c) 42 251(a), (d) 252(a)
Upgrade requirements for existing UST systems	0320	310 340(1)	21 42
Upgrade requirements for previously deferred UST systems	0330	Deferred	251(a), (c) 252(b)
Performance standards for partially exempt UST systems	0340	300	11
Compatibility requirements for UST systems	0350	323	32

WAC 173-360A-0300 Installation of ~~new~~ UST systems and components<sup>133</sup>

Owners and operators shall ensure ~~new~~ UST systems and ~~new~~ UST system components are installed in accordance with the requirements of this ~~sub~~section.

(1) **Notice ~~before commencement~~ of intent to install an UST system or a tank or piping run.** When installing an entire UST system, or a tank or piping run that is part of an UST system, owners and operators shall notify the department as specified in this subsection.

(a) Except for emergency replacements identified under (b) of this subsection, owners and operators shall notify the department of ~~their intent to install an UST system, or a tank or piping run that is part of an UST system,~~ planned installations at least thirty days, ~~but no more than ninety days,~~ before ~~starting installation~~ the planned start date. ~~The notice must be provided~~ using the applicable form provided by the department. ~~The department must also be notified of changes to the~~ Owners and operators shall also confirm the planned start date at least three business days before starting installation.<sup>134</sup>

~~(2) **Deadline for completion.** The installation of an UST system, or a tank or piping run that is part of an UST system, must be completed within ninety days of the department's receipt of the notification form required under subsection (1) of this section unless a written request for an extension, explaining the reason for the request, is submitted to the department within the ninety days.~~

~~(3)(b) **Emergency replacement.** For emergency replacements of an UST system, or a tank or piping run that is part of an UST system, owners and operators shall notify the department within seven days after completing installation before starting the installation.~~<sup>135</sup> A replacement constitutes an emergency if:

~~(a)(i)~~ There is a confirmed release from an operating UST system;<sup>136</sup>

~~(b)(ii)~~ The UST system is located at an operating UST facility ~~(such as a hospital)~~; and

~~(c)(iii)~~ The UST system is necessary for the normal operation of the facility.

~~(4)(2) **Installation Performance.** An UST system or UST system component must be installed.~~<sup>137</sup>

<sup>133</sup> This section incorporates provisions from several sections in the current state rule (WAC 173-360-300(4) and (5) and 173-360-200(1), (3), and (5)).

<sup>134</sup> Added requirement that owners and operators must confirm planned start date at least three business days before starting installation.

<sup>135</sup> For emergency replacements, changed notification requirements. The department must be notified before installation starts instead of within seven days of completing installation.

<sup>136</sup> For emergency replacements, clarified that a site assessment is not required before installing a new UST system if a release has already been confirmed.

<sup>137</sup> Consistent with §280.20(d) of the federal rule, clarified that installation requirements apply to all UST system components, not just tanks and piping.

- (a) By or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter; and
- (b) In accordance with the manufacturer's instructions and a code of practice. The following codes of practice may be used to meet this requirement:<sup>138</sup>
  - (i) American Petroleum Institute, Recommended Practice 1615, "Installation of Underground Petroleum Storage System";
  - (ii) National Fire Protection Association, Standard 30, "Flammable and Combustible Liquids Code," and Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages";
  - (iii) Petroleum Equipment Institute, Recommended Practice 100, "Recommended Practices for Installation of Underground Liquid Storage Systems";
  - (iv) Petroleum Equipment Institute, Recommended Practice 1000, "Recommended Practices for the Installation of Marina Fueling Systems";
  - (v) Petroleum Equipment Institute, Recommended Practice 1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines and Oil Burner Systems"; or
  - ~~(iv)~~(vi) For previously deferred UST systems, military construction criteria, such as U.S. Department of Defense, Unified Facilities Criteria 3-460-01, "Design: Petroleum Fuel Facilities."

~~(5)~~(3) ~~Performance s~~**Standards.** The installed UST system or UST system component must meet the performance standards in WAC 173-360A-0310 or ~~WAC~~ 173-360A-0340, as applicable.

~~(6)~~(4) ~~Installation of u~~**Used tanks.**<sup>139</sup> After effective date of rule, used tanks may not be installed as part of an UST system. ~~A tank that has been installed in the ground and subsequently removed (used tank) may not be re-installed as part of an UST system unless:~~

- ~~(a) — The used tank meets the performance standards in WAC 173-360A-310(1) or WAC 173-360A-340, as applicable;~~
- ~~(b) — The used tank is recertified for use by the original manufacturer or, if the original manufacturer is unavailable, by another manufacturer of the same tank brand or type; and~~
- ~~(c) — Proof of recertification is included with the thirty-day notice required under subsection (1) of this section.~~

<sup>138</sup> Consistent with §280.20(d) and §280.251(d) of the federal rule, updated the codes of practice that may be used to comply with installation requirements. Also added two codes that are not included in the federal rule.

<sup>139</sup> Added prohibition that, after effective date of the rule, used tanks may not be installed as part of an UST system.



~~(7)(5)~~ **Reporting.** ~~Installations of UST systems and UST system components must be certified and reported in accordance with WAC 173-360A-230(3)(b). For installations of UST systems and tanks, the following documents must be submitted with the applicable service checklist provided by the department:~~

- ~~(a) — Any installation checklist provided by the manufacturer. The checklist must be completed by the service provider; and~~
- ~~(b) — An as-built plan showing the location of UST systems, including all tanks, piping, and dispensers, and any adjacent structures. As-built plans must:~~
  - ~~(i) — Contain a north arrow;~~
  - ~~(ii) — Identify and use appropriate and consistent scales to show all required details in sufficient clarity; and~~
  - ~~(iii) — Contain a title, legend of all symbols used, and drafting or origination date.~~

**(a) Installations of UST systems or tanks.** Installations of UST systems or tanks must be reported when applying for a license in accordance with WAC 173-360A-0200(3). The following documentation must be included with the application:<sup>140</sup>

- (i) Certification of installation, completed by the service provider;
- (ii) Manufacturer's installation checklist, completed by the service provider;<sup>141</sup>
- (iii) If required under WAC 173-360A-0310(3)(c), corrosion potential assessment report, completed by the corrosion expert; and
- (iv) An as-built plan of the UST facility that:
  - (A) Shows the location of the UST systems (including all tanks, piping, and dispensers) and any adjacent structures or streets;
  - (B) Identifies and uses appropriate and consistent scales to show all required details in sufficient clarity; and
  - (C) Contains a title, legend of all symbols used, north arrow, and drafting or origination date.<sup>142</sup>

**(b) Installations of other UST system components.** Installations of other UST system components must be reported to the department within thirty days using the applicable checklist provided by the department. Service providers must complete the checklist.

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<sup>140</sup> Clarified process for certifying and reporting installations of UST systems and tanks when applying for a license, including what documentation must be submitted.

<sup>141</sup> Added requirement that the manufacturer's installation checklist must be completed and submitted with the license application.

<sup>142</sup> Clarified minimum requirements for as-built plans.

~~(8)~~(6) **Recordkeeping.** ~~After~~Records of installations completed after [effective date of rule], ~~all records relating to the installation of an UST system or an UST system component~~ must be maintained in accordance with ~~WAC 173-360A-240~~ until the UST system is permanently closed or undergoes a change-in-service.<sup>143</sup>

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<sup>143</sup> Added requirement that installation records must be maintained until the UST system is permanently closed or undergoes a change-in-service, consistent with existing requirement for repairs to UST systems. The requirement is only applicable after effective date of rule.

**WAC 173-360A-0310 Performance standards for new UST systems and components**

Except as provided under WAC 173-360A-0330, owners and operators shall ensure new UST systems and ~~new~~ UST system components meet the performance standards of this section.

- (1) **Tanks.** To prevent releases due to structural failure or corrosion, tanks must meet the performance standards ~~of~~in this subsection.
- (a) **SteelMetal.**<sup>144</sup> Tanks made of ~~steel~~metal must be designed and constructed in accordance with the following:
- (i) The compatibility requirements in WAC 173-360A-0350;
  - (ii) The cathodic protection requirements in subsection (3) of this section, if applicable;<sup>145</sup>
  - (iii) The secondary containment requirements in subsection (4) of this section, if applicable;<sup>146</sup> and
  - (iv) A code of practice. The following codes of practice may be used to meet this requirement:<sup>147</sup>
    - (A) Steel Tank Institute, Specification STI-P3®, "Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks";
    - (B) Steel Tank Institute, Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks";
    - (C) Underwriters Laboratories, Standard 1746, "Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks";
    - (D) Underwriters Laboratories of Canada, Standard S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," Standard S603.1, "Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids", and Standard S631, "Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems"; or
    - (E) National Association of Corrosion Engineers International, Standard Practice 0285, "External Corrosion of Underground Storage Tank Systems by Cathodic Protection," and Underwriters Laboratories,

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<sup>144</sup> Clarified that tank material classification applies to all tanks made of steel, not just those made of steel.

<sup>145</sup> Consolidated cathodic protection system requirements from WAC 173-360-305(1)(b) and (2)(b) of the current rule in subsection (3) of this section.

<sup>146</sup> Integrated secondary containment requirements from WAC 173-360-810 of the current rule in subsection (4) of this section.

<sup>147</sup> Consistent §280.20(a)(2) of the federal rule, updated the codes of practice that may be used to comply with the performance requirements for steel tanks.

Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."

- (b) **Clad or jacketed steel~~metal~~.**<sup>148</sup> Tanks made of ~~steel~~metal and clad or jacketed with a non-corrodible material must be designed and constructed in accordance with the following:
- (i) The compatibility requirements in WAC 173-360A-0350;
  - (ii) The secondary containment requirements in subsection (4) of this section, if applicable;<sup>149</sup> and
  - (iii) A code of practice. The following codes of practice may be used to meet this requirement:<sup>150</sup>
    - (A) Underwriters Laboratories, Standard 1746, "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 Underground Storage Tanks";
    - (C) Steel Tank Institute, Specification F961, "ACT-100U® Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks"; or
    - (D) Steel Tank Institute, Specification F922, "Steel Tank Institute Specification for Permatank®."
- (c) **Fiberglass-reinforced plastic.** Tanks made of fiberglass-reinforced plastic must be designed and constructed in accordance with the following:
- (i) The compatibility requirements in WAC 173-360A-0350;
  - (ii) The secondary containment requirements in subsection (4) of this section, if applicable;<sup>151</sup> and

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<sup>148</sup> Consistent with §280.20(a)(3) of the federal rule, changed tank material classifications (from "steel-fiberglass-reinforced-plastic composite tanks" to "steel tanks clad or jacketed with a non-corrodible material"). Also clarified that classification applies to all metal tanks, not just steel tanks, so clad or jacketed.

<sup>149</sup> Integrated secondary containment requirements for tanks from WAC 173-360-810 of the current rule in subsection (4) of this section.

<sup>150</sup> Consistent §280.20(a)(3) of the federal rule, updated the codes of practice that may be used to comply with the performance requirements for clad or jacketed steel tanks.

<sup>151</sup> Integrated secondary containment requirements for tanks from WAC 173-360-810 of the current rule in subsection (4) of this section.

- (iii) A code of practice. The following codes of practice may be used to meet this requirement:<sup>152</sup>
  - (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, Standard S615, "Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids."
- (d) **Other materials.** Tanks made of materials other than those specified in (a) through (c) of this subsection must be designed and constructed in accordance with the following:
  - (i) The compatibility requirements in WAC 173-360A-0350;
  - (ii) The secondary containment requirements in subsection (4) of this section, if applicable;<sup>153</sup> and
  - (iii) The tank construction and corrosion protection are determined by the department to prevent releases in a manner that is no less protective of human health and the environment than specified in (a) through (c) of this subsection.
- (2) **Piping.** To prevent releases due to structural failure or corrosion, piping must meet the performance standards ~~of~~in this subsection.
  - (a) **SteelMetal.**<sup>154</sup> Piping made of ~~steel~~metal must be designed and constructed in accordance with the following:
    - (i) The compatibility requirements in WAC 173-360A-0350;
    - (ii) The cathodic protection requirements in subsection (3) of this section, if applicable;<sup>155</sup>
    - (iii) The secondary containment requirements in subsection (5) of this section, if applicable;<sup>156</sup> and

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<sup>152</sup> Consistent §280.20(a)(1) of the federal rule, updated the codes of practice that may be used to comply with the performance requirements for fiberglass-reinforced plastic tanks.

<sup>153</sup> Integrated secondary containment requirements got tanks from WAC 173-360-810 of the current rule in subsection (4) of this section.

<sup>154</sup> Clarified that piping material classification applies to all piping made of metal, not just those made of steel.

<sup>155</sup> Consolidated cathodic protection system requirements from WAC 173-360-305(1)(b) and (2)(b) in subsection (3) of this section.

<sup>156</sup> Integrated secondary containment requirements for piping from WAC 173-360-820 of the current rule in subsection (5) of this section.

- (iv) A code of practice. The following codes of practice may be used to meet this requirement:<sup>157</sup>
  - (A) American Petroleum Institute, Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";
  - (B) Underwriters Laboratories, Standard 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 Storage and Dispensing Systems";
  - (D) National Association of Corrosion Engineers International, Standard Practice 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems"; or
  - (E) National Association of Corrosion Engineers International, Standard Practice 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection."

- (b) **Non-corrodible.** Piping made of a non-corrodible material must be designed and constructed in accordance with the following:
  - (i) The compatibility requirements in WAC 173-360A-0350;
  - (ii) The secondary containment requirements in subsection (5) of this section, if applicable;<sup>158</sup> and
  - (iii) A code of practice. The following codes of practice may be used to meet this requirement:<sup>159</sup>
    - (A) Underwriters Laboratories, Standard 971, "Nonmetallic Underground Piping for Flammable Liquids"; or
    - (B) Underwriters Laboratories of Canada, Standard S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids."
- (c) **Other materials.** Piping made of materials other than those specified in (a) and (b) of this subsection must be designed and constructed in accordance with the following:

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<sup>157</sup> Consistent §280.20(b)(2) of the federal rule, updated the codes of practice that may be used to comply with the performance requirements for steel piping.

<sup>158</sup> Integrated secondary containment requirements for piping from WAC 173-360-820 of the current rule in subsection (5) of this section.

<sup>159</sup> Consistent §280.20(b)(1) of the federal rule, updated the codes of practice that may be used to comply with the performance requirements for non-corrodible piping.

- (i) The compatibility requirements in WAC 173-360A-0350;
- (ii) The secondary containment requirements in subsection (5) of this section, if applicable;<sup>160</sup> and
- (iii) The piping construction and corrosion protection are determined by the department to prevent releases in a manner that is no less protective of human health and the environment than specified in (a) and (b) of this subsection.

**(3) Cathodic protection of metal tanks and piping.<sup>161</sup>**

**(a) Applicability.** The following tanks and piping must be cathodically protected in accordance with the requirements in (b) of this subsection unless the environment is determined not to be corrosive enough in accordance with the requirements in (c) of this subsection:

- (i) Any portion of a metal tank ~~made of steel~~ that is underground and routinely contains regulated substances; and
- (ii) Any metal piping ~~made of steel~~ that routinely contains regulated substances and is in contact with the ground.

**(b) Performance standards.** Metal ~~T~~ tanks and piping must be cathodically protected as follows:

- (i) The tank or piping must be coated with a suitable dielectric material;
- (ii) The tank or piping must be equipped with a factory-installed or field-installed cathodic protection system designed by a corrosion expert; and
- (iii) The cathodic protection system must be designed to allow for the operation and maintenance of the system as specified in WAC 173-360A-0430, including testing and rectifier inspections.

**(c) Noncorrosive environment.<sup>162</sup> Metal tanks and piping do not need to be cathodically protected if:**

- (i) Before installation and every five years thereafter:

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<sup>160</sup> Integrated secondary containment requirements for piping from WAC 173-360-820 of the current rule in subsection (5) of this section.

<sup>161</sup> This subsection incorporates performance standards for cathodic protection systems in WAC 173-360-305(1)(b) and (2)(b) of the current rule. Also clarified that requirements apply to tanks and piping made of metal, not just those made of steel.

<sup>162</sup> To be consistent with §280.20(a)(4) and §280.20(b)(3), added option for demonstrating that the environment around the UST system is not corrosive enough to cause the system to have a release due to corrosion during its operational life. In such cases, cathodic protection is not required for metal tanks and piping. Unlike the federal rule, also specified that assessments must also be performed every five years after installation and reports documenting the determination and its basis must be submitted to the department.

- (A) A corrosion expert assesses the environment around the UST system and determines that it is not corrosive enough to cause the system to have a release due to corrosion during its operational life;
- (B) A report documenting the assessment, including the determination and its basis, and the person who performed the assessment, including their certification type and number, is completed by the corrosion expert; and
- (C) The report is submitted as follows:
  - (I) For assessments performed before installation, the report is submitted to the department of revenue when applying for a license in accordance with WAC 173-360A-0200(3) and 173-360A-0300(5)(a); and
  - (II) For assessments performed after installation, the report is submitted to the department of ecology within thirty days of completing the assessment; and
- (ii) The owners and operators maintain records demonstrating compliance with the requirements of (c)(i) of this subsection, including the reports, until the UST system is permanently closed or undergoes a change-in-service.

**(4) Secondary containment of tanks.<sup>163</sup>**

- (a) Applicability.** Tanks must be secondarily contained in accordance with the requirements in (b) of this subsection if:
  - (i) The tank is part of a hazardous substance UST system;<sup>164</sup> or
  - (ii) The tank is part of a petroleum UST system, and the tank is installed or replaced after October 1, 2012.
- (b) Performance standards.** Tanks must be double-walled and designed and constructed to:
  - (i) Contain any regulated substances leaking from the primary space (through the inner wall) within the interstitial space until they are detected and removed;
  - (ii) Prevent the release of regulated substances into the environment throughout the operational life of the UST system; and
  - (iii) Allow for interstitial monitoring.

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<sup>163</sup> This subsection incorporates performance standards for secondary containment of tanks in WAC 173-360-810(1) through (2)(a) of the current rule.

<sup>164</sup> Incorporates existing requirement in WAC 173-360-340 of the current rule. This subsection also eliminates secondary barriers as an option for hazardous substance UST systems installed before October 1, 2012, since all of those systems are double-walled.



(5) Secondary containment of piping.<sup>165</sup>

- (a) **Applicability.** Piping must be secondarily contained in accordance with the requirements in (c) of this subsection unless:
- (i) The piping is part of an airport hydrant system;<sup>166</sup>
  - (ii) The piping is part of an UST system with field-constructed tanks greater than ~~50,000~~fifty thousand gallons;<sup>167</sup>
  - (iii) The piping is part of a petroleum UST system, and the piping was installed or replaced on or before October 1, 2012;
  - (iv) The piping does not routinely contain regulated substances, including suction piping meeting the standards in WAC 173-360A-0600(1)(b)(i) through (v); or
  - (v) The piping replaces less than fifty percent of a single-walled piping run.
- (b) **Replacement.** Unless otherwise directed by the department, if fifty percent or more of a single-walled piping run is replaced after October 1, 2012, then the entire piping run must be replaced with double-walled piping meeting the requirements in (c) of this subsection.
- (c) **Performance standards.** Piping must be double-walled. Containment sumps may also be used as part of the secondary containment and interstitial monitoring system for piping.
- (i) **Piping.** Double-walled piping must be designed and constructed to:
- (A) Contain any regulated substances leaking from the primary space (through the inner wall) within the piping's interstitial space or a containment sump until they are detected and removed;
  - (B) Prevent the release of regulated substances into the environment throughout the operational life of the UST system; and
  - (C) Allow for interstitial monitoring within either the piping's interstitial space or a containment sump.

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<sup>165</sup> This subsection incorporates performance standards for secondary containment of piping in WAC 173-360-820(1) through (3)(a) of the current rule. This subsection also eliminates secondary barriers as an option for hazardous substance UST systems installed before October 1, 2012, since there are no such systems according to Ecology's database.

<sup>166</sup> Consistent with §280.252(a) of the federal rule, added exemption from secondary containment requirements for airport hydrant systems.

<sup>167</sup> Consistent with §280.252(a) of the federal rule, added exemptions from secondary containment requirements for field-constructed tanks > 50,000 gallons.

- (ii) **Containment sumps.** Containment sumps used as part of the secondary containment and interstitial monitoring system for piping must be designed and constructed to:
- (A) Meet the compatibility requirements in WAC 173-360A-0350;<sup>168</sup>
  - (B) Be liquid-tight on its sides, bottom, and at any penetrations;
  - (C) Allow for visual inspection and access to the components in the sump; and
  - (D) Allow for interstitial monitoring of the piping. The piping's interstitial space must be exposed within the sump. Sensors must be placed within the sump where they are able to detect any leak of regulated substances.

(6) **Under-dispenser containment.**<sup>169</sup>

- (a) **Applicability.** UST systems connected to a dispenser must be equipped with under-dispenser containment meeting the requirements in (b) of this subsection if the dispenser, dispenser system, or underground piping connected to the dispenser system is installed or replaced after October 1, 2012.

- (b) **Performance standards.** Under-dispenser containment must be:

~~(i) Factory built, if installed or replaced after [effective date of rule]; and~~

~~(ii)~~(i) Designed and constructed to:

- (A) Meet the compatibility requirements in WAC 173-360A-0350;<sup>170</sup>
- (B) Be liquid-tight on its sides, bottom, and at any penetrations; and
- (C) Allow for visual inspection and access to the components in the containment system; and

(ii) If installed or replaced after [effective date of rule], factory-built or machine-tooled, unless otherwise approved by the department.<sup>171</sup>

(7) **Spill prevention equipment.**

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<sup>168</sup> Clarified that containment sumps used for interstitial monitoring of piping must meet compatibility requirements.

<sup>169</sup> This subsection incorporates WAC 173-340-830(1) and (2).

<sup>170</sup> Clarified that under-dispenser containment must meet compatibility requirements.

<sup>171</sup> Added requirement that under-dispenser containment (UDC) must be factory-built or machine-tooled, unless otherwise approved by the department. The requirement only applies to UDC installed or replaced after effective date of rule.

- (a) **Applicability.** To prevent spilling associated with product transfers, UST systems filled by transfers of more than twenty-five gallons at one time must be equipped with spill prevention equipment that:
- (i) meeting ~~Meets~~ the requirements in (b) of this subsection; or
  - (ii) Is determined by the department to be no less protective of human health and the environment.
- (b) **Performance standards.** Spill prevention equipment must be designed and constructed to:
- (i) Meet the compatibility requirements in WAC 173-360A-0350;<sup>172</sup>
  - (ii) Prevent releases when the transfer hose is detached from the fill pipe; and
  - (iii) Be liquid-tight on its sides, bottom, and at any penetrations.<sup>173</sup>
- (8) **Overfill prevention equipment.**
- (a) **Applicability.** To prevent overfilling associated with product transfers, UST systems filled by transfers of more than twenty-five gallons at one time must be equipped with overfill prevention equipment that:
- (i) meeting ~~Meets~~ the requirements in (b) of this subsection; or
  - (ii) Is determined by the department to be no less protective of human health and the environment.
- (b) **Performance standards.** Overfill prevention equipment must be designed and constructed to:
- (i) Meet the compatibility requirements in WAC 173-360A-0350;<sup>174</sup> and
  - (ii) Do one of the following:
    - (A) Automatically shut off flow into the tank when the tank is no more than ninety-five percent full;
    - (B) Automatically alert the product deliverer when the tank is no more than ninety percent full by restricting flow into the tank or triggering a high-level audible alarm;<sup>175</sup> or
    - (C) Automatically restrict flow into the tank thirty minutes before overfilling, automatically alert the product deliverer with a high level

<sup>172</sup> Clarified that spill prevention equipment must meet compatibility requirements.

<sup>173</sup> Clarified that spill prevention equipment must be liquid tight to prevent releases. This provision is consistent with the performance standards for under-dispenser containment sumps and containment sumps used for interstitial monitoring of piping.

<sup>174</sup> Clarified that overfill prevention equipment must meet compatibility requirements.

<sup>175</sup> Clarified that alarm must be audible.

audible alarm<sup>176</sup> one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to regulated substances due to overfilling; ~~or.~~

~~(D) — Prevent overfilling in a manner determined by the department to be no less protective of human health and the environment than specified in (b)(iii)(A) through (C) of this subsection.~~

- (c) **Phase out of flow restrictors.** Flow restrictors used in vent lines may not be used to comply with the requirements of this subsection when overfill prevention equipment is installed, replaced, or repaired after **[effective date of rule]**.<sup>177</sup>
- (9) **Release detection equipment.** Release detection equipment must meet the performance standards in Part 6 of this chapter.<sup>178</sup>
- (10) **Codes of practice for previously deferred UST systems.** For previously deferred UST systems, in addition to the codes of practice listed in this section, military construction criteria may be used to meet the requirements of this section, such as U.S. Department of Defense, Unified Facilities Criteria 3-460-01, "Design: Petroleum Fuel Facilities."<sup>179</sup>

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<sup>176</sup> Clarified that alarm must be audible.

<sup>177</sup> Consistent with §280.20(c)(3) of the federal rule, specified that flow restrictors in vent lines may no longer be used to comply with overfill prevention requirements when such equipment is installed or replaced after effective date of the rule. Unlike the federal rule, also added requirement that flow restrictors in vent lines needing repairs must be replaced with another type of overfill prevention. .

<sup>178</sup> Added cross-reference to performance standards for release detection equipment.

<sup>179</sup> Consistent §280.251(b) of the federal rule, added codes of practice that may be used by previously deferred UST systems to comply with performance requirements.

**WAC 173-360A-0320 Upgrade requirements for existing UST systems**

By December 22, 1998, owners and operators of existing UST systems were required to meet the performance standards for new UST systems in WAC 173-360A-0310 or the upgrade requirements in this section. Existing UST systems not meeting this requirement must be permanently closed in accordance with WAC 173-360A-~~820~~0810 unless the tanks ~~are in compliance~~meet the requirements of this section and an upgrade is determined to be appropriate by the department.<sup>180</sup> This section does not apply to previously deferred UST systems.

**(1) Administration.**

- (a) The upgrades specified in this section must be performed by or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter.
- (b) The upgrades specified in this section must be ~~certified and reported in accordance with WAC 173-360A-230(3)(b)~~reported to the department within thirty days using the applicable checklist provided by the department. The checklist must be completed by the service provider.
- (c) ~~For UST systems upgraded~~Records of upgrades completed after [effective date of rule], ~~all records relating the upgrade~~ must be maintained ~~in accordance with WAC 173-360A-240~~ until the UST system is permanently closed or undergoes a change-in-service.<sup>181</sup>

**(2) Upgrades.**

- (a) **Corrosion protection of metal tanks.**<sup>182</sup> ~~Steel~~Metal tanks must be upgraded to meet one of the following requirements in accordance with a code of practice:
  - (i) **Internal lining.** A tank may be upgraded by internal lining if:
    - (A) The lining is installed in accordance with WAC 173-360A-0490; and
    - (B) Within ten years after lining, and every five years thereafter, the lined tank is internally inspected in accordance with WAC 173-360A-0440 and found to be structurally sound with the lining still performing in accordance with original design specifications, unless cathodic protection is also installed within ten years of lining the tank, as specified in (a)(iii) of this subsection. If the internal lining is no longer performing in accordance with original design specifications and cannot be repaired in accordance with a code of practice, then the lined tank

<sup>180</sup> This section has been updated to reflect the fact that the deadline for upgrading existing UST systems passed in 1998. Consistent with §280.21 of the federal rule, added requirement that existing UST systems not meeting upgrade requirements must be permanently closed, unless tanks meet requirements and an upgrade is determined to be appropriate by the department.

<sup>181</sup> Added requirement that upgrade records must be maintained until the UST system is permanently closed or undergoes a change-in-service. The requirement is only applicable after effective date of rule. The requirement is consistent with new requirement for installations and the existing requirement for repairs.

<sup>182</sup> Clarified that upgrade requirements for tanks apply to all tanks made of metal, not just those made of steel.

must be permanently closed in accordance with WAC 173-360A-

~~820~~0810.<sup>183</sup>

- (ii) **Cathodic protection.** A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements in WAC 173-360A-0310(3)(b)(ii) and (iii) and the integrity of the tank is ensured using one of the following methods:
- (A) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes before the cathodic protection system is installed;
  - (B) The tank has been installed or internally lined for less than ten years and is monitored monthly for releases in accordance with WAC 173-360A-0630 or 173-360A-0655 through 173-360A-0675;
  - (C) The tank has been installed or internally lined for less than ten years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements in WAC 173-360A-0635. The first tightness test must be conducted before the cathodic protection system is installed. The second tightness test must be conducted between three and six months following the first operation of the cathodic protection system; or
  - (D) 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 ~~(b)~~(a)(ii)(A) through (C) of this subsection.
- (iii) **Internal lining combined with cathodic protection.** A tank may be upgraded by both internal lining and cathodic protection if:
- (A) The lining is installed in accordance with WAC 173-360A-0490; and
  - (B) The cathodic protection system is installed within ten years of the tank being lined and meets the requirements in WAC 173-360A-0310(3)(b)(ii) and (iii).
- (b) **Corrosion protection of metal tanks – ~~e~~Codes of practice.** The following ~~historical~~ codes of practice may have been used to meet the requirements in (a) of this subsection.<sup>184</sup>

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<sup>183</sup> Consistent with §280.21(b)(1)(ii) of the federal rule, added requirement that lined tanks must be permanently closed if the lining cannot be repaired.

<sup>184</sup> Consistent with §280.21(b) of the federal rule, maintained list of historical codes of practice for upgrading tanks.

- (i) American Petroleum Institute, Standard 1631, “Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks”;
  - (ii) 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”;
  - (iii) National Association of Corrosion Engineers, Recommended Practice 0285, “Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems”;
  - (iv) American Petroleum Institute, Recommended Practice 1632, “Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems”;<sup>185</sup> or
  - (v) Steel Tank Institute, Publication F894-91, “Specifications for External Corrosion Protection FRP Composite Underground Steel Storage Tanks.”
- (c) **Corrosion protection of metal piping.** Metal piping routinely containing regulated substances and in contact with the ground must be cathodically protected in accordance with a code of practice and meet the requirements of WAC 173-360A-0310(3)(b)(ii) and (iii). The codes of practice listed in WAC 173-360A-0310(2)(a)(iv) may be used to meet this requirement.
- (d) **Secondary containment of tanks and piping.** Tanks and piping that are part of a hazardous substance UST system must meet the secondary containment requirements ~~of~~<sup>in</sup> WAC 173-360A-0310(4) and (5).<sup>185</sup>
- (e) **Spill and overfill prevention equipment.** UST systems filled by transfers of more than twenty-five gallons at one time must meet the spill and overfill prevention requirements in WAC 173-360A-0310(7) and (8).
- (f) **Release detection equipment.** Release detection equipment must meet the performance standards in Part 6 of this chapter.<sup>186</sup>
- (g) **Compatibility.** UST systems must meet the compatibility requirements in WAC 173-360A-0350.<sup>187</sup>

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<sup>185</sup> Incorporated secondary containment requirements for existing hazardous substances UST systems from WAC 173-360-340(1) of the current rule.

<sup>186</sup> Clarified that existing UST systems must meet performance standards for release detection equipment.

<sup>187</sup> Clarified that existing UST systems must meet compatibility requirements.

**WAC 173-360A-0330 Upgrade requirements for previously deferred UST systems<sup>188</sup>**

By [three years after effective date of rule], owners and operators shall ensure previously deferred UST systems ~~for which installation commenced~~ installed on or before [effective date of rule] meet the performance standards for new UST systems in WAC 173-360A-0310, meet the upgrade requirements in this section, or are permanently closed in accordance with WAC 173-360A-0810.

**(1) Administration.**

- (a) The upgrades specified in this section must be performed by or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter.
- (b) The upgrades specified in this section must be ~~certified and reported in accordance with WAC 173-360A-230(4)(b)~~ reported to the department within thirty days using the applicable checklist provided by the department. The checklist must be completed by the service provider.
- (c) ~~All records relating the~~ Records of upgrades must be maintained ~~in accordance with WAC 173-360A-240~~ until the UST system is permanently closed or undergoes a change-in-service.<sup>189</sup>

**(2) Upgrades.**

**(a) Corrosion protection of tanks and piping.**

- (i) Tanks and piping constructed of metal must be cathodically protected in accordance with a code of practice and meet the following requirements:
  - ~~(i)(A)~~ The cathodic protection system must meet the requirements in WAC 173-360A-0310(3)(b)(ii) and (iii); and
  - ~~(ii)(B)~~ Tanks more than ten years old must be assessed to ensure they are structurally sound and free of corrosion holes before a cathodic protection system is installed.
- ~~(b)(ii)~~ ~~Corrosion protection of tanks and piping—codes of practice.~~ The following codes of practice may be used to meet the requirements in (a)(i) of this subsection:
  - ~~(i)(A)~~ National Association of Corrosion Engineers International, Standard Practice 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection";

<sup>188</sup> Consistent with §§280.251 and 280.252 of the federal rule, added upgrade requirements for previously deferred UST systems. Except as otherwise noted, the requirements are the same as in the federal rule.

<sup>189</sup> Added requirement that upgrade records must be maintained until the UST system is permanently closed or undergoes a change-in-service. The federal rule does not require records of upgrades to be maintained, except for repairs. The requirement is only applicable after effective date of rule. The requirement is consistent with new requirement for installations and the existing requirement for repairs.



~~(ii)~~(B) National Association of Corrosion Engineers International, Standard Practice 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";

~~(iii)~~(C) National Leak Prevention Association, Standard 631, Chapter C, "Internal Inspection of Steel Tanks for Retrofit of Cathodic Protection";  
or

~~(iv)~~(D) American Society for Testing and Materials, Standard G158, "Standard Guide for Three Methods of Assessing Buried Steel Tanks."

~~(c)~~(b) **Spill and overfill prevention equipment.** UST systems filled by transfers of more than twenty-five gallons at one time must meet the spill and overfill prevention requirements in WAC 173-360A-0310(7) and (8).

~~(d)~~(c) **Release detection equipment.** Release detection equipment must meet the performance standards in Part 6 of this chapter.

~~(e)~~(d) **Compatibility.** UST systems must meet the compatibility requirements in WAC 173-360A-0350.

**WAC 173-360A-0340 Performance standards for partially exempt UST systems**

Owners and operators shall ensure partially exempt UST systems identified in WAC 173-360A-0110(2)(a)(i) through (iii) meet the performance standards of this section. This section does not apply to aboveground storage tanks associated with previously deferred UST systems and any partially exempt UST systems for which installation commenced on or before December 22, 1988.<sup>190</sup>

**(1) Performance standards.** Partially exempt UST systems must:

- (a) Prevent releases due to corrosion or structural failure for the operational life of the system;
- (b) Be cathodically protected against corrosion, constructed of non-corrodible material, ~~steel~~metal-clad with a non-corrodible material,<sup>191</sup> determined by a corrosion expert to be located within a noncorrosive environment under WAC 173-360A-0310(3)(c),<sup>192</sup> or designed in a manner to prevent the release or threatened release of any regulated substance stored in the system; and
- (c) Be constructed or lined with material that is compatible with the regulated substance stored in the system.

**(2) Guidance.**<sup>193</sup> The performance standards in WAC 173-360A-0310 for new UST systems and the following codes of practice may be used as guidance for complying with this section:

- (a) National Association of Corrosion Engineers International, Standard Practice 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection";
- (b) National Association of Corrosion Engineers International, Standard Practice 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";
- (c) American Petroleum Institute, Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; or
- (d) Steel Tank Institute, Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems."

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<sup>190</sup> Consistent with §280.11 of the federal rule, exempted aboveground storage tanks associated with previously deferred UST systems from the requirements of this section.

<sup>191</sup> Clarified that corrosion protection is required for all metal tanks and piping, not just those made of steel.

<sup>192</sup> To be consistent with §280.11(b), added option for demonstrating that the environment around the UST system is not corrosive enough to cause the system to have a release due to corrosion during its operational life. In such cases, cathodic protection is not required for metal tanks and piping. Unlike under the federal rule, assessments must also be performed every five years after installation and reports documenting assessments must be submitted to the department.

<sup>193</sup> Consistent with §280.11 of the federal rule, updated the codes of practice that may be used as guidance for complying with performance standards. Also continue to allow performance standards for new UST systems to be used as guidance.

WAC 173-360A-0350 Compatibility requirements for UST systems

**(1) Performance standard for all UST systems.** Owners and operators shall ensure that all UST system components are made of or lined with materials that are compatible with the regulated substances stored in the UST system.

**~~(1)~~(2) Demonstrations for selected UST systems.**<sup>194</sup> Owners and operators of UST systems storing hazardous substances,<sup>195</sup> regulated substances containing greater than ten percent ethanol or twenty percent biodiesel, or any other regulated substances identified by the department shall also comply with the requirements of this subsection.

**(a) Options.** Owners and operators shall either:

(i) ~~d~~ Demonstrate compatibility of the UST system ~~components~~ (including tanks, piping, containment sumps, pumping equipment, release detection equipment, spill prevention equipment, and overfill prevention equipment). ~~Owners and operators may demonstrate compatibility by using one of the following options:~~

~~(a)~~(A) Certification or listing of equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or

~~(b)~~(B) Approval by the Equipment or component manufacturer ~~approval~~. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, and specify the hazardous substances or range of biofuel blends with which the equipment or component is compatible ~~with, and be from the equipment or component manufacturer~~; or

~~(c)~~(ii) ~~Using~~ Use another option determined by the department to be no less protective of human health and the environment than the options specified in (a)(i) ~~or (b)~~ of this subsection.

**(b) Reporting.** When changing the regulated substance stored in an UST system, owners and operators shall notify the department and report compliance with (a) of this subsection in accordance with WAC 173-360A-0410(1).

**~~(2)~~(c) Recordkeeping.** Owners and operators shall maintain all ~~All~~ records documenting compliance with (a) of this subsection ~~(1) of this section must be maintained in~~

<sup>194</sup> Consistent with §280.32 of the federal rule, added compatibility demonstration requirements for UST systems storing regulated substances containing greater than ten percent ethanol or twenty percent biodiesel or any other regulated substances identified by the department. Except as otherwise noted, the requirements are the same as in the federal rule.

<sup>195</sup> Specified that compatibility demonstrations are also required for UST systems storing hazardous substances. The federal rule does not require this.

~~accordance with WAC 173-360A-240~~ until the UST system is permanently closed or  
undergoes a change-in-service.<sup>196</sup>

- (3) **Guidance.** The following code of practice may be used as guidance for complying with this section: American Petroleum Institute, Recommended Practice 1626, “Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations.”

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<sup>196</sup> Specified that records of compatibility demonstrations must be maintained “until the system is permanently closed or undergoes a change-in-service.” This is consistent with the new recordkeeping requirements for installations and upgrades, and the existing requirements for repairs. The federal rule requires such records to be maintained “for as long as system used to store the regulated substance.”

## **Part 4:**

# **Operation and Maintenance**

## Crosswalk of Sections

TOPIC	NEW RULE §	CURRENT RULE §	FEDERAL RULE §
Operation and maintenance	Part 4	In Parts 1, 2, 3	In Subparts B, C, K
Transfer of regulated substances – <del>o</del> wners and operators	0400	130(4), (5), (7) 315	--
Transfer of regulated substances – <del>p</del> roduct deliverers and waste oil collectors	0405	130(4), (5), (6)	--
Changes in regulated substances	0410	200(6) 323	32(a), (b)
Operation and maintenance walkthrough inspections	0420	--	36 252(c)
Operation and maintenance of corrosion protection	0430	320	31
Operation and maintenance of internal linings	0440	310(2), (5)	21(b)
Operation and maintenance of containment sumps <u>used for interstitial monitoring of piping</u>	0450	--	35(a)(1), (b), (c)
Operation and maintenance of spill prevention equipment	0460	--	35(a)(1), (b), (c)
Operation and maintenance of overfill prevention equipment	0470	--	35(a)(2), (b), (c)
Operation and maintenance of release detection equipment	0480	--	40(a)(3) 45(b)(1), (c)
Repairs of UST system <u>s</u> <u>components</u>	0490	325	33

**WAC 173-360A-0400 Transfer of regulated substances – ~~e~~Owners and operators**

Owners and operators shall ensure delivery of regulated substances to UST systems and withdrawal of regulated substances from waste oil UST systems are authorized and do not result in spills or overfills.

- (1) **Authority to deliver or deposit.** Without the prior written authorization of the department, owners and operators may not accept the delivery or deposit of regulated substances into an UST system if:
- (a) The owners and operators do not have a valid and current license to operate the UST system (WAC 173-360A-0200(1));<sup>197</sup>
  - (b) A valid facility compliance tag is not properly displayed at the UST facility where the UST system is located (RCW 90.76.050(2) and WAC 173-360A-0220(1) and 173-360A-0280(4));
  - (c) A red tag is attached to the fill pipe of the UST system (RCW 90.76.050(2) and WAC 173-360A-0280(4)); or
  - (d) A release from the UST system has been confirmed and the system has not been repaired ~~(WAC 173-360A-750)~~.
- (2) **Authority to withdraw waste oil.** Without the prior written authorization of the department, owners and operators may not allow the withdrawal of regulated substances from a waste oil UST system if:
- (a) The owners and operators do not have a valid and current license to operate the UST system (WAC 173-360A-0200(1));
  - (b) A valid facility compliance tag is not properly displayed at the UST facility where the UST system is located (WAC 173-360A-0220(1) and 173-360A-0280~~(4)~~(5)); or
  - (c) A red tag is attached to the fill pipe of the UST system (WAC 173-360A-0280~~(4)~~(5)).
- (3) **Spill and overfill control.** To prevent spills and overfills during the transfer of regulated substances into an UST system, owners and operators shall ensure that:
- (a) Before the transfer, the volume available in a tank is greater than the volume of regulated substances to be transferred into the tank;
  - (b) During the transfer, the transfer operation is monitored constantly; and
  - (c) The transfer is performed in accordance with a code of practice. The following codes of practice may be used to meet this requirement:
    - (i) National Fire Protection Association, Standard 385, “Standard for Tank Vehicles for Flammable and Combustible Liquids”;

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<sup>197</sup> Incorporated changes to licensing provisions in RCW 90.76.020.

- (ii) American Petroleum Institute, Recommended Practice 1007, "Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles"; or
  - (iii) American Petroleum Institute, Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets."<sup>198</sup>
- (4) Reporting spills and overfills.** Owners and operators shall report, investigate, and clean up any spill or overfill of regulated substances in accordance with WAC 173-360A-0740.

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<sup>198</sup> Consistent with §280.30 of the federal rule, updated the codes of practice that may be used to comply with spill and overfill control requirements.



**WAC 173-360A-0405 Transfer of regulated substances – ~~p~~Product deliverers and waste oil collectors**

Product deliverers shall ensure delivery of regulated substances to UST systems are authorized and do not result in spills or overfills. Waste oil collectors shall ensure withdrawals of regulated substances from waste oil UST systems are authorized.

- (1) **Authority to deliver or deposit.** Without the prior written authorization of the department, a product deliverer may not deliver or deposit regulated substances into an UST system if:
- (a) A valid facility compliance tag is not properly displayed at the UST facility where the UST system is located (RCW 90.76.050(1) and WAC 173-360A-0220(1) and 173-360A-0280(4));
  - (b) A red tag is attached to the fill pipe of the UST system (RCW 90.76.050(1) and WAC 173-360A-0280(4)); or
  - (c) The product deliverer knows that a release from the UST system has been confirmed and the UST system has not been repaired, regardless of whether a facility compliance tag is properly displayed at the UST facility ~~(WAC 173-360A-750)~~.
- (2) **Authority to withdraw waste oil.** Without the prior written authorization of the department, persons may not withdraw regulated substances from a waste oil UST system if:
- (a) A valid facility compliance tag is not properly displayed at the UST facility where the UST system is located (WAC 173-360A-0220(1) and 173-360A-0280~~(4)~~(5)); or
  - (b) A red tag is attached to the fill pipe of the UST system (WAC 173-360A-0280~~(4)~~(5)).
- (3) **Spill and overfill control.** To prevent spills and overfills during the transfer of regulated substances into an UST system, product deliverers shall comply with the requirements in WAC 173-360A-0400(3).<sup>199</sup>
- (4) **Reporting spills and overfills.** Product deliverers and waste oil collectors shall report any spill or overfill of regulated substances, including into spill prevention equipment, immediately to the owner or operator.<sup>200</sup>

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<sup>199</sup> Added requirement that product deliverers must comply with spill and overfill control requirements.

<sup>200</sup> Added requirement that product deliverers and waste oil collectors must report any spill or overfill of regulated substances immediately to the owner or operator.

**WAC 173-360A-0410 Changes in regulated substances**

Owners and operators shall notify the department of any changes in the regulated substances stored in an UST system and ~~demonstrated~~document the compatibility ~~of the UST system with the regulated substances~~ in accordance with the requirements of this section.

- ~~(1) Except as provided under subsection (2) of this section, owners and operators shall notify the department within thirty days of making any change in the regulated substances stored in an UST system (such as gasoline to diesel) using the applicable form provided by the department.~~
- ~~(2) When the regulated substance to be stored in an UST system contains greater than ten percent ethanol or twenty percent biodiesel, owners and operators shall:~~
- ~~(a) Notify the department at least thirty days before making the change using the applicable form provided by the department; and~~
- ~~(b) Demonstrate the compatibility of the UST system with the regulated substances to be stored in accordance with WAC 173-360A-350. The demonstration must be documented on the notification form.~~
- (1) When changing to a hazardous substance, a regulated substance containing greater than ten percent ethanol or twenty percent biodiesel, or any other regulated substance identified by the department, owners and operators shall notify the department and report compliance with the compatibility requirements in WAC 173-360A-0350(2) at least thirty days before making the change using the applicable form provided by the department. <sup>201</sup>
- (2) When changing to any other regulated substance, owners and operators shall notify the department within thirty days after making the change using the applicable form provided by the department.

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<sup>201</sup> Consistent with §280.32 of the federal rule, changed when the department must be notified when the regulated substances stored in an UST system are changed to substances containing greater than ten percent ethanol or twenty percent biodiesel or other substances identified by the department (from 30 days after to 30 days before). Unlike the federal rule, this requirement also applies to changes to hazardous substances.

**WAC 173-360A-0420 Operation and maintenance walkthrough inspections<sup>202</sup>**

Owners and operators shall comply with the ~~periodic~~ walkthrough inspection requirements of this section to ensure UST systems are properly operated and maintained.

(1) **Inspections.** Operation and maintenance walkthrough inspections must be performed in accordance with the following requirements or a code of practice that provides for comparable inspections. The following code of practice may be used to meet this requirement: Petroleum Equipment Institute, Recommended Practice 900, "Recommended Practices for the Inspection and Maintenance of UST Systems."

(a) **Thirty-day inspections.** ~~At least every thirty days, the following UST system components must be inspected:~~Spill prevention equipment and release detection equipment must be inspected at least every thirty days. However, for UST systems receiving deliveries of regulated substances less frequently than every thirty days, spill prevention equipment only needs to be inspected prior to each delivery.

(i) **Spill prevention equipment.** ~~For UST systems receiving deliveries of regulated substances less frequently than every thirty days, the equipment only needs to be checked prior to each delivery. The inspection~~Inspections of spill prevention equipment must include:

- (A) Visually checking the spill prevention equipment for damage;
- (B) Removing any liquid or debris from the spill prevention equipment;
- (C) Checking for and removing obstructions in the fill pipe;
- (D) Checking the fill cap to make sure it is securely on the fill pipe; and
- (E) For double-walled spill prevention equipment with interstitial monitoring, checking for a leak in the interstitial area; ~~and,~~

(ii) **Release detection equipment.** ~~The inspection~~Inspections of release detection equipment must include:

- (A) Checking to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and
- (B) Ensuring records of release detection testing are reviewed and current and the results are conclusive.

(b) **Annual inspections.** ~~At least annually, the following equipment must be checked:~~Containment sumps and hand-held release detection equipment must be inspected at least annually.

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<sup>202</sup> Consistent with §280.36 and §280.252(c) of the federal rule, added walkthrough inspection requirements. Except as otherwise noted, the requirements are the same as in the federal rule.

- (i) **Containment sumps.** ~~The inspection~~ Inspections of containment sumps must include:
  - (A) Visually checking the containment sumps for damage, leaks to the containment area, or releases to the environment;
  - (B) Removing any liquid ~~(in contained sumps)~~ or debris from the containment sumps; and
  - (C) For double-walled containment sumps with interstitial monitoring, checking for a leak in the interstitial area, and
- (ii) **Hand-held release detection equipment.** ~~The inspection~~ Inspections of hand-held release detection equipment must confirm the operability and serviceability of devices such as tank gauge sticks and groundwater bailers.
- (c) **Additional inspections for airport hydrant systems.** For airport hydrant systems, ~~the following additional areas~~ hydrant pits and hydrant piping vaults must also be ~~checked~~ inspected at least every thirty days, if confined spaced entry is not required under 29 ~~CFR~~ C.F.R. Part 1910 according to the Occupational Safety and Health Administration, or at least annually if confined spaced entry is required~~;~~.
- (i) **Hydrant pits.** ~~The inspection~~ Inspections of hydrant pits must include:
  - (A) Visually checking for any damage;
  - (B) Removing any liquid or debris; and
  - (C) Checking for any leaks~~;~~ and.
- (ii) **Hydrant piping vaults.** ~~The inspection~~ Inspections of hydrant piping vaults must include checking for any hydrant piping leaks.
- (2) **Repairs.** Any UST system component that is not operating properly must be repaired in accordance with WAC 173-360A-0490 or replaced in accordance with WAC 173-360A-0300.
- (3) **Documentation.** Operation and maintenance walkthrough inspections must be documented in a checklist provided by the department or the code of practice used to perform the inspection.<sup>203</sup> The following information must be included in the checklist:
  - (a) A list of each UST system component inspected;
  - (b) For each component inspected, whether the component needed action taken to correct an issue; and
  - (c) For each component needing action taken to correct an issue, a description of the actions taken.

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<sup>203</sup> Specified that forms used to document walkthrough inspections must be provided by Ecology or in the code of practice used to perform inspection. The federal rule does not specify.

- (4) **Recordkeeping.** Records of operation and maintenance walkthrough inspections must be maintained ~~in accordance with WAC 173-360A-240~~ for at least three years.<sup>204</sup> If spill prevention equipment is checked less frequently than every thirty days due to infrequent deliveries, delivery records must also be maintained in accordance with this requirement.
- (5) **Compliance dates.** ~~Owners and operators shall begin the periodic~~The operation and maintenance walkthrough inspections required in this section must begin by one year after effective date of rule, ~~except as provided for periodic monitoring of double-walled containment sumps used for interstitial monitoring and spill prevention equipment under WAC 173-360A-450(5)(b) and 173-360A-460(5)(b).~~the following dates:<sup>205</sup>
- (a) For UST systems installed after effective date of rule, upon installation; and
- (b) For UST systems installed on or before effective date of rule, by one year after effective date of rule.

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<sup>204</sup> Specified that records of walkthrough inspections must be maintained for three years. The federal rule specifies one year.

<sup>205</sup> Specified that walkthrough inspections must begin upon installation (for systems installed after effective date) or one year after effective date (for systems installed on or before effective date). The federal rule specifies three years after effective date for all systems.

**WAC 173-360A-0430 Operation and maintenance of corrosion protection**

Owners and operators of UST systems with corrosion protection shall comply with the requirements of this section to ensure the equipment is operating properly and will prevent releases to the environment due to corrosion until the UST system is permanently closed or undergoes a change-in-service.

- (1) Corrosion protection systems.** 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 ~~continuously~~ in contact with the ground ~~or an electrolyte~~.
- (2) Testing of cathodic protection systems.** Upon installation or repair, between one and six months after installation or repair, and every three years thereafter, cathodic protection systems must be tested as follows to ensure they are operating properly.
  - (a) Performance.** Cathodic protection tests must be performed:
    - (i) By or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter; and
    - (ii) In accordance with a code of practice. The following codes of practice may be used to meet this requirement:<sup>206</sup>
      - (A) National Association of Corrosion Engineers International, Test Method TM0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems";
      - (B) National Association of Corrosion Engineers International, Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems";
      - (C) Steel Tank Institute, Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3R USTs";
      - (D) National Association of Corrosion Engineers International, Standard Practice 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or
      - (E) National Association of Corrosion Engineers International, Standard Practice 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."
  - (b) Repairs.** ~~Cathodic protection systems that are not operating properly must be recalibrated or repaired in accordance with WAC 173-360A-490 or replaced in accordance with WAC 173-360A-300.~~ If a cathodic protection system is not operating properly:

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<sup>206</sup> Consistent with §280.31 of the federal rule, updated the codes of practice that may be used to comply with cathodic protection testing requirements.

- (i) A corrosion expert must be notified within twenty-four hours;<sup>207</sup> and
    - (ii) The cathodic protection system must be repaired in accordance with WAC 173-360A-0490 or replaced in accordance with WAC 173-360A-0300, as specified by the corrosion expert.
  - (c) **Reporting.** Cathodic protection tests must be ~~certified and reported in accordance with WAC 173-360A-230(3)(b)~~ reported to the department within thirty days using the applicable checklist provided by the department. The checklist must be completed by the service provider.
  - (d) **Recordkeeping.** Records of cathodic protection tests must be maintained ~~in accordance with WAC 173-360A-240~~ for at least six years.<sup>208</sup>
- (3) **Inspections of impressed current cathodic protection systems.** At least every sixty days, impressed current cathodic protection systems must be inspected to ensure the rectifier is on and the equipment is operating properly.
- (a) **Performance.** Rectifier inspections must include checking whether the rectifier is turned on and whether the voltage and amperage readings are within the ranges specified during the last cathodic protection test.<sup>209</sup>
  - ~~(b) **Repairs.** Cathodic protection systems must be repaired in accordance with WAC 173-360A-490 or replaced in accordance with WAC 173-360A-300 if:~~
    - ~~(i) **The rectifier is not functioning; or**~~
    - ~~(ii) **The voltage or amperage readings are not within the range specified for the system, unless a cathodic protection tester or corrosion expert determines that a repair is not necessary.**~~
  - (b) **Repairs.** If a rectifier is not functioning or the voltage or amperage readings are not within the range specified for the cathodic protection system:<sup>210</sup>
    - (i) **A corrosion expert must be notified within twenty-four hours;<sup>211</sup> and**
    - (ii) **The cathodic protection system must be repaired in accordance with WAC 173-360A-0490 or replaced in accordance with WAC 173-360A-0300, as specified by the corrosion expert.**

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<sup>207</sup> Added requirement that corrosion expert must be notified within 24 hours if cathodic protection system is not operating properly.

<sup>208</sup> Changed record retention for cathodic protection tests from last two tests, which is the same as the federal rule, to six years (two compliance inspections). Tests are performed every three years.

<sup>209</sup> Clarified requirements for performing rectifier inspections.

<sup>210</sup> Clarified when rectifier must be repaired.

<sup>211</sup> Added requirement that corrosion expert must be notified within 24 hours if the cathodic protection system is not operating properly.

- (c) **Documentation.** Rectifier inspections must be documented on the checklist provided by the department or on another ~~document~~record that includes the same information.<sup>212</sup>
- (d) **Recordkeeping.** Records of rectifier inspections must be maintained ~~in accordance with WAC 173-360A-240~~ for at least three years.<sup>213</sup>

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<sup>212</sup> Clarified how rectifier inspections must be documented.

<sup>213</sup> Changed record retention for rectifier inspections from last three inspections, which is the same as the federal rule, to three years (one compliance inspection).



**WAC 173-360A-0440 Operation and maintenance of internal linings**

Owners and operators of UST systems with internal linings used to meet the upgrade requirements in WAC 173-360A-0320~~(2)(a)(i)~~ shall comply with the requirements of this section.

- (1) **Inspections.** Within ten years after lining and every five years thereafter, lined tanks must be internally inspected to determine whether the tanks remain structurally sound and the linings are still performing in accordance with the original design specifications. Internal inspections must be performed:
- (a) By or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter; and
  - (b) In accordance with a code of practice. The following codes of practice may be used to meet this requirement:<sup>214</sup>
    - (i) American Petroleum Institute, Recommended Practice 1631, “Interior Lining and Periodic Inspection of Underground Storage Tanks”;
    - (ii) National Leak Prevention Association, Standard 631, Chapter B, “Future Internal Inspection Requirements for Lined Tanks”; or
    - (iii) Ken Wilcox Associates, Recommended Practice, “Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera.”
- (2) **Repairs.**
- (a) Following invasive internal inspections, tanks must be repaired and tightness tested in accordance with WAC 173-360A-0490.
  - (b) Lined tanks failing an internal inspection must be repaired and tightness tested in accordance with WAC 173-360A-0490. Lined tanks that cannot be repaired in accordance with a code of practice must be permanently closed in accordance with WAC 173-360A-0810.<sup>215</sup>
- (3) **Reporting.** Internal inspections of lined tanks must be ~~certified and reported in accordance with WAC 173-360A-230(3)(b)~~reported to the department within thirty days using the applicable checklist provided by the department. The checklist must be completed by the service provider.
- (4) **Recordkeeping.** Records of internal inspections of lined tanks must be maintained ~~in accordance with WAC 173-360A-490~~ until the UST system is permanently closed or undergoes a change-in-service.<sup>216</sup>

<sup>214</sup> Consistent with §280.21(b) of the federal rule, updated the codes of practice that may be used to comply with internal inspection requirements for lined tanks.

<sup>215</sup> Consistent with §280.21(b)(1)(ii) of the federal rule, added requirement that lined tanks must be permanently closed if the lining cannot be repaired.

<sup>216</sup> Clarified record retention requirement for internal inspections of lined tanks (same as for repairs).

**WAC 173-360A-0450**    **Operation and maintenance of containment sumps used for interstitial monitoring of piping<sup>217</sup>**

Owners and operators of UST systems with containment sumps used for interstitial monitoring of piping shall comply with the requirements of this section and the walkthrough inspection requirements in WAC 173-360A-0420 to ensure the equipment is operating properly and will prevent releases to the environment.

- (1) Periodic monitoring or testing.** Containment sumps used for interstitial monitoring of piping must meet one of the following requirements:
- (a) The containment sump is double-walled and the integrity of both walls is monitored at least annually as part of the walkthrough inspection in ~~(WAC 173-360A-0420(1)(b)(i)(C)).~~ If monitoring is discontinued, the containment sump must be tightness tested in accordance with (b) of this subsection within thirty days; or
  - (b) The containment sump is tightness tested at least every three years to ensure it is liquid tight. The tightness test must be performed:
    - (i) By or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter; <sup>218</sup> and
    - (ii) Using a vacuum, pressure, or liquid test (including a low level liquid test) performed in accordance with:
      - (A) The manufacturer's instructions;
      - (B) A code of practice. The following code of practice may be used to meet this requirement: Petroleum Equipment Institute, Recommended Practice 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities;" or
      - (C) Requirements determined by the department to be no less protective of human health and the environment. <sup>219</sup>
- (2) Repairs.** Containment sumps that are not operating properly must be repaired in accordance with WAC 173-360A-0490 or replaced in accordance with WAC 173-360A-0300.
- (3) Reporting.** Tightness tests of containment sumps must be ~~certified and reported in accordance with WAC 173-360A-230(3)(b)~~ reported to the department within thirty days using the applicable

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<sup>217</sup> Consistent with §280.35 of the federal rule, added operation and maintenance requirements for containment sumps used for interstitial monitoring of piping. Except as otherwise noted, the requirements are the same as in the federal rule.

<sup>218</sup> Specified that tightness tests of containment sumps must be performed by certified service provider. The federal rule does not specify who may perform tests.

<sup>219</sup> Clarified that low liquid level integrity tests may be used to meet the testing requirements for containment sumps, as approved by EPA under the federal rule.

checklist provided by the department. The checklist must be completed by the service provider.<sup>220</sup>

**(4) Recordkeeping.** ~~Records of periodic monitoring and tightness tests of containment sumps must be maintained in accordance with WAC 173-360A-240.~~

- (a) Records of periodic monitoring of containment sumps must be maintained for at least three years. The records must demonstrate that the sumps are double-walled and the integrity of both walls is periodically monitored. ~~The records must be maintained for at least three years.~~<sup>221</sup>
- (b) Records of tightness tests of containment sumps must be maintained for at least six years.<sup>222</sup>

**(5) Compliance dates.** ~~Owners and operators shall begin t~~The periodic monitoring or tightness testing of containment sumps required under this section must begin by the following dates:

- (a) For UST systems installed after **[effective date of rule]**, upon installation; and
- (b) For UST systems installed on or before **[effective date of rule]**:<sup>223</sup>
  - (i) By **[two years after effective date of rule]**, if the identification number on the facility compliance tag for the UST facility where the system is located is an even number; and
  - (ii) By **[three years after effective date of rule]**, if the identification number on the facility compliance tag for the UST facility where the system is located is an odd number or if the UST facility does not have a facility compliance tag.

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<sup>220</sup> Specified that tightness tests of containment sumps must be reported. The federal rule does not require reporting.

<sup>221</sup> Specified that records of periodic monitoring of containment sumps must be retained for three years (one inspection cycle). The federal rule requires such records to be maintained for as long as the equipment is periodically monitored.

<sup>222</sup> Specified that records of tightness tests of containment sumps must be retained for six years (two inspection cycles). The federal rule requires such records to be maintained for three years.

<sup>223</sup> Specified that compliance dates for previously installed UST systems depends on whether the identification number on the facility compliance tag is even (two years after effective date) or odd (three years after effective date). The federal rule requires compliance within three years. This is intended to avoid having the deadline for testing and inspections by service providers of all previously installed UST systems (more than 9,000) be at the same time, which has been an implementation problem in other states.

**WAC 173-360A-0460 Operation and maintenance of spill prevention equipment<sup>224</sup>**

Owners and operators of UST systems with spill prevention equipment shall comply with the requirements of this section and the walkthrough inspection requirements in WAC 173-360A-0420 to ensure the equipment is operating properly and will prevent releases to the environment.

- (1) **Periodic monitoring or testing.** Spill prevention equipment must meet one of the following requirements:
- (a) The equipment is double-walled and the integrity of both walls is monitored at least every thirty days, or prior to delivery of regulated substances if less frequent, as part of the walkthrough inspection ~~{in WAC 173-360A-0420(1)(a)(i)(E)}~~. If monitoring is discontinued, the equipment must be tightness tested in accordance with (b) of this subsection within thirty days; or
  - (b) The equipment is tightness tested at least every three years. The tightness test must be performed:
    - (i) By or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter;<sup>225</sup> and
    - (ii) Using a vacuum, pressure, or liquid test performed in accordance with manufacturer's instructions or a code of practice. The following code of practice may be used to meet this requirement: Petroleum Equipment Institute, Recommended Practice 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities."
- (2) **Repairs.** Spill prevention equipment that is not operating properly must be repaired in accordance with WAC 173-360A-0490 or replaced in accordance with WAC 173-360A-0300.
- (3) **Reporting.** Tightness tests of spill prevention equipment must be ~~certified and reported in accordance with WAC 173-360A-230(3)(b)~~ reported to the department within thirty days using the applicable checklist provided by the department. The checklist must be completed by the service provider.<sup>226</sup>
- (4) **Recordkeeping.** ~~Records of periodic monitoring and tightness tests of spill prevention equipment must be maintained in accordance with WAC 173-360A-240.~~
- (a) Records of periodic monitoring of spill prevention equipment must be maintained for at least three years. The records must demonstrate that the equipment is double-walled

<sup>224</sup> Consistent with §280.35 of the federal rule, added operation and maintenance requirements for spill prevention equipment. Except as otherwise noted, the requirements are the same as in the federal rule.

<sup>225</sup> Specified that tightness tests of spill prevention equipment must be performed by a certified service provider. The federal rule does not specify who may perform the tests.

<sup>226</sup> Specified that tightness tests of spill prevention equipment must be reported. The federal rule does not require reporting.

and the integrity of both walls is periodically monitored. ~~The records must be maintained for at least three years.~~<sup>227</sup>

- (b) Records of tightness tests of spill prevention equipment must be maintained for at least six years.<sup>228</sup>

**(5) Compliance dates.** ~~Owners and operators shall begin to~~The periodic monitoring or tightness testing of spill prevention equipment required under this section must begin by the following dates:

- (a) For UST systems installed after [effective date of rule], upon installation; and
- (b) For UST systems installed on or before [effective date of rule].<sup>229</sup>
- (i) By [two years after effective date of rule], if the identification number on the facility compliance tag for the UST facility where the system is located is an even number; and
- (ii) By [three years after effective date of rule], if the identification number on the facility compliance tag for the UST facility where the system is located is an odd number or if the UST facility does not have a facility compliance tag.

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<sup>227</sup> Specified that records of periodic monitoring of spill prevention equipment must be retained for three years (one inspection cycle). The federal rule requires such records to be maintained for as long as the equipment is periodically monitored.

<sup>228</sup> Specified that records of tightness tests of spill prevention equipment must be retained for six years (two inspection cycles). The federal rule requires such records to be maintained for three years.

<sup>229</sup> Specified that compliance dates for previously installed UST systems depends on whether the identification number on the facility compliance tag is even (two years after effective date) or odd (three years after effective date). The federal rule requires compliance within three years. This is intended to avoid having the deadline for testing and inspections by service providers of all previously installed UST systems (more than 9,000) be at the same time, which has been an implementation problem in other states.

**WAC 173-360A-0470 Operation and maintenance of overfill prevention equipment<sup>230</sup>**

Owners and operators of UST systems with overfill prevention equipment shall comply with the requirements of this section to ensure the equipment is operating properly and will prevent releases to the environment.

- (1) Inspections.** Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that the equipment is set to activate at the applicable level specified in WAC 173-360A-~~320~~<sup>0310</sup>(8) and will activate when regulated substances reach that level. Inspections must be performed:

  - (a) By or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter;<sup>231</sup> and
  - (b) In accordance with the manufacturer's instructions or a code of practice. The following code of practice may be used to meet this requirement: Petroleum Equipment Institute, Recommended Practice 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities."
- (2) Repairs.** Overfill prevention equipment that is not operating properly must be repaired in accordance with WAC 173-360A-0490 or replaced in accordance with WAC 173-360A-0300. Flow restrictors used in vent lines that are not operating properly must be replaced with another type of overfill prevention equipment (WAC 173-360A-0310(8)(c)).<sup>232</sup>
- (3) Reporting.** Overfill prevention equipment inspections must be ~~certified and reported in accordance with WAC 173-360A-230(3)(b)~~ reported to the department within thirty days using the applicable checklist provided by the department. The checklist must be completed by the service provider.<sup>233</sup>
- (4) Recordkeeping.** Records of overfill prevention equipment inspections must be maintained ~~in accordance with WAC 173-360A-240~~ for at least six years.<sup>234</sup>
- (5) Compliance dates.** ~~Owners and operators shall begin to~~ The inspections of overfill prevention equipment ~~inspections~~ required under this section must begin by the following dates:

  - (a) For UST systems installed after **[effective date of rule]**, upon installation; and

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<sup>230</sup> Consistent with §280.35 of the federal rule, added operation and maintenance requirements of overfill prevention equipment. Except as otherwise noted, the requirements are the same as in the federal rule.

<sup>231</sup> Specified that inspections of overfill prevention equipment must be performed by a certified service provider. The federal rule does not specify who may perform the inspections.

<sup>232</sup> Added requirement that flow restrictors in vent lines needing repairs must be replaced with another type of overfill prevention equipment.

<sup>233</sup> Specified that inspections of overfill prevention equipment must be reported. The federal rule does not require reporting.

<sup>234</sup> Specified that records of overfill prevention equipment must be retained for six years (two inspection cycles). The federal rule requires such records to be maintained for three years.

- (b) For UST systems installed on or before [effective date of rule].<sup>235</sup>
- (i) By [two years after effective date of rule], if the identification number on the facility compliance tag for the UST facility where the system is located is an even number; and
  - (ii) By [three years after effective date of rule], if the identification number on the facility compliance tag for the UST facility where the system is located is an odd number or if the UST facility does not have a facility compliance tag.

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<sup>235</sup> Specified that compliance dates for previously installed UST systems depends on whether the identification number on the facility compliance tag is even (two years after effective date) or odd (three years after effective date). The federal rule requires compliance within three years. This is intended to avoid having the deadline for testing and inspections by service providers of all previously installed UST systems (more than 9,000) be at the same time, which has been an implementation problem in other states.

**WAC 173-360A-0480 Operation and maintenance of release detection equipment<sup>236</sup>**

Owners and operators shall operate and maintain release detection equipment in accordance with the requirements of this section and the walkthrough inspection requirements in WAC 173-360A-0420 to ensure the equipment is operating properly and will detect leaks from tanks and piping.

- (1) General.** Release detection equipment must be operated and maintained in accordance with the manufacturer's instructions or a code of practice. The following code of practice may be used to meet this requirement: Petroleum Equipment Institute, Recommended Practice 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities."
- (2) Testing.** Release detection equipment that is electronic or mechanical must be tested at least annually.
  - (a) Performance.** Tests of release detection equipment must be performed:
    - (i) By or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter;<sup>237</sup> and
    - (ii) In accordance with the ~~manufacturer's instructions or a code of practice. The code of practice specified in subsection (1) of this section may be used to meet this requirement~~requirements in subsection (1) of this section.
  - (b) Minimum.** Tests of release detection equipment must include the following, as applicable to the UST system:
    - (i) Automatic tank gauges and other controllers: ~~t~~Test proper operation of alarms, verify system configuration, and test battery backups;
    - (ii) Probes and sensors: ~~i~~Inspect for residual buildup, ensure floats move freely, ensure shafts are not damaged, ensure cables are free of kinks and breaks, and test alarm operability and communication with controller;
    - (iii) Automatic line leak detectors: ~~t~~Test operation to determine whether the detectors meet the performance standards in WAC 173-360A-0640 by simulating a leak from the entire piping run being monitored;
    - (iv) Vacuum pumps and pressure gauges: ~~e~~Ensure proper communication with sensors and controller; and
    - (v) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ~~e~~Ensure proper operation.

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<sup>236</sup> Consistent with §280.40(a)(3) and §280.45(b)(1) and (c) of the federal rule, added operation and maintenance requirements for release detection equipment. Except as otherwise noted, the requirements are the same as in the federal rule.

<sup>237</sup> Specified that tests of release detection equipment must be performed by a certified service provider. The federal rule does not specify who may perform the tests.



- (3) **Repairs.** Release detection equipment that is not operating properly must be recalibrated or otherwise repaired in accordance with WAC 173-360A-0490 or replaced in accordance with WAC 173-360A-0300.
- (4) **Reporting.** Tests of release detection equipment must be ~~certified and reported in accordance with WAC 173-360A-230(3)(b)~~ reported to the department within thirty days using the applicable checklist provided by the department. The checklist must be completed by the service provider.<sup>238</sup> The following must be documented in the checklist:
- (a) List of each component tested;
  - (b) For each component tested, whether the component needed action to correct an issue; and
  - (c) For each component needing action to correct an issue, a description of the actions taken.
- (5) **Recordkeeping.** Records of operation and maintenance of release detection equipment, including any tests required under this section, must be maintained ~~in accordance with WAC 173-360A-240~~ for at least three years. Any schedules of required calibration and maintenance provided by the equipment manufacturer must be maintained for as long as the equipment is used.<sup>239</sup>
- (6) **Compliance date.** ~~Owners and operators shall begin testing of release detection equipment required under this section~~ must begin by ~~three years after effective date of rule~~ the following dates:<sup>240</sup>
- (a) For UST systems installed after effective date of rule, upon installation; and
  - (b) For UST systems installed on or before effective date of rule:
    - (i) By two years after effective date of rule, if the identification number on the facility compliance tag for the UST facility where the system is located is an even number; and
    - (ii) By three years after effective date of rule, if the identification number on the facility compliance tag for the UST facility where the system is located is an odd number or if the UST facility does not have a facility compliance tag.

<sup>238</sup> Specified that tests of release detection equipment must be reported. The federal rule does not require reporting.

<sup>239</sup> Specified that schedules of required calibration and maintenance of release detection equipment must be maintained for as long as the equipment is used. The federal rule requires such records to be maintained for five years.

<sup>240</sup> Specified that testing of release detection equipment must begin upon installation (for systems installed after effective date) or either two or three years after effective date (for systems installed on or before effective date) based on whether the facility compliance tag number is even or odd. The federal rule requires compliance within three years for all UST systems.

**WAC 173-360A-0490 Repairs of UST systems components**

Owners and operators shall ensure that UST system components that do not meet applicable performance standards ~~and~~or upgrade requirements or that are not operating properly are repaired or replaced.<sup>241</sup> Owners and operators shall ensure that repairs ~~of UST system components~~ are performed in accordance with the requirements of this section and will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances.

**(1) Performance of repairs.** Repairs must be performed:

- (a) By or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter; and
- (b) In accordance with the manufacturer's instructions or a code of practice. The following codes ~~of practice~~ may be used to meet this requirement:<sup>242</sup>
  - (i) National Fire Protection Association, Standard 30, "Flammable and Combustible Liquids Code";
  - (ii) American Petroleum Institute, Recommended Practice 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines";
  - (iii) American Petroleum Institute, Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";
  - (iv) National Fire Protection Association, Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair";
  - (v) National Leak Prevention Association, Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks";
  - (vi) Steel Tank Institute, Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3R Tanks";
  - (vii) National Association of Corrosion Engineers International, Standard Practice 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or
  - (viii) Fiberglass Tank and Pipe Institute, Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks."

**(2) Standards for repairs.** Repaired UST system components must meet the applicable performance standards ~~and~~or upgrade requirements in Part 3 of this chapter.

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<sup>241</sup> Consistent with definition of "repair" in §280.12 of the federal rule, clarified that "repairs" include any action to restore to proper operating condition any UST system component that is not operating properly.

<sup>242</sup> Consistent with §280.33(a) of the federal rule, updated the codes of practice that may be used to comply with requirements for performing repairs.

- (3) **Replacement ~~required~~ of metal piping and fittings.** (a) Metal piping and fittings that have released regulated substances due to corrosion or other damage must be replaced.
- ~~(a) Metal piping and fittings that have released regulated substances due to corrosion or other damage must be replaced.~~
- ~~(b) Flow restrictors in vent lines used to comply with overfill prevention requirements in WAC 173-360A-310(8) that do not meet performance standards or are not operating properly must be replaced with another type of overfill prevention (WAC 173-360A-310(8)(c)).~~
- ~~(4) Permanent closure required.~~ Tanks upgraded with liners under WAC 173-360A-320(2)(a) must be permanently closed if the lining cannot be repaired in accordance with a code of practice.
- ~~(5)~~(4) **Tests and inspections after repairs.** Repaired UST system components must be tested ~~and~~or inspected after the repair as specified in this subsection.
- (a) **Tanks and piping.** Repaired tanks and piping must be tightness tested as specified in WAC 173-360A-0635 and 173-360A-0650 within thirty days of the repair unless another test method is used that is determined by the department to be no less protective of human health and the environment.
- ~~(b)~~ Except as provided under ~~(c)~~(b) of this subsection, ~~the~~ cathodic protection systems of repaired tanks or piping must be tested as specified in WAC 173-360A-~~330~~0430(2) within six months ~~after~~of the repair;
- ~~(c)~~(b) **Cathodic protection systems.** Repaired cathodic protection systems must be tested as specified in WAC 173-360A-~~330~~0430(2) at the time of the repair and between one and six months after the repair. ~~The cathodically protected tanks or piping must also be tightness tested as specified in WAC 173-360-635 or 173-360-650 within thirty days of the repair.~~
- ~~(d)~~(c) **Secondary containment areas of tanks and piping.** Repaired secondary containment areas of tanks and piping used for interstitial monitoring must be tightness tested as follows ~~as specified in subsection (6) of this section~~ within thirty days of the repair.<sup>243</sup>
- ~~(6) Testing of secondary containment areas of tanks and piping. Secondary containment areas of tanks and piping used for interstitial monitoring must be tightness tested in accordance with this subsection.~~
- ~~(a)~~(i) **Performance.** Tightness tests of secondary containment areas of tanks and piping must be performed:

<sup>243</sup> Consistent with §280.33(d) of the federal rule, added requirement that repaired secondary containment areas of tanks and piping used for interstitial monitoring must be tightness tested within thirty days of the repair. Except as otherwise noted, the requirements are the same as in the federal rule.

~~(i)(A)~~ By or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter;<sup>244</sup> and

~~(ii)(B)~~ In accordance with the manufacturer's instructions or a code of practice. The following codes of practice may be used to meet this requirement:

~~(A)(I)~~ Steel Tank Institute Recommended Practice R012, "Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks";

~~(B)(II)~~ Fiberglass Tank and Pipe Institute Protocol, "Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space"; or

~~(C)(III)~~ Petroleum Equipment Institute, Recommended Practice 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities.

~~(b)(ii)~~ **Reporting.** Tightness tests of secondary containment areas of tanks and piping must be certified and reported in accordance with WAC 173-360A-230(3)(b) reported to the department within thirty days using the applicable checklist provided by the department. The checklist must be completed by the service provider.<sup>245</sup>

~~(c)(iii)~~ **Recordkeeping.** Records of tightness tests of secondary containment areas of tanks and piping must be maintained in accordance with WAC 173-360A-240 for at least three years.<sup>246</sup>

~~(e)(d)~~ **Containment sumps used for interstitial monitoring.** Repaired containment sumps used for interstitial monitoring of piping must be tightness tested as specified in WAC 173-360A-0450 within thirty days of the repair.<sup>247</sup>

~~(f)~~ ~~Repaired under dispenser containment sumps must be tested as specified in WAC 173-360A-450 within thirty days of the repair, regardless of whether the sumps are used for interstitial monitoring of piping.~~

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<sup>244</sup> Specified that tightness tests of secondary containment areas of tanks and piping must be performed by a certified service provider. The federal rule does not specify who may perform such tests.

<sup>245</sup> Specified that tightness tests of secondary containment areas of tanks and piping must be reported. The federal rule does not require reporting.

<sup>246</sup> Specified that records of tightness tests of secondary containment areas of tanks and piping must be retained for three years (one inspection cycle). The federal rule does not clearly specify record retention for such tests.

<sup>247</sup> Consistent with §280.33(d) of the federal rule, added requirement that repaired containment sumps used for interstitial monitoring of piping must be tested within thirty days of the repair.

~~(e)~~(e) **Spill prevention equipment.** Repaired spill prevention equipment must be tightness tested as specified in WAC 173-360A-0460 within thirty days of the repair.<sup>248</sup>

~~(f)~~(f) **Overfill prevention equipment.** Repaired overfill prevention equipment must be inspected as specified in WAC 173-360A-0470 within thirty days of the repair.<sup>249</sup>

~~(g)~~(g) **Release detection equipment.** Repaired electronic or mechanical release detection equipment must be tested as specified in WAC 173-360A-0480 within thirty days of the repair.<sup>250</sup>

~~(6) Testing of secondary containment areas of tanks and piping.~~ Secondary containment areas of tanks and piping used for interstitial monitoring must be tightness tested in accordance with this subsection.

~~(a) Performance.~~ Tightness tests of secondary containment areas of tanks and piping must be performed:

~~(i) By or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter; and~~

~~(ii) In accordance with the manufacturer's instructions or a code of practice. The following codes of practice may be used to meet this requirement:~~

~~(A) Steel Tank Institute Recommended Practice R012, "Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks";~~

~~(B) Fiberglass Tank and Pipe Institute Protocol, "Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple Wall Tanks with Dry Annular Space"; or~~

~~(C) Petroleum Equipment Institute, Recommended Practice 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities.~~

~~(b) Reporting.~~ Tightness tests of secondary containment areas of tanks and piping must be certified and reported in accordance with WAC 173-360A-230(3)(b).

~~(c) Recordkeeping.~~ Records of tightness tests of secondary containment areas of tanks and piping must be maintained in accordance with WAC 173-360A-240 for at least three years.

<sup>248</sup> Consistent with §280.33(f) of the federal rule, added requirement that repaired spill prevention equipment must be tested within thirty days of the repair.

<sup>249</sup> Consistent with §280.33(f) of the federal rule, added requirement that repaired overfill prevention equipment must be inspected within thirty days of the repair.

<sup>250</sup> Added requirement that electronic or mechanical repaired release detection equipment must be tested within thirty days of the repair. The federal rule does not require such testing upon repair.

- (7)(5) **Reporting repairs.** Repairs ~~of UST-system components~~ must be ~~certified and reported in accordance with WAC 173-360A-230(3)(b)~~ reported to the department within thirty days using the applicable checklist provided by the department. The checklist must be completed by the service provider.
- (8)(6) **Recordkeeping.** Records of repairs ~~of UST-system components~~ must be maintained ~~in accordance with WAC 173-360A-240~~ until the UST system is permanently closed or undergoes a change-in-service. Records of tests and inspections of repaired UST system components must be maintained in accordance with the applicable requirements of this chapter.

## **Part 5:**

# **Operator Training**

## Crosswalk of Sections

TOPIC	AMENDED RULE §	CURRENT RULE §	FEDERAL RULE §
Operator training	Part 5	Part 7	Subpart J
Purpose and applicability	0500	700	240
Designation of <u>Class A, Class B, and Class C</u> operators	0510	710	241
Timing of operator training	0520	720	243
<del>Training</del> Requirements for operators <u>training</u>	0530	730	242
Retraining requirements for Class A and Class B operators	0540	740	244
Operation and maintenance plans	0545	745	--
Emergency response requirements	0550	750	--
Documentation and recordkeeping	0560	760	245



**WAC 173-360A-0500 Purpose and applicability**

- (1) This part establishes a mandatory operator training program for three distinct classes of individuals who operate and maintain UST systems. The program is designed to prevent and mitigate releases from UST systems by ensuring that those individuals know how to properly operate and maintain those systems and respond to any spills, overfills, leaks, or releases from those systems.
- (2) Owners and operators of an UST system shall continuously comply with the requirements of this part from installation until permanent closure or change-in-service of the UST system, including during any period of temporary closure.

**WAC 173-360A-0510 Designation of Class A, Class B, and Class C operators<sup>251</sup>**

UST system owners and operators shall designate individuals as Class A, Class B, and Class C operators in accordance with the requirements of this section.

- (1) At least one Class A and one Class B operator must be designated for each UST system or group of systems at an UST facility.
- (2) Each individual who meets the definition of Class C operator at an UST facility must be designated as a Class C operator.<sup>252</sup>
- (3) Separate individuals may be designated for each operator class or an individual may be designated to more than one operator class.

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<sup>251</sup> Consistent with §280.241 of the federal rule, edited section header to help distinguish between “operators” and “Class A, B, and C operators,”

<sup>252</sup> Consistent with the definition of “Class C operator” in §280.12 of the federal rule, eliminated requirement that a Class C operator must be an employee.

**WAC 173-360A-0520    Timing of operator training**

UST system owners and operators shall ensure that each Class A, Class B, and Class C operator is trained in accordance with the requirements in WAC 173-360A-0530 by the dates specified in this section.<sup>253</sup>

- (1)     Class A and Class B operators must be trained within sixty days of assuming duties of the operator class.
- (2)     Class C operators must be trained before assuming duties of the operator class.

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<sup>253</sup> Eliminated dates for initial compliance with operator training requirements. All compliance dates for previously deferred UST systems, including operator training, will be specified in Part 1 of the Chapter.

**WAC 173-360A-0530 Requirements for operator training<sup>254</sup>**

UST system owners and operators shall ensure that each Class A, Class B, and Class C operator is trained in accordance with the requirements of this section. Any individual designated for more than one operator class must successfully complete the training required for each operator class that the individual is designated. The training required under this section for Class A and Class B operators is the same.

**(1) Class A and Class B operators.** Each individual designated as a Class A and/or a Class B operator must successfully complete a classroom, computer, or field-based training program or examination that:<sup>255</sup>

- (a) Is developed and administered by the department, an UST system owner or operator approved by the department, or an independent third party approved by the department;
- (b) Covers the following subject areas and associated requirements in this chapter. Training programs and examinations may be facility-specific:
  - (i) Administrative requirements, including:
    - (A) Licensing and fees;
    - (B) Facility compliance tags;
    - (C) Authority to accept product delivery;
    - (D) Financial responsibility; and
    - (E) Reporting and recordkeeping;
  - (ii) Certification and use of service providers;
  - (iii) Compliance inspections and enforcement;
  - (iv) Overview of UST systems and UST system components;
  - (v) Product and equipment compatibility and demonstration;<sup>256</sup>
  - (vi) Installation and repair requirements;
  - (vii) Spill and overfill prevention;
  - (viii) Release detection;

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<sup>254</sup> Consistent with §280.242 of the federal rule, edited section header to help distinguish between “operators” and “Class A, B, and C operators,”

<sup>255</sup> Clarified that the training required for Class A and Class B operators is the same, and that successful completion of the training satisfies the requirements for both classes.

<sup>256</sup> Consistent with §280.242 of the federal rule, added equipment compatibility demonstrations to the training requirements for Class A and Class B operators.

- (ix) Corrosion protection and internal lining;
  - (x) Secondary and under-dispenser containment;
  - (xi) Operation and maintenance requirements, including inspections and testing;<sup>257</sup>
  - (xii) Release reporting and confirmation requirements;
  - (xiii) Overview of site assessment requirements;
  - (xiv) Overview of cleanup requirements for releases, including the applicability of chapter 173-340 WAC;
  - (xv) Temporary closure, permanent closure, and change-in-service requirements;
  - (xvi) Operator training requirements, including training of Class C operators; and
  - (xvii) Any other subject areas specified by the department; and
- (c) Includes an evaluation of operator knowledge, such as testing or practical examination, that reasonably determines whether the operator has the necessary knowledge and skills to meet the responsibilities of the class.
- (2) Class C operators.** Each Class C operator must successfully complete a classroom, computer, or field-based training program that:
- (a) Is developed and administered by the department, a trained Class A or Class B operator, or an independent third party approved by the department;
  - (b) Provides training on how to respond to emergencies and alarms, including:
    - (i) Locating emergency response equipment;
    - (ii) Operating any emergency shut-off systems;
    - (iii) Identifying and responding to any alarms; and
    - (iv) Responding to and ~~reporting~~notifying appropriate authorities of any spills or releases; and
  - (c) Includes an evaluation of operator knowledge, such as testing or practical examination, that reasonably determines whether the operator has the necessary knowledge and skills to meet the responsibilities of the class.
- (3) Reciprocity for out-of-state training.** Class A and Class B operators previously designated in another state or at a tribal UST facility shall be deemed to meet the training requirements in subsection (1) of this section if:

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<sup>257</sup> Consistent with §280.242 of the federal rule, added new operation and maintenance requirements to the training requirements for Class A and Class B operators.

- (a) They successfully completed a training program or examination meeting the requirements of that state or 40 C.F.R. Part 280, as applicable; and
  - (b) They possess the training records required under WAC 173-360A-0560(2) and the records identify the state where they were designated and trained.
- (4) **Acceptance of prior in-state training.** Except as provided under WAC 173-360A-0540, retraining is not required when the training requirements in this section are changed.<sup>258</sup>
- ~~(a) Class A and Class B operators who successfully completed an applicable training program or examination approved by the department before October 1, 2012, and possess the training records required in WAC 173-360A-560(2) shall be deemed to meet the training requirements in subsection (1) of this section.~~
  - ~~(b) Class C operators who successfully completed a training program approved by the department or administered by a trained Class A or Class B operator before October 1, 2012, and possess the training records required in WAC 173-360A-560(2) shall be deemed to meet the training requirements in subsection (2) of this section.~~
- (5) **Revision of existing training programs and examinations for Class A and Class B operators.** Training programs and examinations for Class A and/or Class B operators approved by the department on or before **effective date of the rule** must be revised to reflect the changes to the training requirements in subsection (1)(b) of this section. Revised training programs and examinations must be submitted to the department for approval by **six months after effective date of the rule**. The department will approve or reject revised training programs and examinations, and provide written notice of its decision and reasons for any rejection.<sup>259</sup>

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<sup>258</sup> Updated grandfather clause to clarify that retraining is not required merely because the training requirements are changed.

<sup>259</sup> Added requirements that existing Class A and/or B training programs and examinations must be revised to reflect changes in training requirements and approved by the department. Updates must be submitted within six months of the effective date of the rule.

**WAC 173-360A-0540 Retraining requirements for Class A and Class B operators**

UST system owners and operators shall ensure that Class A and Class B operators are retrained, as applicable, in accordance with the requirements of this section.

- (1) Applicability.** If the department determines the owners and operators of an UST system are not in compliance with the requirements of this chapter, the department may require the Class A and Class B operators of that system to be retrained in accordance with subsection (2) of this section.<sup>260</sup>
- (2) Requirements.** Within sixty days of receipt of the department's determination of noncompliance, Class A and Class B operators requiring retraining must successfully complete a training program or comparable examination meeting the requirements in WAC 173-360A-0530(1) and submit a copy of the certificate of completion to the department. At a minimum, the retraining must cover the areas determined to be out of compliance.

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<sup>260</sup> Eliminated exemption from retraining requirements for Class A and Class B operators retrained annually.

**WAC 173-360A-0545 Operation and maintenance plans**

UST system owners and operators shall ensure that operation and maintenance plans are developed and maintained, as applicable, in accordance with the requirements of this section.

- (1) **Applicability.** If the department determines the owners and operators of an UST system are not in compliance with the requirements of this chapter, the department may require the owners and operators to develop an operation and maintenance plan for each UST system at the UST facility where the noncompliant system is located. The department may require the development of such a plan in place of or in addition to any retraining of Class A or Class B operators required under WAC 173-360A-0540.
- (2) **Development.** Operation and maintenance plans for UST systems must be developed and a copy submitted to the department within sixty days of receipt of the department's determination of noncompliance.
- (3) **Updates.** The operation and maintenance plan for an UST system must be updated within sixty days of any modification of the system that changes how the system must be operated and maintained under this chapter.
- (4) **Content.** At a minimum, the operation and maintenance plan for an UST system must include the actions required under this chapter to operate and maintain the system, including as applicable:<sup>261</sup>

  - (a) Release detection;
  - (b) Spill and overfill prevention;
  - (c) Corrosion protection;<sub>2</sub>
  - (d) Internal lining; and
  - (e) Containment sumps.<sup>262</sup>
- (5) **Recordkeeping.** Operation and maintenance plans for UST systems must be maintained ~~and made available to the department in accordance with WAC 173-360A-240. Plans must be maintained~~ until ~~UST~~the systems are permanently closed or undergo a change-in-service.

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<sup>261</sup> Clarified that most operation and maintenance requirements are dependent on whether the specified equipment is required for the UST system.

<sup>262</sup> Added operation and maintenance of containment sumps to the list of what must be included in operation and maintenance plans, consistent with the new requirements.



**WAC 173-360A-0550    Emergency response requirements**

- (1)    **Presence of operators.** While an UST facility is manned, UST system owners and operators shall ensure at least one of the individuals manning the facility is a properly trained Class A, Class B, or Class C operator.
- (2)    **Signage.** At each UST facility, UST system owners and operators shall post and maintain signage providing emergency response information. The signage must:
- (a)    Be posted in prominent areas of the facility that are easily visible to individuals who dispense or deliver regulated substances;
  - (b)    Identify the location of fire extinguishers and any emergency shut-off devices at the facility; and
  - (c)    Provide instructions on what to do in case of an emergency at the facility. At a minimum, the instructions must include the following or equivalent wording:  
  
          (Name and address of facility)  
  
          IN CASE OF FIRE, SPILL OR RELEASE  
  
          (Insert if applicable: Use emergency shut off)  
  
          Call the fire department: (911 or local fire department telephone number)  
  
          Call the facility operator: (24-hour telephone number)

**WAC 173-360A-0560 Documentation and recordkeeping**

UST system owners and operators shall maintain records documenting all currently designated Class A, Class B, and Class C operators at an UST facility and the training received by those operators. ~~The records must be maintained and made available in accordance with WAC 173-360A-240.~~

- (1) Designated operators.** Records documenting Class A, Class B, and Class C operators at an UST facility must include the following information:

  - (a) The facility's name, address, and compliance tag number; and
  - (b) For each individual designated at the facility:

    - (i) The name of the individual;
    - (ii) The UST systems and operator classes to which the individual has been designated;
    - (iii) The date the individual assumed the duties of each operator class; and
    - (iv) The date the individual completed initial training and any required retraining for each operator class.
- (2) Training of designated operators.** Records documenting the initial training and any required retraining of Class A, Class B, and Class C operators must include a certificate of completion. Certificates must include the following information:

  - (a) The name of the trainee;
  - (b) The date the trainee completed the training;
  - (c) The operator class or classes covered by the training;
  - (d) The name of the company providing the training; and
  - (e) For classroom and field-based training, the printed name and signature of the trainer or examiner.

## **Part 6:**

# **Release Detection**

## Crosswalk of Sections

TOPIC		AMENDED RULE §	CURRENT RULE §	FEDERAL RULE §
Release detection		Part 6	In Part 3 In Part 8	Subpart D In Subparts B, K
General release detection requirements		0600	335(1), (3) 345(1) 350(1), (2)(b) 355	40 (except (a)(3)) 45 252(d)
<del>Compliance schedule</del> [deleted]		--	330 340(1) 345(3)	Former 40(c) Former 41(a)(2) Former 42(a)
Release detection methods for tanks		0610	335(2)(a) 340(2) 345(2-6) 810(3)	In 20 41(a) 42 252(d)(1)
Release detection methods for piping		0615	335(2)(b) 340(2) 350(2), (3)(c) 820(4)(a), (b)	In 20 41(b) 42 44(c) 252(d)(2)
Tanks ONLY	Inventory control	0620	345(6)(a)	43(a)
	Weekly manual tank gauging	0625	345(6)(b)	43(b)
	<del>Monthly manual tank gauging</del> [deleted]	--	345(6)(c)	--
	Automatic tank gauging	0630	345(6)(e)	43(d)
	Tank tightness testing	0635	345(6)(d)	43(c)
Piping ONLY	Automatic line leak detectors	0640	350(3)(a)	44(a)
	Monthly <del>automatic</del> electronic line leak detection [added]	0645	--	--
	Line tightness testing	0650	350(3)(b), (4)	44(b)
Tanks or Piping	Interstitial monitoring	0655	340(2) 345(6)(h) 810(3) 820(4)(c)	42 43(g)
	Vapor monitoring	0660	345(6)(f)	43(e)
	Groundwater monitoring	0665	345(6)(g)	43(f)
	Statistical inventory reconciliation	0670	345(6)(i)	43(h)
	Other release detection methods	0675	345(6)(j)	43(i)

**WAC 173-360A-0600 General release detection requirements**

Owners and operators shall ~~ensure that~~monitor tanks and underground piping ~~are monitored~~ for leaks in accordance with the requirements of this Part. This section specifies general release detection requirements. WAC 173-360A-0610 and 173-360A-0615 identify allowed release detection methods for monitoring tanks and piping. WAC 173-360A-0620 through 173-360A-0675 specify requirements for each release detection method.

- (1) Applicability.** The following tanks and underground piping must be monitored for leaks in accordance with this Part:

  - (a) Any portion of a tank that routinely contains regulated substances; and
  - (b) Any underground piping that routinely contains regulated substances. However, underground piping conveying regulated substances under suction does not need to be monitored for leaks if the piping is designed and constructed to meet the following standards:

    - (i) The below-grade piping operates at less than atmospheric pressure;
    - (ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
    - (iii) Only one check valve is included in each suction line;
    - (iv) The check valve is located directly below and as close as practical to the suction pump; and
    - (v) A method is provided that allows compliance with (b)(i) through (iv) of this subsection to be readily determined.
- (2) Closure of UST systems.** Any UST system that cannot be monitored for leaks in accordance with the requirements of this Part must be closed in accordance with Part 8 of this chapter.<sup>263</sup>
- (3) Release detection methods.** Tanks and underground piping must be monitored for leaks using one of the applicable methods, or combination of methods, of release detection specified in WAC 173-360A-0610 and 173-360A-0615. Results from periodic release detection must be conclusive.
- (4) Notification of changes in methods.** Within thirty days after any change in release detection methods used, owners and operators shall notify the department in writing.
- (5) Performance standards for methods.** Release detection methods must be able to meet:

  - ~~(a) Detect a leak from any portion of the tank or underground piping that routinely contains regulated substances;~~

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<sup>263</sup> Consistent with §280.40(c) of the federal rule, clarified that closure requirement apply to all UST systems, not just “existing UST systems.”

- ~~(b) Detect the leak rate or quantity specified for the method in this Part;~~
- ~~(c) Detect the specified leak rate or quantity with a probability of detection of at least 0.95 and a probability of false alarm of no more than 0.05, if required for the method in this Part;~~
- ~~(d) Meet any other standards specified for the method in this Part; and~~
- (a) The performance standards specified for the method in this Part, with any performance claims and their manner of determination described in writing by the manufacturer, vendor, or installer;<sup>264</sup> and

~~(e)(b)~~ Meet The compatibility requirements in WAC 173-360A-0350.

- (6) ~~Third-party certifications~~ Certification of methods or equipment.<sup>265</sup> ~~All electrical and mechanical release detection equipment and statistical inventory reconciliation methods~~ Except for inventory control (WAC 173-360A-0620) and weekly manual tank gauging (WAC 173-360A-0625), the methods or equipment used to perform release detection must be certified in writing by the manufacturer or vendor or an independent third party as capable of meeting the performance standards ~~in subsection (5)(c) of this section based on the type of regulated substance stored~~ specified for the release detection method in this Part. ~~Third party evaluations must be performed~~ using a test procedure:

- (a) Developed by the U.S. Environmental Protection Agency;
- (b) Developed by a nationally or internationally recognized association or independent testing laboratory; or
- (c) Deemed equivalent by a nationally or internationally recognized association or independent testing laboratory to a test procedure developed by the U.S. Environmental Protection Agency.

- (7) **Performance of release detection.** Release detection must be performed in accordance with:

~~(c)(a)~~ Any requirements specified for the method in this Part;

~~(a)(b)~~ Any instructions specified by the equipment manufacturer; and

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<sup>264</sup> Consistent with §280.40(a)(4) of the federal rule, clarified that performance claims for release detection methods and equipment and their manner of determination must be described in writing by the manufacturer, vendor, or installer.

<sup>265</sup> Consistent with EPA's implementation of §280.40(a)(4), clarified that, except for inventory control and manual tank gauging, the methods or equipment used to perform release detection must be certified in writing by the manufacturer or vendor or an independent third party as capable of meeting the applicable performance standards using a test procedure developed by EPA or a nationally recognized association or independent testing laboratory.

~~(b)(c)~~ Any conditions or limitations specified in ~~third-party certifications~~ the certifications required under subsection (6) of this section, if applicable;<sup>266</sup> ~~and~~

~~(c) Any requirements specified for the method in this Part.~~

- (8) **Suspected releases.** When the results of release detection under this Part indicate a release may have occurred, the suspected release must be reported and investigated in accordance with Part 7 of this chapter. The establishment of leak indication thresholds is a means of setting a standard for the equipment or method used. It is not intended to imply that actual leak rates or quantities less than the thresholds are allowable. No release is acceptable, and any indication that a release may have occurred should be reported and investigated in accordance with Part 7 of this chapter.
- (9) **Recordkeeping.** Records of release detection ~~must be maintained in accordance with WAC 173-360A-240. The records~~ must document compliance with this Part ~~and include~~ including the following:
- (a) Any ~~third-party~~ certifications of release detection ~~equipment or statistical inventory reconciliation methods~~ methods or equipment required under this Part. Certifications must be maintained for as long as the method or equipment ~~or method~~ is used;<sup>267</sup>
  - (b) Any site evaluations required under WAC 173-360A-0660 or 173-360A-0665 for using vapor monitoring or groundwater monitoring as a release detection method. Site evaluations must be maintained for as long as the method is used;<sup>268</sup> and
  - (c) The performance of release detection required under this Part, including the results of all monitoring, testing, and sampling.<sup>269</sup>
    - (i) For tank tightness testing (WAC 173-360A-0635), line tightness testing (WAC 173-360A-0650),<sup>270</sup> and vapor monitoring using a tracer compound in accordance with WAC 173-360A-0610(3)(d) or 173-360A-0615(3)(b),<sup>271</sup> at least the last two test results must be maintained.

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<sup>266</sup> Clarified requirement that release detection equipment must be operated in accordance with any conditions or limitations specified in the certification of the method or equipment.

<sup>267</sup> Changed retention period for certification records from five years to as long as the equipment or method is used. The retention period in the federal rule is five years.

<sup>268</sup> Consistent with §280.45(a) of the federal rule, specified that site evaluation records used for vapor and groundwater monitoring methods must be maintained for as long as the method is used. Unlike the federal rule, made requirement apply on effective date of rule instead of within three years of effective date.

<sup>269</sup> Consistent with §280.45(b)(2) and (3) of the federal rule, changed recordkeeping requirements for release detection results. Except as otherwise noted, the requirements are the same as under the federal rule.

<sup>270</sup> Changed retention period for tank and line tightness test results from the last test to the last two tests, including when performed on previously deferred UST systems. The federal rule requires the last test result.

<sup>271</sup> Specified that retention period for results from vapor monitoring using a tracer compound every two years is the last two test results. The federal rule requires the last test result.

- (ii) For all other release detection methods, results must be maintained for at least three years.<sup>272</sup>

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<sup>272</sup> Changed retention period for results from all other release detection methods, including when performed on previously deferred UST systems, from five years to three years. The federal rule requires the last test result.



**WAC 173-360A-0610 Release detection methods for tanks**

Owners and operators shall monitor tanks for leaks using the methods, or combination of methods, of release detection specified in this section.

- (1) Tanks requiring secondary containment.** Tanks requiring secondary containment under WAC 173-360A-0310(4)(a) must be monitored for leaks at least every thirty days using interstitial monitoring (WAC 173-360A-0655).<sup>273</sup>
- (2) Tanks not requiring secondary containment.** Except as provided for previously deferred UST systems under subsection (3) of this section, tanks not requiring secondary containment under WAC 173-360A-0310(4)(a) must be monitored for leaks at least every thirty days (except as otherwise provided) using one of the following methods, or combination of methods, of release detection:<sup>274</sup>

  - (a) Combination of inventory control (WAC 173-360A-0620) and tank tightness testing (WAC 173-360A-0635). Tank tightness testing must be performed at least every five years. This combination of methods may be used only if the tank has been installed for less than ten years;
  - (b) Combination of weekly manual tank gauging (WAC 173-360A-0625) and tank tightness testing (WAC 173-360A-0635). Tank tightness testing must be performed at least every five years. This combination of methods may be used only if:

    - (i) The tank has been installed for less than ten years; and
    - (ii) The tank's capacity is less than or equal to two thousand gallons;<sup>275</sup>
  - (c) Weekly manual tank gauging (WAC 173-360A-0625). This method may be used as the sole method of release detection only if:

    - (i) The tank's capacity is less than or equal to five hundred fifty gallons; or
    - (ii) The tank's capacity is five hundred fifty-one gallons to one thousand gallons and the ~~tank meets the diameter criteria in Table 625-1~~tank's diameter is either sixty-four inches or forty-eight inches;<sup>276</sup>
  - (d) Automatic tank gauging (WAC 173-360A-0630);

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<sup>273</sup> Consistent with §280.20 of the federal rule, specified that previously deferred UST systems installed after effective date of rule must be interstitially monitored.

<sup>274</sup> To be consistent with §280.43 of the federal rule, eliminated monthly manual tank gauging as an allowable method of release detection, either alone or in combination with tank tightness testing. This method was only allowed for emergency power generator UST systems.

<sup>275</sup> Consistent with §280.43(b)(5) of the federal rule, changed the applicability of the combined method of weekly manual tank gauging and tank tightness testing.

<sup>276</sup> Consistent with §280.43(b)(5) of the federal rule, changed the applicability of weekly manual tank gauging as a sole method of release detection.

- (e) Interstitial monitoring (WAC 173-360A-0655). This method may be used only if the tank is secondarily contained and meets the performance standards in WAC 173-360A-0310(4)(b);<sup>277</sup>
  - (f) Vapor monitoring (WAC 173-360A-0660);
  - (g) Groundwater monitoring (WAC 173-360A-0665);
  - (h) Statistical inventory reconciliation (WAC 173-360A-0670); or
  - (i) Other release detection methods (WAC 173-360A-0675).
- (3) Additional methods for certain previously deferred UST systems.**<sup>278</sup> Field-constructed tanks not requiring secondary containment under WAC 173-360A-0310(4)(a) with a capacity greater than fifty thousand gallons must be monitored for leaks in accordance with subsection (2) of this section or using one of the following methods, or combination of methods, of release detection:
- (a) Tank tightness testing (WAC 173-360A-0635) performed at least annually, except the method must be able to detect a 0.5 gallon per hour leak rate;
  - (b) Combination of automatic tank gauging (WAC 173-360A-0630) performed at least every thirty days, except the method must be able to detect a one gallon per hour leak rate, and tank tightness testing (WAC 173-360A-0635) performed at least every three years, except the method must be able to detect a 0.2 gallon per hour leak rate;
  - (c) Combination of automatic tank gauging (WAC 173-360A-0630) performed at least every thirty days, except the method must be able to detect a two gallons per hour leak rate, and tank tightness testing (WAC 173-360A-0635) performed at least every two years, except the method must be able to detect a 0.2 gallon per hour leak rate;
  - (d) Vapor monitoring (WAC 173-360A-0660) performed at least every two years, except the method must use a tracer compound and be able to detect a 0.1 gallon per hour leak rate;
  - (e) Combination of inventory control (WAC 173-360A-0620) performed at least every thirty days, except the method must be able to detect a leak of at least 0.5 percent of flow-through and be performed in accordance with Department of Defense Instruction 4140.25, Air Transport Association Airport Fuel Facility Operations and Maintenance Guidance Manual, or equivalent procedures, and either:
    - (i) Tank tightness testing (WAC 173-360A-0635) performed at least every two years, except the method must be able to detect a 0.5 gallon per hour leak rate;

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<sup>277</sup> For interstitial monitoring method, eliminated requirements for UST systems that are secondarily contained using secondary barriers. According to Ecology's database, there are no UST systems in the state using secondary barriers to meet regulatory requirements. Secondary barriers are no longer allowed.

<sup>278</sup> Consistent with §280.252(d)(1) of the federal rule, incorporated additional release detection methods for certain previously deferred UST systems installed before effective date of the rule (those systems not requiring secondary containment).

- (ii) Vapor monitoring (WAC 173-360A-0660) performed at least every thirty days; or
- (iii) Groundwater monitoring (WAC 173-360A-0665) performed at least every thirty days; or
- (f) Other release detection methods (WAC 173-360A-0675), except owners and operators must demonstrate the method can detect a leak as effectively as any of the methods allowed in (a) through (e) of this subsection and the department must approve the use of the method. In comparing methods, the department ~~must~~will consider the size of release that can be detected and the frequency and reliability of detection.

**WAC 173-360A-0615 Release detection methods for piping**

Owners and operators shall monitor underground piping for leaks using the methods, or combination of methods, of release detection specified in this section.

- (1) **Piping requiring secondary containment.** Underground piping requiring secondary containment under WAC 173-360A-0310(5)(a) must be monitored for leaks as follows.<sup>279</sup>
- (a) **Pressurized piping.** Underground piping conveying regulated substances under pressure must be equipped with an automatic line leak detector (WAC 173-360A-0640) and monitored for leaks at least every thirty days using interstitial monitoring (WAC 173-360A-0655).
  - (b) **Suction piping.** Underground piping conveying regulated substances under suction, except as provided under WAC 173-360A-0600(1)(b), must be monitored for leaks at least every thirty days using interstitial monitoring (WAC 173-360A-0655).
- (2) **Piping not requiring secondary containment.** Except as provided for previously deferred UST systems under subsection (3) of this section, underground piping not requiring secondary containment under WAC 173-360A-0310(5)(a) must be monitored for leaks as follows.
- (a) **Pressurized piping.** Underground piping conveying regulated substances under pressure must be:
    - (i) Equipped with an automatic line leak detector (WAC 173-360A-0640); and
    - (ii) Monitored for leaks at least annually using line tightness testing (WAC 173-360A-0650) or every thirty days using one of the following methods, or combination of methods, of release detection:
      - (A) Monthly automatic electronic line leak detection (WAC 173-360A-0645);<sup>280</sup>
      - (B) Interstitial monitoring (WAC 173-360A-0655). This method may be used only if the piping is secondarily contained and meets the performance standards in WAC 173-360A-0310(5)(c);
      - (C) Vapor monitoring (WAC 173-360A-0660);
      - (D) Groundwater monitoring (WAC 173-360A-0665);
      - (E) Statistical inventory reconciliation (WAC 173-360A-0670); or
      - (F) Other release detection methods (WAC 173-360A-0675).

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<sup>279</sup> Consistent with §280.20 of the federal rule, specified that previously deferred UST systems installed after effective date of rule must be interstitially monitored.

<sup>280</sup> Added automatic electronic line leak detection as a monthly method for pressurized piping. The method is currently allowed as an “other method” of release detection. Ecology’s database shows that eight UST systems are using this method as their primary method.

- (b) **Suction piping.** Underground piping conveying regulated substances under suction, except as provided under WAC 173-360A-0600(1)(b), must be monitored for leaks at least every three years using line tightness testing (WAC 173-360A-0650) or at least every thirty days using one of the following methods of release detection:
- (i) Interstitial monitoring (WAC 173-360A-0655). This method may be used only if the piping is secondarily contained and meets the performance standards in WAC 173-360A-0310(5)(c);
  - (ii) Vapor monitoring (WAC 173-360A-0660);
  - (iii) Groundwater monitoring (WAC 173-360A-0665);
  - (iv) Statistical inventory reconciliation (WAC 173-360A-0670); or
  - (v) Other release detection methods (WAC 173-360A-0675).

- (3) **Additional methods for certain previously deferred UST systems.**<sup>281</sup> Underground piping not requiring secondary containment under WAC 173-360A-0310~~(3)~~(5)(a) associated with field-constructed tanks with a capacity greater than fifty thousand gallons or airport hydrant systems must be monitored for leaks in accordance with subsection (2) of this section or using one of the following methods, or combination of methods, of release detection:

- (a) Line tightness testing (WAC 173-360A-0650) performed semiannually or annually, except the method must be able to detect the leak rate specified in Table 0615-1. Piping segment volumes greater than or equal to one hundred thousand gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test may be tested at a leak rate up to 6.0 gallons per hour according to the schedule in Table 0615-2;

**Table 0615-1: Maximum Leak Detection Rate per Test Section Volume**

Test Section Volume (Gallons)	Semiannual Test – Leak Detection Rate Not To Exceed (Gallons Per Hour)	Annual Test – Leak Detection Rate Not To Exceed (Gallons Per Hour)
< 50,000	1.0	0.5
≥ 50,000 to < 75,000	1.5	0.75
≥ 75,000 to < 100,000	2.0	1.0
≥ 100,000	3.0	1.5

**Table 0615-2: Phase-In for Piping Segments ≥ 100,000 Gallons in Volume**

<sup>281</sup> Consistent with §280.252(d)(2) of the federal rule, incorporated additional release detection methods for certain previously deferred UST systems installed before effective date of the rule (those systems not requiring secondary containment).

Test	Time Frame	Leak Detection Rate
First test	Not later than [three years after effective date of rule]	May use up to 6.0 gallons per hour leak rate
Second test	Between [three years after effective date of rule] and [six years after effective date of rule]	May use up to 6.0 gallons per hour leak rate
Third test	Between [six years after effective date of rule] and [seven years after effective date of rule]	Must use 3.0 gallons per hour leak rate
Subsequent tests	After [seven years after effective date of rule]	Begin using semiannual or annual line testing according to Table 0615-1

- (b) Vapor monitoring (WAC 173-360A-0660) performed at least every two years, except the method must use a tracer compound and be able to detect a 0.1 gallon per hour leak rate;
- (c) Combination of inventory control (WAC 173-360A-0620) performed at least every thirty days, except the method must be able to detect a leak of at least 0.5 percent of flow-through and be performed in accordance with Department of Defense Instruction 4140.25, Air Transport Association Airport Fuel Facility Operations and Maintenance Guidance Manual, or equivalent procedures, and either:
  - (i) Line tightness testing (WAC 173-360A-0650) performed at least every two years, except the method must be performed in accordance with (a) of this subsection using the leak rates for the semiannual test in Table 0615-1;
  - (ii) Vapor monitoring (WAC 173-360A-0660) performed at least every thirty days; or
  - (iii) Groundwater monitoring (WAC 173-360A-0665) performed at least every thirty days; or
- (d) Other release detection methods (WAC 173-360A-0675), except owners and operators must demonstrate the method can detect a leak as effectively as any of the methods allowed in (a) through (c) of this subsection and the department must approve the use of the method. In comparing methods, the department ~~must~~will consider the size of release that can be detected and the frequency and reliability of detection.

**WAC 173-360A-0620 Inventory control**

Owners and operators ~~shall ensure that~~ using inventory control (or another test of equivalent performance) ~~is performed in accordance~~ shall comply with the requirements of this section.

**(1) ~~Performance s~~Standards.**

- (a) Inventory control must be performed in a manner that is able to detect leaks of at least one percent of the monthly flow-through plus one hundred thirty gallons.
- (b) Inventory control must be performed using a gauge stick or an automatic tank gauge system that is able to measure the following:<sup>282</sup>
  - (i) Tank liquid levels over the full range of the tank's height to the nearest one-eighth of an inch; and
  - (ii) Water levels in the bottom of the tank to the nearest one-eighth of an inch.
- (c) Dispensing meters must be calibrated to local standards or an accuracy of at least six cubic inches for every five gallons of regulated substances that is withdrawn.
- (d) The fill pipe through which regulated substances are delivered into the tank must have a drop tube that extends to within one foot of the bottom of the tank.

**(2) Performance.**<sup>283</sup> Inventory control must be performed in accordance with the requirements of this subsection. ~~ATG~~ Automatic tank gauge systems must be operated in accordance with the manufacturer's instructions ~~and any conditions specified in third-party certifications~~. The following code of practice may be used, where applicable, as guidance in meeting the requirements of this subsection: American Petroleum Institute, Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets."

- (a) Each day regulated substances are removed from or added to the tank, the following inventory volume measurements and calculations must be performed:
  - (i) Measure the number of gallons of regulated substances removed from the tank within the local standards for meter calibration or an accuracy of at least six cubic inches for every five gallons of regulated substances that is withdrawn;
  - (ii) Measure the tank liquid level to the nearest one-eighth of an inch before and after any delivery of regulated substances, convert the two measurements into gallons, calculate the difference between the two measurements, and reconcile the change in inventory volume with delivery receipts;
  - (iii) Measure the tank liquid level at the end of the day (ending inventory) to the nearest one-eighth of an inch and convert the measurement into gallons. The

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<sup>282</sup> Clarified that inventory control may be performed using either a gauge stick or an automatic tank gauge.

<sup>283</sup> Clarified how method must be performed and that automatic tank gauges must be operated in accordance with manufacturer's instructions.

measurement taken after a delivery of regulated substances may be used to meet this requirement;

- (iv) Calculate the book inventory by adding the starting inventory and the number of gallons delivered and then subtracting the number of gallons dispensed; and
- (v) Calculate the daily inventory imbalance (overage or shortage) by subtracting the book inventory from the ending inventory.

- (b) At least once each month, the ~~water~~ level of any water in the tank must be measured to the nearest one-eighth of an inch.
- (c) At the end of each monitoring period, calculate the monthly imbalance (overage or shortage) by adding together all of the daily imbalances.

**(3) Suspected release.**<sup>284</sup> A release is suspected based on inventory control if:

- (a) The monthly inventory imbalance is greater than one percent of the monthly flow-through plus one hundred thirty gallons; or
- (b) The presence of water in the tank is unexplained.

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<sup>284</sup> Clarified when a release is suspected based on results of inventory control.



**WAC 173-360A-0625 Weekly manual tank gauging**

Owners and operators ~~shall ensure that~~using weekly manual tank gauging ~~is performed in accordance~~shall comply with the requirements of this section.

**(1) ~~Performance s~~Standards.**

- (a) Weekly manual tank gauging must be performed in a manner that is able to detect any leaks greater than the applicable test standards in Table 0625-1 with a probability of detection of at least 0.95 and a probability of false alarm of no more than 0.05.
- (b) Weekly manual tank gauging must be performed using a gauge stick or an automatic tank gauge ~~(ATG)~~system that is able to measure the following:<sup>285</sup>
  - (i) Tank liquid levels over the full range of the tank's height to the nearest one-eighth of an inch; and
  - (ii) Water levels in the bottom of the tank to the nearest one-eighth of an inch.<sup>286</sup>

**(2) Performance.**<sup>287</sup> Weekly manual tank gauging must be performed in accordance with the requirements of this subsection. ~~ATG~~Automatic tank gauge systems must be operated in accordance with the manufacturer's instructions ~~and any conditions specified in third-party certifications.~~

- (a) Each week, the following inventory volume measurements and calculations must be performed:
  - (i) Select a period that is at least as long as the applicable minimum test duration specified in Table 0625-1. During this period, no liquid may be added or removed from the tank;
  - (ii) Take two consecutive tank liquid level measurements to the nearest one-eighth of an inch at the beginning and at the end of the selected period;
  - (iii) Calculate the average of the two beginning measurements and the average of the two ending measurements and convert the averages from inches to gallons;
  - (iv) Calculate the change in volume by subtracting the average ending measurement from the average beginning measurement; and
  - (v) Compare the change in volume to the applicable weekly standard in Table 0625-1.

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<sup>285</sup> Clarified that weekly manual tank gauging may be performed using either a gauge stick or an automatic tank gauge.

<sup>286</sup> Added requirement that equipment used to conduct weekly manual tank gauging must be able to measure water levels.

<sup>287</sup> Clarified how method must be performed and that automatic tank gauges must be operated in accordance with manufacturer's instructions.

- (b) Each month, calculate the monthly change in volume by adding together the four weekly changes in volume and compare to the applicable monthly standard in Table 0625-1.
- (c) At least once each month, the ~~water~~ level of any water in the tank must be measured to the nearest one-eighth of an inch.<sup>288</sup>
- (3) **Suspected release.**<sup>289</sup> A release is suspected based on weekly manual tank gauging if:
- (a) Any weekly change in volume is greater than the applicable weekly standard in Table 0625-1;
- (b) Any monthly change in volume is greater than the applicable monthly standard in Table 0625-1; or
- (c) The presence of water in the tank is unexplained.

Table 0625-1: Weekly ~~m~~Manual ~~t~~Tank ~~g~~Gauging ~~e~~Criteria<sup>290</sup>

Nominal Tank Capacity	Minimum Test Duration	Weekly Standard (one test)	Monthly Standard (four test average)
550 gallons or less	36 hours	10 gallons	5 gallons
551 - 1,000 gallons (when tank diameter is 64 inches)	44 hours	9 gallons	4 gallons
551 - 1,000 gallons (when tank diameter is 48 inches)	58 hours	12 gallons	6 gallons
551 - 1,000 gallons (when tank diameter other than 64 or 48 inches)	36 hours	13 gallons	7 gallons
1,001 - 2,000 gallons	36 hours	26 gallons	13 gallons

<sup>288</sup> Added requirement that water levels must be measured at least once each month.

<sup>289</sup> Clarified when release suspected based on results of weekly manual tank gauging.

<sup>290</sup> Consistent with §280.43(b) of the federal rule, changed tank criteria and test standards.

**WAC 173-360A-0630 Automatic tank gauging**

Owners and operators ~~shall ensure~~using automatic tank gauging, ~~using either in-tank static testing or continuous in-tank leak detection, is performed in accordance~~shall comply with the requirements of this section.

- (1) ~~Performance s~~Standards. For the purposes of this method, automatic tank gauge ~~(ATG)~~ systems must be able to:
- (a) Detect at least a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains a regulated substance with a probability of detection of at least 0.95 and a probability of false alarm of no more than 0.05;
  - (b) Measure tank liquid levels over the full range of the tank's height; and
  - (c) Measure water levels in the bottom of the tank.<sup>291</sup>
- (2) **Performance.** Leak detection tests must be performed in accordance with the manufacturer's instructions and any conditions or limitations specified in ~~third-party~~the certifications of the equipment.<sup>292</sup> Tests must be performed with ~~ATG~~automatic tank gauge systems operating in one of the following modes:<sup>293</sup>
- (a) **In-tank static test mode.** In this mode, testing must be performed at least once every thirty days; or
  - (b) **Continuous in-tank leak detection mode.** In this mode, ~~ATG~~automatic tank gauge systems must operate on an uninterrupted basis or operate within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every thirty days.
- ~~(3) **Suspected release.** A release is suspected if an ATG system detects any leak of regulated substances from the tank or the presence of water in the tank is unexplained.~~

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<sup>291</sup> Clarified which inventory control requirements ATG systems must meet.

<sup>292</sup> Clarified that ATG systems must be operated in accordance with manufacturer's instructions and any conditions or limitations specified in the certifications of the equipment.

<sup>293</sup> Consistent with §280.43(d), added specific requirements for automatic tank gauging based on the mode used to perform the test (in-tank static test or continuous in-tank leak detection).

WAC 173-360A-0635 Tank tightness testing

Owners and operators ~~shall ensure that~~ using tank tightness testing ~~(or another test of equivalent performance) is performed in accordance~~ shall comply with the requirements of this section.<sup>294</sup>

- (1) ~~Performance s~~Standards. Tank tightness tests must be able to detect at least a 0.1 gallon per hour leak rate from any portion of the tank up to the ninety-five percent full level or up to the product level limited by overfill prevention equipment while accounting for the effects of thermal expansion or contraction of the regulated substance, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table. The tests must be able to detect the specified leak rate with a probability of detection of at least 0.95 and a probability of false alarm of no more than 0.05.
- (2) ~~Performance and reporting~~.<sup>295</sup> Tank tightness tests must be performed:
  - (a) ~~Performed b~~By or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter; and
  - (b) ~~Performed i~~n accordance with the manufacturer's instructions and any conditions or limitations specified in ~~third-party the~~ certifications of the method or equipment; and
- ~~(c)(3)~~ Reporting. ~~Certified and reported in accordance with WAC 173-360A-230(3)(b). Tank tightness tests must be reported to the department within thirty days using the applicable checklist provided by the department. The checklist must be completed by the service provider.~~
- ~~(3) Suspected release. A release is suspected if a tank tightness test detects any leak of regulated substances from a tank.~~

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<sup>294</sup> Eliminated option of using another test of equivalent performance for tank tightness testing since that option is no longer needed.

<sup>295</sup> Clarified who may perform tank tightness tests, how tests must be performed, and how results must be reported.

**WAC 173-360A-0640 Automatic line leak detectors**

Owners and operators shall ~~ensure that~~equip pressurized piping ~~is equipped~~ with automatic line leak detectors meeting the requirements of this section.

(1) ~~Performance s~~Standards. For the purposes of this method, automatic line leak detectors must be able to:

(a) Detect a leak rate of at least three gallons per hour at ten pounds per square inch line pressure within one hour from any portion of the piping that routinely contains a regulated substance with a probability of detection of at least 0.95 and a probability of false alarm of no more than 0.05; and

(b) If a leak is detected, alert the operator by shutting off or restricting the flow of regulated substances or triggering an audible or visual alarm.

(2) **Performance.** Automatic line leak detectors must be operated in accordance with the manufacturer's instructions and any conditions or limitations specified in ~~third-party~~the certifications of the equipment.<sup>296</sup>

~~(3) **Suspected release.** A release is suspected if an automatic line leak detector detects any leak of regulated substances from the piping.~~

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<sup>296</sup> Clarified that automatic line leak detectors must be operated in accordance with manufacturer's instructions and any conditions or limitations specified in the certifications of the equipment.

WAC 173-360A-0645 Monthly automatic electronic line leak detection

Owners and operators ~~shall ensure that~~using monthly automatic electronic line leak detection ~~is performed in accordance~~shall comply with the requirements of this section.<sup>297</sup>

- (1) ~~Performance s~~Standards. For the purposes of this method, automatic electronic line leak detectors must be able to detect a leak rate of at least 0.2 gallons per hour at operating pressure from any portion of the piping that routinely contains a regulated substance with a probability of detection of at least 0.95 and a probability of false alarm of no more than 0.05.
- (2) Performance. ~~Automatic~~ Eelectronic line leak detection tests must be performed in accordance with the manufacturer's instructions and any conditions or limitations specified in ~~third-party~~the certifications of the equipment.
- ~~(3) Suspected release. A release is suspected if an electronic line leak detector detects any leak of regulated substances from the piping.~~

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<sup>297</sup> Specified that automatic electronic line leak detection may be used as a monthly method, and specified requirements for use of the method. The method is allowed under the current rule as an "other method."

**WAC 173-360A-0650 Line tightness testing**

Owners and operators ~~shall ensure that~~using line tightness tests ~~are performed in accordance~~shall comply with the requirements of this section.

- (1) ~~Performance s~~Standards. Line tightness tests must be able to detect at least a 0.1 gallon per hour leak rate at one and one-half times the operating pressure with a probability of detection of at least 0.95 and a probability of false alarm of no more than 0.05.
- (2) ~~Performance and reporting~~.<sup>298</sup> Line tightness tests must be performed:
  - (a) ~~Performed b~~By or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter; and
  - (b) ~~Performed i~~n accordance with the manufacturer's instructions and any conditions or limitations specified in ~~third-party~~the certifications of the method or equipment; ~~and~~.
- ~~(e)(3)~~ Reporting. ~~Certified and reported in accordance with WAC 173-360A-230(3)(b)~~Line tightness tests must be reported to the department within thirty days using the applicable checklist provided by the department. The checklist must be completed by the service provider.
- ~~(3) Suspected release. A release is suspected if a line tightness test detects any leak of regulated substances from the piping.~~

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<sup>298</sup> Clarified who may perform line tightness tests, how tests must be performed, and how results must be reported.

**WAC 173-360A-0655 Interstitial monitoring**

Owners and operators ~~shall ensure that~~using interstitial monitoring ~~is performed in accordance~~shall comply with the requirements of this section.

- (1) ~~Performance s~~Standards.<sup>299</sup> The interstitial monitoring system must be able to detect a leak through the inner wall of any portion of the tank or underground piping that routinely contains a regulated substance. Methods that continuously monitor the interstitial space using a vacuum, pressure, or a liquid must be able to detect a breach in both the inner and outer walls.
- (2) **Performance.** Interstitial monitoring must be performed in accordance with the manufacturer's instructions and any conditions or limitations specified in ~~third-party~~the certifications of the equipment.<sup>300</sup>
- ~~(3) **Suspected release.** A release is suspected if an interstitial monitoring system detects:~~
  - ~~(a) Any leak of regulated substances from the tank or piping being monitored;~~
  - ~~(b) The presence of any liquid in the interstitial space of a double-walled tank; or~~
  - ~~(c) The presence of any water in a monitored sump that is unexplained.~~

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<sup>299</sup> Eliminated requirements for UST systems that are secondarily contained using secondary barriers. According to Ecology's database, there are no UST systems in the state using secondary barriers to meet regulatory requirements. All new UST systems must be double-walled.

<sup>300</sup> Clarified that interstitial monitoring equipment must be operated in accordance with manufacturer's instructions and any conditions or limitations specified in the certifications of the equipment.



**WAC 173-360A-0660 Vapor monitoring**

Owners and operators ~~shall ensure that~~ using vapor monitoring (testing or monitoring for vapors within the soil gas of the excavation zone) ~~is performed in accordance~~ shall comply with the requirements of this section. Except as otherwise provided in WAC 173-360A-0610(3) or ~~WAC 173-360A-0615(3)~~, vapor monitoring may be either passive (monitoring for presence of regulated substance) or active (monitoring for presence of tracer compound).<sup>301</sup>

**(1) ~~Performance standards~~ Site conditions.**

- (a) The materials used as backfill must be sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area.
- (b) The stored regulated substance, or a tracer compound placed in the UST system, must be 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~~ UST system.
- (c) The measurement of vapors by the monitoring device must not be rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than thirty days.
- (d) The level of background contamination in the excavation zone must not interfere with the method used to detect releases from the ~~tank~~ UST system.

**(2) Site evaluations.**

~~(f)~~ — In the UST excavation zone, the site must be evaluated to ensure compliance with the requirements in ~~(a) through (d)~~ subsection (1) of this ~~sub~~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 or piping being monitored that routinely contains product. ~~Site evaluations must be:~~

~~(i)~~(a) **Performance.** Site evaluations must be ~~P~~performed by or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter; ~~and~~.<sup>302</sup>

~~(ii)~~(b) **Reporting.** Site evaluations must be ~~Certified and reported in accordance with WAC 173-360A-230(3)(b)~~ reported to the department within thirty days of the installation of the vapor monitoring system. The report must be submitted with the checklist required for the installation (WAC 173-360A-0300(5)(b)). The report must be completed by the service provider. The report must identify the service provider and their certification type and number.<sup>303</sup>

<sup>301</sup> Clarified that vapor monitoring may be either passive or active, except as provided for certain release detection methods for previously deferred UST systems.

<sup>302</sup> Consistent with §280.45(a) of the federal rule, specified who may perform site evaluations.

<sup>303</sup> Added requirement that site evaluations must be reported to the department.

**(3) Monitoring wells.**

~~(g)~~(a) Monitoring wells must be clearly marked and secured to avoid unauthorized access and tampering.

~~(h)~~(b) Monitoring wells must be constructed, maintained, and decommissioned in accordance with chapter 173-160 WAC.

**(4) Vapor monitors.**

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

~~(2)~~ ~~(b)~~ **Performance.** Vapor monitoring must also be performed ~~operated~~ in accordance with the manufacturer's instructions and any conditions or limitations specified in ~~third-party~~the certifications of the equipment.<sup>304</sup>

~~(3)~~ ~~**Suspected release.** A release is suspected if a vapor monitoring system detects any release of regulated substances from the tank or piping being monitored.~~

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<sup>304</sup> Clarified that vapor monitoring equipment must be operated in accordance with manufacturer's instructions and any conditions or limitations specified in the certifications of the equipment.

**WAC 173-360A-0665 Groundwater monitoring**

Owners and operators ~~shall ensure that~~ using groundwater monitoring (testing or monitoring for liquids on the groundwater) ~~is performed in accordance~~ shall comply with the requirements of this section. Except as otherwise provided in WAC 173-360A-0610(3) or ~~WAC~~ 173-360A-0615(3), groundwater monitoring may be either passive (monitoring for presence of regulated substance) or active (monitoring for presence of tracer compound).<sup>305</sup>

**(1) ~~Performance standards~~ Site conditions.**

- (a) The regulated substance stored must be immiscible in water and have a specific gravity of less than one.
- (b) Groundwater must never be more than twenty feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices must not be less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials).
- (c) The slotted portion of the monitoring 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 water table into the well under both high and low groundwater conditions.
- (d) Monitoring wells must be sealed from the ground surface to the top of the filter pack.
- (e) Monitoring wells or devices must intercept the excavation zone or must be as close to it as is technically feasible.

**(2) Site evaluations. ~~(g)~~—**Within and immediately below the UST system excavation zone, the site must be evaluated to ensure compliance with the requirements in ~~(a) through (e)~~ subsection (1) of this ~~subsection~~ and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank or piping being monitored that routinely contains product. ~~Site evaluations must be:~~

**~~(i)(a)~~ Performance.** Site evaluations must be ~~P~~performed by or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter; ~~and~~.<sup>306</sup>

**~~(ii)(b)~~ Reporting.** Site evaluations must be ~~Certified and reported in accordance with WAC 173-360A-230(3)(b)~~ reported to the department within thirty days of the installation of the groundwater monitoring system. The report must be submitted with the checklist required for the installation (WAC 173-360A-0300(5)(b)). The report must be completed by the service provider. The report must identify the service provider and their certification type and number.<sup>307</sup>

<sup>305</sup> Clarified that groundwater monitoring may be either passive or active, except as provided for certain release detection methods for previously deferred UST systems.

<sup>306</sup> Consistent with §280.45(a) of the federal rule, specified who may perform site evaluations.

<sup>307</sup> Added requirement that site evaluations must be reported to the department.

**(3) Monitoring wells.**

~~(h)~~(a) Monitoring wells must be clearly marked and secured to avoid unauthorized access and tampering.

~~(i)~~(b) Monitoring wells must be constructed, maintained, and decommissioned in accordance with chapter 173-160 WAC.

**(4) Monitoring devices or manual methods.**

~~(f)~~(a) The continuous monitoring devices or manual methods used must be able to detect the presence of at least one-eighth of an inch of free product on top of the groundwater in the monitoring wells.

~~(2)~~(b) ~~Performance. Groundwater monitoring.~~ The continuous monitoring devices must be ~~performed~~operated in accordance with the manufacturer's instructions and any conditions or limitations specified in ~~third-party~~the certifications of the equipment.<sup>308</sup>

~~(3) Suspected release. A release is suspected if a groundwater monitoring system detects any release of regulated substances from the tank or piping being monitored.~~

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<sup>308</sup> Clarified that groundwater monitoring equipment must be operated in accordance with manufacturer's instructions and any conditions or limitations specified in the certifications of the equipment.

**WAC 173-360A-0670 Statistical inventory reconciliation**

Owners and operators ~~shall ensure that~~using statistical inventory reconciliation (SIR) ~~is performed in accordance~~shall comply with the requirements of this section. SIR involves the application of statistical principles to inventory data similar to those described in WAC 173-360A-0620.

**(1) ~~Performance s~~Standards.**<sup>309</sup> The SIR method must:

- (a) Be able to detect at least a 0.2 gallon per hour leak rate or a release of one hundred fifty gallons within a thirty-day period from any portion of the tank or underground piping that routinely contains a regulated substance with a probability of detection of at least 0.95 and a probability of false alarm of no more than 0.05;
- (b) Use a threshold that does not exceed one-half the minimum detectible leak rate; and
- (c) Be able to report a quantitative result with a calculated leak rate.

**(2) Performance.** SIR must be performed in accordance with the requirements of this subsection.

- (a) Inventory control must be performed in accordance with the requirements in WAC 173-360A-0620 and the SIR vendor's instructions.
- (b) SIR must be performed in accordance with any conditions or limitations specified in the certification of the SIR method.<sup>310</sup>
- (c) Conclusive SIR results must be obtained within the thirty-day monitoring period.<sup>311 312</sup>
- ~~(b) Within five days after the end of each monitoring period, inventory control data must be submitted to the SIR vendor for analysis.~~
- ~~(c) Within ten days of receipt of inventory control data, SIR vendors shall complete an independent SIR analysis of the data and submit results to owners and operators. Results must be documented in writing by the SIR vendor.~~

~~(3) Suspected release. A release is suspected if the SIR analysis result is a fail (meaning the SIR analysis shows a leak rate of at least 0.2 gallons per hour or one hundred fifty gallons per month).~~

~~(4) Late or inconclusive results. If conclusive SIR results are not obtained every thirty days, then another release detection method must be used.~~

<sup>309</sup> Consistent with §280.43(h) of the federal rule, changed the performance standards for SIR.

<sup>310</sup> Clarified that SIR must be performed in accordance with any conditions or limitations specified in the certification of the SIR method.

<sup>311</sup> Consistent with §280.43(h) of the federal rule and to comply with state program approval requirements, changed by when conclusive results must be obtained (to within the thirty-day monitoring period).

<sup>312</sup> To be consistent with §280.43(h) of the federal rule, eliminated requirements governing how long the SIR vendor has to submit results to owners and operators.

**WAC 173-360A-0675 Other release detection methods**

Owners and operators ~~shall ensure that~~using other methods, or combinations of methods, of release detection ~~are performed in accordance~~shall comply with the requirements of this section.

**(1) ~~Performance s~~Standards.** Other release detection methods must:

- (a) Be able to detect a 0.2 gallon per hour leak rate or a release of one hundred fifty gallons within a thirty-day period from any portion of the tank or underground piping that routinely contains a regulated substance with a probability of detection of at least 0.95 and a probability of false alarm of no more than 0.05; or
- (b) Be approved by the department. To be approved, owners and operators must demonstrate the other method is able to detect a leak as effectively as any of the following methods. In comparing methods, the department ~~must~~will consider the size of release that can be detected and the frequency and reliability of detection. Owners and operators must comply with any additional requirements imposed by the department on its use to ensure protection of human health and the environment:
  - (i) Automatic tank gauging (WAC 173-360A-0630);
  - (ii) Tank tightness testing (WAC 173-360A-0635);
  - (iii) Monthly automatic electronic line leak detection (WAC 173-360A-0645).<sup>313</sup>
  - (iv) Line tightness testing (WAC 173-360A-0650).<sup>314</sup>
  - (v) Interstitial monitoring (WAC 173-360A-0655);
  - (vi) Vapor monitoring (WAC 173-360A-0660);
  - (vii) Groundwater monitoring (WAC 173-360A-0665); or
  - (viii) Statistical inventory reconciliation (WAC 173-360A-0670);

**(2) Performance.** Other release detection methods must be performed in accordance with the manufacturer's instructions, any conditions or limitations specified in ~~third-party~~the certifications of the method or equipment, and any additional requirements imposed by the department.<sup>315</sup>

~~**(3) Suspected release.** A release is suspected if an alternative leak detection method detects any leak of regulated substances from the tank or piping being monitored.~~

<sup>313</sup> Added monthly automatic electronic line leak detection as a baseline for other methods.

<sup>314</sup> Added line tightness testing as a baseline for other methods.

<sup>315</sup> Clarified that other methods must be performed in accordance with the manufacturer's instructions, any conditions or limitations specified in the certification of the method or equipment, and any additional requirements imposed by the department.

## **Part 7:**

# **Release Reporting, Confirmation, and Cleanup**

## Crosswalk of Sections

TOPIC	AMENDED RULE §	CURRENT RULE §	FEDERAL RULE §
Release reporting, confirmation, and cleanup	Part 7	In Part 3	Subpart E In Subpart G
Reporting of suspected releases	0700	360	50
<del>Releases suspected by department</del> <u>Investigation due to off-facility impacts</u>	0710	365	51
<del>Confirmation of suspected releases</del> <u>Release investigation and confirmation steps</u>	0720	370	52
Site assessment requirements	0730	390 370(2), (3)	72 52(b)
Reporting and cleanup of spills and overfills	0740	375	53
Reporting and cleanup of confirmed releases	0750	372 399	52(a)(2) 52(b)(1) 53(a)



**WAC 173-360A-0700 Reporting of suspected releases**

Within twenty-four hours<sup>316</sup> of identifying or being notified by another person of any of the following conditions, owners and operators of UST systems shall report a suspected release to the department and initiate an investigation of the suspected release in accordance with WAC 173-360A-0720:

- (1) Presence of released regulated substances at the UST facility or in the surrounding area (such as the presence of free product or its constituents or vapors<sup>317</sup> in soils, basements, sewer ~~and~~or utility lines, groundwater, or surface water);
- (2) Unusual operating conditions (such as the erratic behavior of product dispensing equipment, the sudden loss of regulated substances from an UST system, the unexplained presence of water in a tank, or the presence of liquid in the interstitial space of a secondarily contained UST system),<sup>318</sup> unless:
  - (a) The UST system component is found not to be releasing regulated substances to the environment;
  - (b) Any defective UST system component is immediately repaired in accordance with WAC 173-360A-0490 or replaced in accordance with WAC 173-360A-0300; and
  - (c) For secondarily contained UST systems, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine) is immediately removed;<sup>319</sup> or
- (3) Monitoring results or alarms<sup>320</sup> from a release detection method required under ~~p~~Part 6 of this chapter indicate that a release may have occurred, unless:
  - (a) ~~A false alarm is confirmed~~The alarm was investigated and determined to be a nonrelease event (for example, alarm caused by power surge or filling the tank during release detection testing),<sup>321</sup>
  - (b) The release detection equipment is found to be defective, and either:
    - (i) The defective equipment is immediately repaired or recalibrated in accordance with WAC 173-360A-0490 or replaced in accordance with WAC 173-360A-0300, and additional monitoring does not confirm the initial result; or

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<sup>316</sup> Eliminated Ecology's authority to specify a period other than 24 hours for reporting suspected releases. Ecology retained existing requirement.

<sup>317</sup> To be consistent with §280.50(a) of the federal rule, added presence of vapors as an example of environmental conditions that must be reported as a suspected release.

<sup>318</sup> Consistent with §280.50(b) of the federal rule, added presence of liquid in interstitial space as an example of an unusual operating condition that must be reported as a suspected release.

<sup>319</sup> Consistent with §280.50(b)(3), added removal of liquid from interstitial space as condition for not reporting a suspected release based on unusual operating conditions.

<sup>320</sup> Consistent with §280.50(c) of the federal rule, added monitoring alarms as an indication of a suspected release.

<sup>321</sup> Consistent with §280.50(c)(4) of the federal rule, added example of a false alarm from a release detection method.

- (ii) Another applicable release detection method is used and additional monitoring does not confirm the initial result;<sup>322</sup>
- (c) In the case of inventory control (WAC 173-360A-0620), a second month of data does not confirm the initial result. However, owners and operators shall immediately investigate all larger-than-normal or reoccurring variations in inventory control results, and report such variations if they are unaccounted for, without waiting to obtain a second month of data; or
- (d) In the case of interstitial monitoring (WAC 173-360A-0655):
  - (i) The leak is contained in the secondary containment;
  - (ii) Any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine) is immediately removed; and
  - (iii) Any defective UST system component is immediately repaired in accordance with WAC 173-360A-0490 or replaced in accordance with WAC 173-360A-0300.<sup>323</sup>

**Note:** Other federal, state, and local laws may also require reporting, and in some cases investigation, of suspected releases.

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<sup>322</sup> Clarified that another release detection method must be used if defective equipment is not immediately repaired or replaced.

<sup>323</sup> Consistent with §280.50(c)(2) of the federal rule, clarified conditions under which a suspected release based on interstitial monitoring results does not need to be reported.

**WAC 173-360A-0710** ~~Releases suspected by department~~Investigation due to off-facility impacts

~~Upon identifying or being notified by another person of the presence of released regulated substances inside or outside of an UST facility~~When required by the department, owners and operators of an UST system shall follow the procedures in WAC 173-360A-0720 to determine if the UST system is the source of off-facility impacts. These impacts include the discovery of regulated substances (such as the presence of free product or its constituents or vapors<sup>324</sup> in soils, basements, sewer and or utility lines, groundwater, or surface water),~~the department may require owners and operators to investigate a suspected release from an UST system at the UST facility to determine whether they are the source of the regulated substances.~~that has been observed by the department or brought to its attention by another person.

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<sup>324</sup> Consistent with §280.50(a) of the federal rule, added presence of vapors as an example of environmental conditions under which the department may require investigation of a suspected release.

**WAC 173-360A-0720** ~~Confirmation of suspected releases~~Release investigation and confirmation steps

Unless remedial action is initiated in accordance with WAC 173-360A-0750(4), owners and operators shall ~~ensure that~~immediately investigate and confirm all suspected releases of regulated substances ~~from UST systems~~ requiring reporting under WAC 173-360A-0700 or investigation under WAC 173-360A-0710 ~~are investigated and confirmed in accordance with the steps and requirements of this section~~using the following steps, except as otherwise directed by the department.

- (1) **System test.** First, all tanks and underground piping ~~that routinely contain or contained a regulated substance~~suspected of a release must be tested to determine whether a leak exists or whether a breach exists in either wall of the secondary containment.<sup>325</sup> The tests must be completed within seven days of identifying a suspected release or receiving notice that the department requires investigation of a suspected release.
  - (a) **Performance.** For each tank or pipe suspected of a release, one of the following tests must be performed:
    - (i) A tightness test of the tank or piping in accordance with WAC 173-360A-0635 or 173-360A-0650; or
    - (ii) A tightness test of the secondary containment area of the tank or piping used for interstitial monitoring in accordance with WAC 173-360A-0490~~(6)~~(4)(c) and, for piping, a tightness test of any containment sumps used for interstitial monitoring in accordance with WAC 173-360A-0450.<sup>326</sup>
  - (b) **Next steps.**
    - (i) If the test results do not indicate there is a release<sup>327</sup> and environmental contamination is not the basis for suspecting a release, then no further investigation is ~~not~~ required.
    - (ii) If the test results do not indicate there is a release but environmental contamination is the basis for suspecting a release, then a site check must be performed in accordance with subsection (2) of this section.
    - (iii) ~~If the test results indicate there is a release, then the confirmed release must be reported, investigated, and cleaned up in accordance with WAC 173-360A-750.~~If the test results confirm there is a leak into the interstice but do not indicate a release, then the defective UST system components must be repaired, replaced, or closed immediately. No further investigation is required.

<sup>325</sup> Consistent with §280.52(a) of the federal rule, clarified that a system test may include testing to determine whether a breach exists in either wall of secondarily contained tanks or piping.

<sup>326</sup> Consistent with §280.52(a) of the federal rule, added option of testing the secondary containment of tanks and piping in place of tank or line tightness test.

<sup>327</sup> Consistent with §280.52(a) of the federal rule, replaced term “leak” with “release” to reflect the fact that leaks from secondarily contained UST systems may not result in releases.

- (iv) ~~If the test results indicate there is a leak into the interstice or a release, then the defective UST system component must be repaired, replaced, or closed immediately.~~ If the test results indicate there is a release, then:

(A) The defective UST system components must be repaired, replaced, or closed immediately; and

(B) A site check must be performed in accordance with subsection (2) of this section.<sup>328</sup>

- ~~(v) If the test results indicate there is a leak into the interstice or a release and release detection results are not the basis for suspecting a release, then release detection equipment must be tested in accordance with WAC 173-360A-480 to determine whether it is operating properly.~~

- (2) **Site check.** Second, if required based on the results of the system test in subsection (1) of this section, a site check must be performed to determine whether regulated substances have been released from the UST system into the environment. The site check must be ~~performed~~completed within ~~sixty~~thirty days of identifying a suspected release or receiving notice that the department requires investigation of a suspected release.

(a) **Performance.** Site checks must be performed in accordance with WAC 173-360A-0730.

(b) **Next steps.**<sup>329</sup>

- (i) If the results of the site check do not indicate there ~~has been~~is a release from the UST system that may pose a threat to human health or the environment, then no further investigation of the suspected release ~~is not~~ required.
- (ii) If the results of the site check ~~indicate~~confirm there ~~has been~~is a release from the UST system that may pose a threat to human health or the environment, then the confirmed release must be reported, investigated, and cleaned up in accordance with WAC 173-360A-0750.

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<sup>328</sup> For cases where a system test indicates a release may have occurred, changed requirements to allow a site check to confirm a suspected release before remedial action is required.

<sup>329</sup> Clarified next steps based on results of site check when results do not indicate a release that poses a threat. Also clarified that only releases that may pose a threat to human health or the environment require remedial action.

**WAC 173-360A-0730 Site assessment requirements**

Owners and operators shall ensure site assessments, including site checks, are performed in accordance with the requirements of this section.<sup>330</sup>

**(1) Applicability.** Site assessments are required under this chapter to:

- (a) ~~Confirm~~Investigate a suspected release from an UST system, as applicable (WAC 173-360A-0720(2)). Such assessments are referred to as “site checks”;
- (b) Suspend financial responsibility for a temporarily closed UST system (WAC 173-360A-0800(3)(c) and 173-360A-1010(2));
- (c) ~~Keep~~Allow an UST system to be temporarily closed for more than twelve months when the tanks or piping do not meet applicable performance standards or upgrade requirements (WAC 173-360A-0800(4));
- (d) Permanently close an UST system, or a tank or piping run that is part of an UST system (WAC 173-360A-0810~~(4)~~(3)); and
- (e) Undertake a change-in-service of an UST system (WAC 173-360A-0820~~(4)~~(3)).

**(2) Service provider.** Site assessments must be performed or directly supervised by a service provider certified in accordance with Part 9 of this chapter. The service provider must be present at the UST facility when and where the site assessment is performed and any ~~removal of~~ tanks or piping are ~~performed~~removed.

**(3) Sampling and analysis plans.** A sampling and analysis plan must be prepared for all sampling activities that are part of a site assessment.

- (a) Submission.** The department may require a sampling and analysis plan be submitted to the department at least thirty days before any sampling is performed. The department may also require alternative sampling and analysis.
- (b) Content.** A sampling and analysis plan must include the following information at a minimum:
  - ~~(a)~~(i) The reasons for performing the site assessment;
  - ~~(b)~~(ii) The UST system or portion of the UST system around which the assessment is to be performed;
  - ~~(c)~~(iii) The media to be assessed, including under what circumstances groundwater will be assessed or an explanation of why groundwater does not need to be assessed;

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<sup>330</sup> Incorporated into the rule minimum requirements for site assessments from the guidance document referenced in the current rule. Except as otherwise noted, the requirements are the same.

- ~~(d)~~(iv) The number and location of samples to be collected. If the plan does not include all of the soil samples specified in subsection (5)(a)(i) of this section, then the plan must explain how physical conditions prevent the collection of those samples;
- ~~(e)~~(v) The methods to be used to collect and handle the samples;
- ~~(f)~~(vi) The regulated substances to be analyzed for in the samples;
- ~~(g)~~(vii) The methods to be used to analyze the samples for those substances;
- ~~(h)~~(viii) The name of the accredited laboratory to be used to perform those analyses;
- ~~(i)~~(ix) The methods to be used for quality assurance and quality control; and
- ~~(j)~~(x) Any other information required by the department.

**(4) Health and safety requirements.** Persons performing site assessments under this chapter shall comply, as applicable, with the requirements of the Occupational Safety and Health Act (20 U.S.C. Sec. 651 et seq.) and the Washington Industrial Safety and Health Act (chapter 49.17 RCW), and regulations promulgated pursuant thereto. These requirements are subject to enforcement by the designated federal and state agencies.

**(5) Sampling and analysis requirements.** Site assessments must be performed in accordance with the requirements of this subsection, except as otherwise directed by the department. The department may require additional sampling or analysis on a site-specific basis to confirm whether a release has occurred ~~or poses~~that may pose a threat to human health or the environment or to address any such threats.

**(a) Soil assessment.**

- (i) Number and location of samples.** Soil samples must be collected where contamination has been detected or is most likely to be present. At a minimum, the soil samples specified in Table 0730-1 must be collected unless:
  - (A) Physical conditions prevent the collection of any of the specified samples and an alternative sampling plan is prepared. The department must be notified in the site assessment report of any such changes and the reasons for the changes; or
  - (B) A release that may pose a threat to human health or the environment is confirmed without the collection of some or all of the specified samples.
- (ii) Regulated substances to be analyzed.** All regulated substances currently or previously stored in the UST system must be analyzed for in the soil samples.
  - (A) For petroleum, analyze for the substances specified for the type of product in Table 830-1 of WAC 173-340-900.
  - (B) For hazardous substances, analyze for the substances and any likely decomposition by-products.

- (iii) **Analytical procedures.** The soil samples must be collected, handled, and analyzed in accordance with the requirements in WAC 173-340-830.
- (iv) **Evaluation of results.** A release that may pose a threat to human health or the environment is confirmed if the concentration of any regulated substance analyzed in any of the soil samples exceeds the following levels:
  - (A) The level specified in Table 740-1 of WAC 173-340-900; or
  - (B) If a regulated substance is not listed in Table 740-1, a Method B unrestricted soil cleanup level established under WAC 173-340-740(3).

(b) **Groundwater assessment.**

- (i) **Applicability.** Groundwater must be sampled if a release has not been confirmed by soil sampling and if:
  - (A) The lowest point of the UST system is located in ~~or within two feet of~~ groundwater;
  - (B) A release is suspected based on environmental contamination and the lowest point of the UST system is located within two feet of the seasonal high water table;
  - ~~(B)~~(C) Groundwater monitoring wells already exist at the UST facility where the site assessment is being performed, the wells are located in areas at the facility that would provide useful data, and the condition of the wells allows for the collection of representative samples;
  - ~~(C)~~(D) Physical conditions prevent collection of all or some ~~or all~~ of the soil samples required under (a)(i) of this subsection and groundwater sampling is part of an alternative sampling plan; or
  - ~~(D)~~(E) Groundwater sampling is otherwise required by the department.
- (ii) **Number and location of samples.** Groundwater samples must be collected where contamination has been detected or is most likely to be present.
- (iii) **Regulated substances to be analyzed.** All regulated substances currently or previously stored in the UST system must be analyzed for in the groundwater samples.
  - (A) For petroleum, analyze for the substances specified for the type of product in Table 830-1 of WAC 173-340-900.
  - (B) For hazardous substances, analyze for the substances and any likely decomposition by-products.
- (iv) **Analytical procedures.** The groundwater samples must be collected, handled, and analyzed in accordance with the requirements in WAC 173-340-830.



- (v) **Evaluation of results.** A release that may pose a threat to human health or the environment is confirmed if the concentration of any regulated substance tested in any of the groundwater samples exceeds the following levels:
- (A) The levels specified in Table 720-1 of WAC 173-340-900; or
  - (B) If the regulated substance is not listed in Table 720-1, a Method B potable groundwater cleanup level established under WAC 173-~~360~~340-720(4).
- (6) **Reporting and cleanup of confirmed releases.** If ~~the results of~~ a site assessment confirms that a release has occurred from an UST system ~~and that the release~~that may pose a threat to human health or the environment, then:
- (a) The service provider who performed or directly supervised the site assessment shall notify:
    - (i) An owner or operator of the UST system immediately; and
    - (ii) The department within twenty-four hours.<sup>331</sup> However, if an owner or operator of the system is not immediately available, the service provider shall notify the department immediately.
  - (b) Owners and operators shall report, investigate, and clean up the confirmed release in accordance with WAC 173-360A-0750.
- (7) **Reporting results of assessment.**
- (a) Site assessments must be ~~certified and reported in accordance with WAC 173-360A-230(3)(b)~~reported to the department within thirty days by submitting the applicable checklist provided by the department and a report including the information specified in subsection (8) of this section. Both the checklist and the report must be completed by the service provider.
  - (b) If a site assessment confirms a release that may pose a threat to human health or the environment, the site assessment report may be combined with the remedial action reports required under WAC 173-340-450, provided the combined report is submitted within thirty days of release confirmation.
- (8) **Content of report.** At a minimum, site assessment reports must ~~meet the general submittal requirements in WAC 173-340-840 and~~ include the following information:<sup>332</sup>
- (a) Information about the service provider who performed or directly supervised the site assessment, including the name of the service provider, the certification type and number, and the firm with which the service provider is affiliated;

<sup>331</sup> Changed deadline for service providers to report confirmed releases to the department from 72 hours to 24 hours to be consistent with reporting requirements for owners and operators.

<sup>332</sup> Clarified what information that must be included in a site assessment report.

- (b) Information about the UST system and the UST facility where the system is located, including:
  - (i) The name of the owner and operator of the system and the owner of the property where the system is located, if different;
  - (ii) The location of the system within the facility;
  - (iii) The components comprising the system;
  - (iv) Any previous repairs to the system;
  - (v) The type of regulated substances stored in the system, both currently and historically since the date of installation;
  - (vi) The dimensions of the excavation zone and the depth, width, and type of backfill material used within that zone, if known;
  - (vii) The number and location of any other currently or previously regulated systems at the facility; and
  - (viii) The types and locations of any groundwater monitoring wells at the facility;
- (c) Information on any previous leaks or confirmed releases from the UST system, and whether the releases were cleaned up;
- (d) The physical characteristics of the UST facility, including the following:
  - (i) The current uses of the land within and adjacent to the facility, and any known prior uses of that land;
  - (ii) The geology of the site, including soil types and characteristics;
  - (iii) The hydrology of the site, including:
    - (A) Surface draining characteristics;
    - (B) Depth to groundwater (including seasonal fluctuations);
    - (C) Presence of groundwater in the excavation zone, direction of groundwater flow (if relevant to any groundwater sampling plan);
    - (D) Proximity of the UST system to any nearby drinking water wells or surface water bodies (if known); and
    - (E) Potential hydraulic connections between groundwater and any nearby surface water bodies (if known); and
  - (iv) The location of tax parcel(s) comprising the facility, any above-ground and below-ground structures at the facility, any paved areas at the facility, and any roads or utilities on or adjacent to the facility;

- (e) A summary of the sampling and analyses performed, including any changes to the plan or the sampling or analyses required under this section and the reason for those changes;

(f) All laboratory reports;

~~(f)~~(g) The results of the site assessment, including:

- (i) A table showing, for each field sample collected, the unique identifying number assigned to the sample, whether the sample was a composite sample, the laboratory results for all indicator constituents analyzed, the method used to analyze the sample, and the detection limit for that method;
- (ii) Any factors that may have compromised the quality of the data or validity of the results; and
- (iii) A conclusion as to whether there has been a release of regulated substances from the UST system that may pose a threat to human health or the environment;

~~(g)~~(h) Site diagrams that include the following information at a minimum:

- (i) The geographic location of the UST facility and a north arrow;
- (ii) The location of the UST system within the UST facility, including the location of all tanks, piping, and dispensers, and any adjacent structures or streets;
- (iii) To the extent known, the dimensions of the excavation zone and the backfill material used within that zone;
- (iv) The physical characteristics of the UST facility, including the information specified in (d) of this subsection and the location of any other regulated UST systems at the facility; and
- (v) The horizontal and vertical location of and unique identifying number for all samples collected for laboratory analysis, and which samples were collected from excavated soils. Diagrams must clearly differentiate between soil and groundwater samples and between investigatory and confirmation samples; and

~~(h)~~(i) Any other information required by the department.

~~(8)~~(9) **Department determination.** After receiving a site assessment report, the department will determine whether any further assessment or information is necessary. The department may require further sampling or analysis if:

- (a) The assessment performed does not comply with the requirements of this section; or
- (b) The department determines further assessment is necessary to confirm a suspected release, determine whether a release poses a threat to human health or the environment, or to address any such threats.

~~(9)~~(10) **Recordkeeping.** Records of site assessments, including sampling and analysis plans and site assessment reports and checklists, must be maintained ~~in accordance with WAC 173-360A-240~~ until six years after the UST system is permanently closed or undergoes a change-in-service.

Table 0730-1: Minimum ~~n~~Number and ~~l~~Location of ~~s~~Soil ~~s~~Samples

UST System Status	Tanks	Connected Dispensers	Connected Piping
Operating, temporarily closed, or undergoing change in service	Collect <del>two samples</del> , one at each end of the tank. Collect two additional samples for each additional tank in the tank excavation zone. <del>(1, 2)</del>	Collect <del>two samples</del> around each dispenser or set of dispensers connected to the UST system, one on each side. <del>(1, 2)</del>	Collect samples around connected piping where contamination is most likely to be present, such as at connections, fittings, or elbows. <del>(1, 2)</del>  If a piping run is longer than fifty feet, then collect one additional sample for every fifty feet of piping. For example, collect one additional sample if the piping run is 50 to 99 feet long and two additional samples if the piping run is 100 to 150 feet long. <del>(1, 2)</del>
Undergoing permanent closure in place	Collect <del>four samples</del> , one on each side of the tank. Collect two additional samples for each additional tank in the tank excavation zone. <del>(1, 2)</del>	Collect <del>one sample</del> beneath each dispenser connected to the UST system. <del>(1, 2)</del>	
Undergoing permanent closure by removal	<p><b>Samples from excavation zone:</b> Collect the following samples from within the tank excavation zone:</p> <ul style="list-style-type: none"><li>Collect <del>one sample</del> between one and two feet into the wall of the tank excavation zone where the pipe to the dispenser exited the tank.</li><li>Collect <del>one sample</del> at the bottom center of the tank exaction zone wall on each of the other three sides of the tank. <del>(2)</del></li><li>Collect <del>one sample</del> in the bottom of the tank excavation zone beneath where the fill pipe entered the tank. <del>(2)</del></li></ul>		
	<p><b>Samples from excavated soils:</b> Collect the following number of samples from excavated soils and collect them where field instruments indicate contamination is most likely to be present:</p>		
	Cubic Yards of Soil	Minimum Number of Samples	
	0-25	1	
	26-50	2	
51-100	3		
101-500	5		
501-1000	7		
1001-2000	10		
>2000	10 + 1 additional sample for each additional 500 cubic yards of soil		

**Footnotes:**

**(1) Horizontal distance:** The specified samples must be collected as close as practicable, but no more than five feet from the applicable tank, pipe, or dispenser.

**(2) Vertical distance:** The specified samples must be collected between one and two feet below the lowest point of the interface between the backfill material and the native soil. If the interface is not discernible, then samples must be collected between one and two feet below the lowest point of the applicable tank, pipe, or dispenser.

**UST Regulations, Chapter 173-360A WAC**  
**Proposed Rule: Text with Tracked Changes to Preliminary Draft**

**Part 7**

	<u>Tanks</u>	<u>Piping</u>	<u>Dispensers</u>																
<u>In Place</u>	<p><u>Collect the following samples around the excavation zone where contamination is most likely to be present:</u><sup>333</sup></p> <ul style="list-style-type: none"><li><u>When assessing single tank with a capacity of &lt; 9,000 gallons, collect three samples, one at each end and one on another side of the tank. (1, 2)</u></li><li><u>When assessing single tank with a capacity of ≥ 9,000 gallons, collect four samples, one at each side of the tank. (1, 2)</u></li><li><u>When assessing multiple tanks in an excavation zone, collect four samples for the first tank and two additional samples for each additional tank, spacing the samples evenly around the excavation zone. (1, 2)</u></li></ul>	<p><u>Collect one sample for every 50 feet of piping. For example, collect one sample if the piping run is less than 50 feet and two samples if the piping run is 50 to 100 feet. Collect the samples adjacent to the piping where contamination is most likely to be present, such as at connections, fittings, or elbows. (1, 2)</u></p>	<p><u>Collect one sample adjacent to each dispenser. (1, 2)</u><sup>334</sup></p>																
<u>Removed</u>	<p><u>Collect the following samples within the excavation zone where contamination is most likely to be present:</u><sup>335</sup></p> <ul style="list-style-type: none"><li><u>When assessing single tank with a capacity of &lt; 9,000 gallons, collect three samples, one beneath the tank (2), one beneath where the piping from the tank entered a sidewall, and one from another sidewall.</u></li><li><u>When assessing single tank with a capacity of ≥ 9,000 gallons, collect five samples, one from beneath the tank (2), one beneath where the piping from the tank entered a sidewall, and one from each of the other three sidewalls.</u></li><li><u>When assessing multiple tanks from an excavation zone, collect five samples for the first tank and two additional samples for each additional tank, one beneath each tank (2), one beneath where piping from each tank entered a sidewall, and spacing remaining samples evenly around the sidewalls.</u></li></ul> <p><u>Collect the following samples from excavated soils where contamination is most likely to be present:</u></p> <table><tr><td><u>Cubic Yards of Soil</u></td><td><u>Minimum Number of Samples</u><sup>336</sup></td></tr><tr><td><u>0-25</u></td><td><u>1</u></td></tr><tr><td><u>26-50</u></td><td><u>2</u></td></tr><tr><td><u>51-100</u></td><td><u>3</u></td></tr><tr><td><u>101-500</u></td><td><u>5</u></td></tr><tr><td><u>501-1000</u></td><td><u>7</u></td></tr><tr><td><u>1001-2000</u></td><td><u>10</u></td></tr><tr><td><u>&gt;2000</u></td><td><u>10 + 1 additional sample for each additional 500 cubic yards of soil</u></td></tr></table>	<u>Cubic Yards of Soil</u>	<u>Minimum Number of Samples</u> <sup>336</sup>	<u>0-25</u>	<u>1</u>	<u>26-50</u>	<u>2</u>	<u>51-100</u>	<u>3</u>	<u>101-500</u>	<u>5</u>	<u>501-1000</u>	<u>7</u>	<u>1001-2000</u>	<u>10</u>	<u>&gt;2000</u>	<u>10 + 1 additional sample for each additional 500 cubic yards of soil</u>	<p><u>Collect one sample for every 50 feet of piping. For example, collect one sample if the piping run is less than 50 feet and two samples if the piping run is 50 to 100 feet. Collect the samples beneath the piping where contamination is most likely to be present, such as at connections, fittings, or elbows. (2)</u></p>	<p><u>Collect one sample beneath each dispenser. (2)</u></p>
<u>Cubic Yards of Soil</u>	<u>Minimum Number of Samples</u> <sup>336</sup>																		
<u>0-25</u>	<u>1</u>																		
<u>26-50</u>	<u>2</u>																		
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<u>1001-2000</u>	<u>10</u>																		
<u>&gt;2000</u>	<u>10 + 1 additional sample for each additional 500 cubic yards of soil</u>																		

<sup>333</sup> For assessing single tanks in place, increased the number of samples from three to five for tanks between 9,000 and 20,000 gallons. For assessing multiple tanks in place, clarified the number of additional samples required for each additional tank.

<sup>334</sup> For assessing dispensers (either removed or in place), clarified that one sample must be collected for each connected dispenser instead of for each dispenser island.

<sup>335</sup> For assessing single tanks removed from the ground, increased the number of samples from three to five for tanks between 9,000 and 20,000 gallons. For assessing multiple tanks removed from the ground, increased the number of additional samples for each additional tank from one to two.

<sup>336</sup> For assessing excavated soils, reduced the number of required samples when there is less than 51 cubic yards from three to two (for 26-50) and one (for 0-25).

**Footnotes:**

- (1) Horizontal distance:** The specified samples must be collected from native soil as close as practicable to, but no more than ten feet from the applicable tank, pipe, or dispenser.<sup>337</sup>
- (2) Vertical distance:** The specified samples must be collected from native soil as close as practicable to the bottom of the applicable tank, pipe, or dispenser. If groundwater is encountered, soil samples must be collected at the approximate top of the water table.

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<sup>337</sup> For assessing UST system components in place, specified that samples must be collected as close as practicable to, but no more than ten feet from the applicable component. The current rule does not specify an outside limit.

**WAC 173-360A-0740 Reporting and cleanup of spills and overfills**

Owners and operators shall ~~ensure that~~respond to spills and overfills of regulated substances ~~are responded to~~ in accordance with the requirements of this section.

- (1) If a spill or overfill of regulated substances from an UST system results in a release that may pose a threat to human health or the environment, including in the following cases,<sup>338</sup> then the release must be reported, investigated, and cleaned up in accordance with WAC 173-360A-0750:
  - (a) A spill or overfill of petroleum results in a release to the environment of more than twenty-five gallons, a sheen on surface water, or groundwater contamination; or
  - (b) A spill or overfill of a hazardous substance results in a release to the environment of more than the reportable quantity specified in 40 C.F.R. Sec. 302.
- (2) If a spill or overfill of regulated substances from an UST system does not result in a release or results in a release that does not pose a threat to human health or the environment, then the spill or overfill must be:
  - (a) Immediately contained and cleaned up as follows:
    - (i) Eliminate or reduce any fire, explosive, or vapor hazards resulting from the spill or overfill, and do so in a manner that minimizes the release of regulated substances into the environment;
    - (ii) Prevent the release or further release of regulated substances into the environment and the migration of any substances already released;
    - (iii) Absorb or otherwise contain any free product and properly dispose of the product and any used absorbent materials in accordance with all applicable federal, state, and local requirements. Free product shall not be flushed into storm drains, catch basins, dry wells, monitoring wells, or other locations with a possible connection to surrounding soils, groundwater, or surface water; and
    - (iv) Provide for the proper disposal or treatment of any contaminated soils in accordance with applicable federal, state, and local requirements~~;~~ and
  - (b) Reported to the department within ~~24~~twenty-four hours if the cleanup required under (a) of this subsection has not been completed.

**Note:** Other federal, state, and local laws may also require reporting, and in some cases cleanup, of spills and overfills.

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<sup>338</sup> To be consistent with the state's cleanup rules in Chapter 173-340 WAC, clarified that any spill or overfill that may pose a threat to human health or the environment must be reported and cleaned up under the state's cleanup rules, not just those spills and overfills exceeding the specified volumetric thresholds. Other spills and overfills only need to be reported if they are not contained and cleaned up as specified within 24 hours.



**WAC 173-360A-0750 Reporting and cleanup of confirmed releases**

Owners and operators shall ~~ensure that~~immediately respond to all confirmed releases of regulated substances from UST systems that may pose a threat to human health or the environment,<sup>339</sup> including those confirmed under WAC 173-360A-0720 through 173-360A-0740, ~~are responded to~~ in accordance with the requirements of this section.

- (1) Within twenty-four hours of confirming a release, the release must be reported to the department.
- (2) Within twenty-four hours of confirming a release ~~from a tank~~, the UST system must be secured to prevent further delivery or deposit of regulated substances ~~into the tank that is not authorized by the department~~ until the defective UST system components are repaired, replaced, or closed.
- (3) Within thirty days of confirming a release, ~~evidence of~~ financial responsibility records must be submitted to the department in accordance with WAC 173-360A-1045(2)(a).<sup>340</sup>
- (4) Confirmed releases must be investigated and cleaned up in accordance with chapter 173-340 WAC or as otherwise directed by the department under chapter 90.48 RCW.

**Note:** Other federal, state, and local laws may also require reporting, and in some cases cleanup, of confirmed releases.

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<sup>339</sup> Clarified that only releases that may pose a threat to human health and the environment must be reported to Ecology and cleaned up under the state's cleanup rules in Chapter 173-340 WAC.

<sup>340</sup> Added cross-reference to existing requirement that evidence of financial responsibility must be submitted to department within thirty days of confirming a release.

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## **Part 8: Closure**

## Crosswalk of Sections

TOPIC	AMENDED RULE §	CURRENT RULE §	FEDERAL RULE §
Closure	Part 8	Part 3 In Part 2	Subpart G In Subpart K
Temporary closure of UST systems	0800	380 In 200(6) In 398	70 In 74 In 252(b)
Permanent closure of UST systems	0810	In 385 In 390 In 398	In 71 In 72 In 74
Change-in-service of UST systems	0820	In 385 In 390 In 398	In 71 In 72 In 74
Previously closed UST systems	0830	395	73 252(e)

WAC 173-360A-0800 Temporary closure of UST systems

Owners and operators of temporarily closed UST systems shall ~~ensure compliance~~comply with the requirements of this section.

- (1) ~~Removing~~Taking UST systems from out of operation. Within thirty days of temporarily closing an UST system:
- (a) ~~Within thirty days of temporarily closing an UST system, t~~The department must be notified using the applicable form provided by the department;~~;~~ and
  - (b) If ~~an~~the UST system ~~is~~will be temporarily closed for more than ninety days, the following actions must be completed and reported to the department ~~within one hundred and twenty days of temporarily closing the system using the applicable form provided by the department~~on the form.<sup>341</sup>
    - (i) Ensure vent lines are open and functioning;
    - (ii) Cap ~~and or~~or secure all other lines, pumps, entryways, and ancillary equipment;
    - (iii) Empty the UST system in accordance with subsection (2) of this section, or measure ~~and report on the notification form~~ the amount of regulated substances remaining in the system;<sup>342</sup> and
    - (iv) If ~~there are~~ no UST systems are in operation at the UST facility, return the facility compliance tag to the department ~~with the notification form.~~<sup>343</sup>
- (2) ~~Emptying systems removed from operation~~temporarily closed UST systems. When emptying a temporarily closed UST system:
- (a) ~~When emptying a temporarily closed UST system, a~~All materials must be removed from the UST system using commonly employed practices. The remaining residue in the tanks must not exceed 2.54 centimeters (one inch);~~;~~<sup>344</sup> and
  - (b) ~~Within thirty days of emptying a temporarily closed UST system, t~~The department must be notified ~~using the applicable form provided the department~~in writing within thirty days. The notice must include documentation that the UST system has been emptied,

<sup>341</sup> Clarified that if an UST system will be temporarily closed for more than ninety days, then required closure activities must be completed and reported within thirty days of closure on the specified form.

<sup>342</sup> Added requirement that UST systems temporarily closed for more than ninety days must either be emptied or the amount of regulated substance remaining in the system must be measured.

<sup>343</sup> Clarified that facility compliance tags, not active permits, must be returned to Ecology if there are no UST systems in operation at the UST facility, consistent with changes to the authorizing state statute in RCW 90.76.020.

<sup>344</sup> Eliminated "0.3 percent by weight of the total capacity" as a criteria for determining whether an UST system is empty.

~~{such as an invoice}~~. This notice may be combined with the notice required under subsection (1)~~(b)~~ of this section.<sup>345</sup>

- (3) **Maintaining compliance during temporary closure.** Except as otherwise provided in this subsection, owners and operators ~~must ensure compliance~~shall comply with all of the applicable requirements of this chapter during temporary closure, including maintenance of corrosion protection and payment of annual tank fees.<sup>346</sup>
- (a) **Spill and overfill prevention.** The following ~~operation and maintenance~~ tests and inspections of spill and overfill prevention equipment may be suspended during temporary closure, regardless of whether the UST system is emptied in accordance with subsection (2) of this section:<sup>347</sup>
- (i) Walkthrough inspections of spill prevention equipment ~~in~~ (WAC 173-360A-0420);
  - (ii) Monitoring and tightness ~~T~~ tests of spill prevention equipment ~~in~~ (WAC 173-360A-0460); and
  - (iii) Inspections of overfill prevention equipment ~~in~~ (WAC 173-360A-0470).
- (b) **Release detection and containment.** Release detection in Part 6 of this chapter and the following ~~operation and maintenance~~ tests and inspections of release detection equipment and containment ~~sumps~~ may be suspended during temporary closure if an UST system is emptied in accordance with subsection (2) of this section:<sup>348</sup>
- (i) Walkthrough inspections of release detection equipment, ~~and~~ containment sumps, and hydrant pits and vaults ~~in~~ (WAC 173-360A-0420);
  - (ii) Monitoring and tightness ~~T~~ tests of containment sumps used for interstitial monitoring ~~in~~ (WAC 173-360A-0450); and
  - (iii) Tests of release detection equipment ~~in~~ (WAC 173-360A-0480).
- (c) **Financial responsibility.** Financial responsibility in Part 10 of this chapter may be suspended during temporary closure if:<sup>349</sup>

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<sup>345</sup> Clarified that Ecology must be notified within thirty days of an UST system being emptied (as a change in the status of an UST system).

<sup>346</sup> Clarified that UST systems must comply with all applicable requirements of this chapter, including corrosion protection, during temporary closure (just as if it were in operation), except as otherwise specified in the section.

<sup>347</sup> Consistent with §280.70(a) of the federal rule, specified that tests and inspections of spill and overfill prevention equipment may be suspended during temporary closure.

<sup>348</sup> Consistent with §280.70(a) of the federal rule, specified that release detection and tests and inspections of release detection equipment, containment sumps, and hydrant pits and vaults may be suspended during temporary closure if the UST system is empty.

<sup>349</sup> To be consistent with §280.113 of the federal rule, added requirement that financial responsibility must be maintained during temporary closure. However, unlike the federal rule, specified that financial responsibility does not need to be maintained during temporary closure if the UST system is emptied and a site assessment is

- (i) The UST system is emptied in accordance with subsection (2) of this section; and
  - (ii) After the UST system is emptied, a site assessment around the UST system is completed and reported in accordance with WAC 173-360A-0730. Unless otherwise directed by the department, a site assessment is not required if:
    - (A) A release from the UST system had previously been confirmed and reported to the department; and
    - (B) Further remedial action is necessary to investigate or clean up the confirmed release under WAC 173-360A-0750(4).
- (4) **Permanent closure of ~~non-compliant~~substandard UST systems.** ~~Unless the department provides an extension, UST systems temporarily closed more than twelve months must be permanently closed in accordance with WAC 173-360A-810 if the tanks or piping do not meet the applicable performance standards or upgrade requirements in Part 3 of this chapter. The department may provide an extension if, before the end of the twelve-month period~~An UST system must be permanently closed within twelve months of temporary closure if the tanks or piping do not meet the applicable performance standards or upgrade requirements in Part 3 of this chapter, unless:<sup>350</sup>
- (a) A site assessment is performed around the UST system in accordance with WAC 173-360A-0730. Unless otherwise directed by the department, a site assessment is not required if:
    - (i) A release from the UST system had previously been confirmed and reported to the department; and
    - (ii) Further remedial action is necessary to investigate or clean up the confirmed release under WAC 173-360A-0750(4); and
  - (b) ~~After the site assessment is completed, an extension is requested in writing~~The department provides an extension of the twelve-month period. Requests for extensions must be submitted to the department in writing after the site assessment is completed.
- (5) **Returning UST systems to operation.**
- (a) **Requirements for all temporarily closed UST systems.** Before returning an UST system to operation, owners and operators must ~~ensure compliance~~ comply with all of the applicable requirements of this chapter, including any suspended during temporary closure under subsection (3) of this section. If financial responsibility is suspended during temporary closure, the owner or operator must demonstrate financial

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completed after the system is emptied. A site assessment is not needed if a release had previously been confirmed and further remedial action is needed to clean up the confirmed release.

<sup>350</sup> Clarified that UST systems temporarily closed more than twelve months must be permanently closed if the tanks and piping do not meet applicable performance standards or upgrade requirements.

responsibility in accordance with WAC 173-360A-1045(1)(a) or (b), as applicable, before returning an UST system to operation.

- (b) Additional requirements for UST systems temporarily closed more than ninety days.** ~~If the~~ When an UST system ~~has been~~ is temporarily closed for more than ninety days, owners and operators must also ~~ensure compliance~~ comply with the ~~additional~~ following additional requirements ~~of this subsection.~~

**(a)(i) Tests and inspections.** Before returning an UST system to operation, the following tests and inspections, as applicable, must be ~~performed, as applicable,~~ completed to ensure the UST system is operating properly and will prevent releases to the environment.

**(i)(A) Tanks and piping.** If release detection is suspended during temporary closure, tightness tests of tanks and piping must be ~~tightness tested~~ performed in accordance with WAC 173-360A-0635 and 173-360A-0650. This requirement does not apply to suction piping meeting the standards in WAC 173-360A-0600(1)(b)(i) through (v). The department must authorize any delivery or deposit of regulated substances ~~necessary~~ needed to perform the tightness tests. To ~~request~~ obtain such authorization, ~~submit the applicable form provided by the department.~~ <sup>351</sup> ~~Authorization will not be provided unless:~~

**(A)(I)** A preliminary evaluation of the ~~structural integrity of the~~ tanks (such as a pressure decay test) ~~is~~ must be performed ~~and reported on the request form;~~ <sup>352</sup> and

**(B)(II)** ~~Proof of financial responsibility for the UST system is included with the request form~~ A request must be submitted to the department using the applicable form provided by the department. The results of the preliminary evaluation must be included with the request.

**(ii)(B) Spill and overfill prevention equipment.** If suspended during temporary closure, ~~The following operation and maintenance test~~ tests and inspections of spill and overfill prevention equipment must be performed ~~if suspended (scheduled, but not performed) during temporary closure.~~ <sup>353</sup>

<sup>351</sup> Clarified how to obtain Ecology's authorization for a one-time delivery or deposit of regulated substances needed to perform a tank tightness test.

<sup>352</sup> Added requirement that a preliminary evaluation of the tank must be completed before Ecology will authorize deposit of regulated substances needed for a tightness test of an empty temporarily closed UST system.

<sup>353</sup> For UST systems temporarily closed more than ninety days, added requirement that any tests or inspections of spill or overfill prevention equipment suspended during temporary closure must be performed before returning an UST system to operation.



- ~~(A)~~(I) Walkthrough inspections of spill prevention equipment ~~in~~ (WAC 173-360A-0420);
  - ~~(B)~~(II) Monitoring or tightness ~~Testing~~ tests of spill prevention equipment ~~in~~ (WAC 173-360A-0460); and
  - ~~(C)~~(III) Inspections of overfill prevention equipment ~~in~~ (WAC 173-360A-0470).
- ~~(iii)~~(C) **Release detection equipment and containment.** If suspended during temporary closure, ~~The following operation and maintenance~~ tests and inspections of release detection equipment and containment ~~sumps must be performed if suspended (scheduled, but not performed) during temporary closure.~~<sup>354</sup>
- ~~(A)~~(I) Walkthrough inspections of release detection equipment, ~~and~~ containment sumps, and hydrant pits and vaults ~~in~~ (WAC 173-360A-0420);
  - ~~(B)~~(II) Monitoring or tightness ~~T~~ tests of containment sumps used for interstitial monitoring ~~in~~ (WAC 173-360A-0450); and
  - ~~(C)~~(III) Tests of release detection equipment ~~in~~ (WAC 173-360A-0480).
- ~~(b) — Financial responsibility.~~ ~~If financial responsibility under Part 10 of this chapter is suspended during temporary closure, financial responsibility for the UST system must be demonstrated to the department before any regulated substances are delivered or deposited into the UST system, including a one-time delivery or deposit necessary to perform the tightness tests required under (a)(i) of this subsection.~~
- ~~(c)~~(ii) **Notification of return to operation.** Within thirty days of returning ~~a temporarily closed~~ an UST system to operation, the department must be notified using the applicable form provided by the department. ~~The following must be included with the notification form:~~
- ~~(i) —~~ The completed checklists of any UST system services required to return the UST system to operation must be included with the notification form; ~~and.~~
  - ~~(ii) — Proof of financial responsibility for the UST system.~~<sup>355</sup>
- ~~(d)~~(c) **Reissuance of facility compliance tag.** ~~Upon~~ If the facility compliance tag for an UST facility is returned to the department under subsection (1)(b)(iv) of this

<sup>354</sup> For UST systems temporarily closed more than ninety days, added requirement that any tests or inspections of release detection equipment, containment sumps, or hydrant pits or vaults suspended during temporary closure must be performed before returning an UST system to operation.

<sup>355</sup> Clarified requirements for notifying Ecology after returning an UST system temporarily closed more than ninety days to operation.

section, the department will reissue a facility compliance tag upon receipt of the completed notification form required under ~~(c)(b)(ii)~~ of this subsection, ~~the department will reissue a facility compliance tag for the UST facility if returned under subsection (1)(b)(iv) of this section.~~

WAC 173-360A-0810 Permanent closure of UST systems

~~When UST systems, or tanks or piping that are part of an UST system, undergo permanent closure, owners and operators shall ensure compliance with the requirements of this section.~~ Owners and operators shall permanently close an UST system, or a tank or piping run that is part of an UST system,<sup>356</sup> in accordance with the requirements of this section.

(1) **Notice of intent.** Owners and operators shall notify the department of their intent to permanently close an UST system, or a tank or piping run that is part of an UST system, at least thirty days, but no more than ninety days, before ~~starting permanent closure~~ the planned start date. ~~The notice must be provided~~ using the applicable form provided by the department. ~~The department must also be notified of any change to~~ Owners and operators shall also confirm the planned start date with the department at least three business days before starting permanent closure.<sup>357</sup> <sup>358</sup>

~~(2) **Deadline.** Permanent closure must be completed within ninety days of the department's receipt of the notification form required under subsection (1) of this section unless a written request for an extension, explaining the reason for the request, is submitted to the department within the ninety days.~~

~~(3)~~(2) **Decommission.** When an UST system, or a tank or piping run that is part of an UST system, undergoes permanent closure, it must be decommissioned in accordance with the requirements of this subsection.

(a) **Actions.** To decommission an UST system, or a tank or piping run, undergoing permanent closure, the following actions must be completed, as applicable:

- (i) Tanks must be emptied and cleaned by removing all liquids and accumulated sludge;
- (ii) Piping must be emptied by removing all liquids;
- (iii) Tanks must be removed from the ground or closed in place by filling with an inert solid material or in another manner approved by the department;
- (iv) Piping must be removed from the ground or closed in place by capping; and
- (v) Any liquids or sludge removed from the tanks or piping must be designated and disposed of in accordance with all applicable federal, state, and local requirements.

(b) **Performance.** Decommissioning must be performed:

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<sup>356</sup> Clarified that permanent closure requirements apply to circumstances when only a portion of an UST system (tank or piping run) is being closed.

<sup>357</sup> Added requirement that Ecology must be notified of any change in the planned start date for permanent closure at least three business days before starting.

<sup>358</sup> Eliminated requirement that permanent closure must be completed within 90 days of Ecology's receipt of the notice of intent.

- (i) By or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter; and
- (ii) In accordance with a code of practice. The following codes of practice may be used to meet this requirement:<sup>359</sup>
  - (A) American Petroleum Institute, Recommended Practice 1604, "Closure of Underground Petroleum Storage Tanks";
  - (B) American Petroleum Institute, Standard 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks, Planning and Managing Tank Entry from Decommissioning through Recommissioning";
  - (C) American Petroleum Institute, Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks";
  - (D) American Petroleum Institute, Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";
  - (E) National Fire Protection Association, Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"; and
  - (F) National Institute for Occupational Safety and Health, Publication 80-106, "Criteria for a Recommended Standard: Working in Confined Spaces."

(c) **Reporting.** Decommissioning must be ~~certified and reported in accordance with WAC 173-360A-230(3)(b)~~ reported to the department within thirty days using the applicable checklist provided by the department. The checklist must be completed by the service provider.<sup>360</sup>

~~(4)~~(3) **Site assessment.** When an UST system, or a tank or piping run that is part of an UST system, undergoes permanent closure, a site assessment must be conducted around the system or the part of the system being closed in accordance with WAC 173-360A-0730.<sup>361</sup> Unless otherwise directed by the department, a site assessment is not required if:

- (a) A release from the UST system had previously been confirmed and reported to the department; and

<sup>359</sup> Consistent with §280.71(c) of the federal rule, updated the codes of practices that may be used to comply with decommissioning requirements.

<sup>360</sup> Eliminated requirement that decommissioning records must be maintained since such records must be submitted to Ecology.

<sup>361</sup> Eliminated exception to site assessment requirement in cases where vapor or groundwater monitoring is used as a release detection method and monitoring does not indicate a release.

(b) Further remedial action is necessary to investigate or clean up the confirmed release under WAC 173-360A-0750(4).<sup>362</sup>

~~(5)~~(4) **Return of facility compliance tag.** If there are no UST systems in operation at the UST facility, the facility compliance tag must be returned to the department with the checklist required under subsection ~~(3)~~(2)(c) of this section.<sup>363</sup>

(5) Partially exempt UST systems – Notice of permanent closure. Owners and operators of a partially exempt UST system identified in WAC 173-360A-0110(2)(a) shall notify the department in writing within thirty days of the permanent closure of the UST system.<sup>364</sup>

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<sup>362</sup> Clarified that a site assessment is not required when a release from the UST system had previously been confirmed and further remedial action is necessary to clean up the confirmed release.

<sup>363</sup> Clarified that facility compliance tags (not permits) must be returned to Ecology if there are no UST systems in operation at the facility, consistent with changes to the authorizing state statute in RCW 90.76.020.

<sup>364</sup> Specified that Ecology must be notified of the permanent closure of partially exempt UST systems. Such systems no longer need to comply with any other closure requirements.

WAC 173-360A-0820 Change-in-service of UST systems

~~When UST systems undergo a change in service, owners and operators shall ensure compliance with the requirements of this section.~~ Owners and operators shall undertake a change-in-service of an UST system in accordance with the requirements of this section.

(1) **Notice of intent.** Owners and operators shall notify the department of their intent to undertake a change-in-service of an UST system at least thirty days, but no more than ninety days, before ~~starting the change in service~~the planned start date. ~~The notice must be provided~~ using the applicable form provided by the department. ~~The department must also be notified of any change to~~Owners and operators shall also confirm the planned start date with the department at least three business days before starting the change-in-service.<sup>365</sup> <sup>366</sup>

~~(2) **Deadline.** A change in service must be completed within ninety days of the department's receipt of the notification form required under subsection (1) of this section unless a written request for an extension, explaining the reason for the request, is submitted to the department within the ninety days.~~

~~(3)~~(2) **Decommission.** When an UST system undergoes a change-in-service, the system must be decommissioned in accordance with the requirements of this subsection.

(a) **Actions.** To decommission an UST system undergoing a change-in-service, the following actions must be completed, as applicable:

- (i) Tanks must be emptied and cleaned by removing all liquids and accumulated sludge;
- (ii) Piping must be emptied of all liquids; and
- (iii) Any liquids or sludge removed from the tanks or piping must be designated and disposed of in accordance with all applicable federal, state, and local requirements.

(b) **Performance.** Decommissioning must be performed:

- (i) By or under the direct supervision of a service provider certified in accordance with Part 9 of this chapter; and
- (ii) In accordance with a code of practice. The following codes of practice may be used to meet this requirement:<sup>367</sup>

<sup>365</sup> Added requirement that Ecology must be notified of any change in the planned start date for a change-in-service at least three business days before starting.

<sup>366</sup> Eliminated requirement that change-in-service must be completed within 90 days of Ecology's receipt of the notice of intent.

<sup>367</sup> Consistent with §280.71(c) of the federal rule, updated the codes of practices that may be used to comply with decommissioning requirements.

- (A) American Petroleum Institute, Recommended Practice 1604, "Closure of Underground Petroleum Storage Tanks";
  - (B) American Petroleum Institute, Standard 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks, Planning and Managing Tank Entry from Decommissioning through Recommissioning";
  - (C) American Petroleum Institute, Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks";
  - (D) American Petroleum Institute, Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";
  - (E) National Fire Protection Association, Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"; and
  - (F) National Institute for Occupational Safety and Health, Publication 80-106, "Criteria for a Recommended Standard: Working in Confined Spaces."
- (c) **Reporting.** Decommissioning must be ~~certified and reported in accordance with WAC 173-360A-230(3)(b)~~ reported to the department within thirty days using the applicable checklist provided by the department. The checklist must be completed by the service provider.<sup>368</sup>
- ~~(4)~~(3) **Site assessment.** When an UST system undergoes a change-in-service, a site assessment must be performed around the system in accordance with WAC 173-360A-0730.<sup>369</sup> Unless otherwise directed by the department, a site assessment is not required if:
- (a) A release from the UST system had previously been confirmed and reported to the department; and
  - (b) Further remedial action is necessary to investigate or clean up the confirmed release under WAC 173-360A-0750(4).<sup>370</sup>
- ~~(5)~~(4) **Return of facility compliance tag.** If there are no UST systems in operation at the UST facility, the facility compliance tag must be returned to the department with the checklist required under subsection ~~(3)~~(2)(c) of this section.<sup>371</sup>

<sup>368</sup> Eliminated requirement that change-in-service records must be maintained since such records must be submitted to Ecology.

<sup>369</sup> Eliminated exception that site assessments are not required upon change-in-service when vapor or groundwater monitoring is used as a release detection method and monitoring does not indicate a release.

<sup>370</sup> Clarified that a site assessment is not required when a release from the UST system had previously been confirmed and further remedial action is necessary to clean up the confirmed release.

<sup>371</sup> Clarified that facility compliance tags (not permits) must be returned to Ecology if there are no UST systems in operation at the facility, consistent with changes to the authorizing state statute in RCW 90.76.020.

- (5) **Partially exempt UST systems – Notice of change-in-service.** Owners and operators of a partially exempt UST system identified in WAC 173-360A-0110(2)(a) shall notify the department in writing within thirty days of the change-in-service of the UST system.<sup>372</sup>

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<sup>372</sup> Specified that Ecology must be notified of the change-in-service of partially exempt UST systems. Such systems no longer need to comply with any other closure requirements.



**WAC 173-360A-0830 Previously closed UST systems**

When directed by the department, owners and operators of the following UST systems ~~must~~shall permanently close ~~the~~those systems (decommission and perform site assessments around the systems) in accordance with WAC 173-360A-0810 if the department determines releases from ~~the~~those systems may pose a current or potential threat to human health or the environment or if any additional closure activities are performed<sup>373</sup>:

- (1) UST systems permanently closed before December 22, 1988; and
- (2) ~~UST systems with field-constructed tanks or airport hydrant~~Previously deferred UST systems permanently closed before [effective date of rule].<sup>374</sup>

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<sup>373</sup> Clarified that UST systems closed before becoming subject to regulation must be permanently closed in accordance with requirements in this chapter if any additional closure activities are performed, such as removal.

<sup>374</sup> Consistent with §280.252(e) of the federal rule, added previously deferred UST systems closed before effective date of rule to those systems that must comply with the requirements governing previously closed UST systems.

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## **Part 9:**

# **Service Providers**

## Crosswalk of Sections

TOPIC	AMENDED RULE §	CURRENT RULE §	FEDERAL RULE §
Service providers	Part 9	Part 6	--
Purpose and applicability	0900	In 600 610	--
General requirements	0910	620 630(1), (2), (4), (5)	--
<del>Performance of</del> <u>Certifications required to perform</u> services	0920	620 630(4)	280.45(a) <sup>375</sup>
Certification of service providers	0930	In 600 620	280.45(a)
Responsibilities of service providers	0940	630 670	--

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<sup>375</sup> The federal rule amendments specify that site evaluations required before using vapor or groundwater monitoring as a release detection method must be signed by a professional engineer or geologist, or equivalent licensed professional with relevant experience.

**WAC 173-360A-0900 Purpose and applicability**

- (1) This Part establishes a certification program for service providers, specifies the responsibilities of services providers, and identifies which services on UST systems must be performed by certified service providers. The certification program is designed to ensure that the services performed on UST systems are performed safely and in a manner that will protect human health and the environment.
- (2) The requirements of this Part apply to any services performed on an UST system requiring the use of a service provider under this chapter.
- (3) The applicability of this Part does not affect the applicability of any other legally applicable licensing requirements or manufacturer certification requirements.

**WAC 173-360A-0910 General requirements**

Owners and operators shall ensure that:

- (1) UST system services are performed by or under the direct supervision<sup>376</sup> of a service provider who is certified to perform the services in accordance with WAC 173-360A-0920 and 173-360A-0930;
- (2) UST system services are performed in accordance with the requirements of this chapter and any other legally applicable requirements;
- (3) UST system services are reported in accordance with WAC 173-360A-0230(3)~~(b)~~; and
- (4) Records of UST system services are maintained in accordance with WAC 173-360A-0240<sup>(1)</sup>.

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<sup>376</sup> Clarified that UST system services must be performed by or under the direct supervision of a service provider. Made clarification throughout rule.

**WAC 173-360A-0920** ~~Performance of~~ Certifications required to perform services

Owners and operators shall ensure that UST system services are performed by or under the direct supervision of a service provider certified in accordance with the requirements of this section. Table 0920-1 identifies the UST system services requiring the use of a service provider and the certification that a service provider must have to perform those services.<sup>377</sup> There are six types of certification, which are specified in WAC 173-360A-0930. ~~Some UST system services require more than one type of certification (such as installation and repair of cathodic protection systems).~~ Some UST system services may be performed by more than one type of service provider ~~(such as inspections of overfill prevention equipment).~~

**Table 0920-1: Type of ~~C~~ertification ~~R~~equired to ~~p~~erform UST ~~s~~ystem ~~s~~ervices**

UST <del>s</del> ystem <del>s</del> ervice	Service <del>R</del> equirements	<u>Type of Certification</u> <del>required</del>
<b>Services not involving corrosion protection</b>		
Installing UST systems or components, except cathodic protection	WAC 173-360A-0300	Installation/repair
Performing internal inspections of tanks	<u>WAC 173-360A-0320(1) and (2)(a)(ii)(A),</u> <u>WAC 173-360A-0330(1) and (2)(a)(i)(B), or</u> WAC 173-360A-0440 <del>and/or</del> <del>173-360A-490</del>	Installation/repair
Tightness testing of containment sumps used for interstitial monitoring <sup>378</sup>	WAC 173-360A-0450	Tightness testing or <del>i</del> nstallation/repair
Tightness testing of spill prevention equipment <sup>379</sup>	WAC 173-360A-0460	Tightness testing or <del>i</del> nstallation/repair
Inspecting overfill prevention equipment <sup>380</sup>	WAC 173-360A-0470	Tightness testing or <del>i</del> nstallation/repair
Testing of electronic or mechanical release detection equipment <sup>381</sup>	WAC 173-360A-0480	Tightness testing or <del>i</del> nstallation/repair

<sup>377</sup> Clarified which UST system services require a service provider (which is also specified throughout the chapter) and the types of certification required to perform those services.

<sup>378</sup> Specified that testing of containment sumps used for interstitial monitoring must be performed by a service provider certified in tightness testing or installation/repair.

<sup>379</sup> Specified that testing of spill prevention equipment must be performed by a service provider certified in tightness testing or installation/repair.

<sup>380</sup> Specified that testing of release detection equipment must be performed by a service provider certified in tightness testing or installation/repair.

<sup>381</sup> Specified that inspections of overfill prevention equipment must be performed by a service provider certified in tightness testing or installation/repair.

**UST Regulations, Chapter 173-360A WAC**  
**Proposed Rule: Text with Tracked Changes to Preliminary Draft**

**Part 9**

<b>UST <del>s</del>System <del>s</del>Service</b>	<b>Service <del>r</del>Requirements</b>	<b><u>Type of Certification</u> <del>required</del></b>
Repairing UST systems <del>s-or</del> components, except cathodic protection <u>systems</u>	WAC 173-360A-0490	Installation/repair
Tightness testing of secondary containment areas of tanks or piping used for interstitial monitoring <sup>382</sup>	WAC 173-360A-0490 <del>(6)</del> <u>(4)(c)</u>	Tightness testing or <del>i</del> installation/repair
Tightness testing of tanks	WAC 173-360A-0635	Tightness testing
Tightness testing of piping	WAC 173-360A-0650	Tightness testing
Site evaluations required to use vapor or groundwater monitoring as a release detection method <sup>383</sup>	WAC 173-360A-0660 <u>(2)</u> or <u>WAC 173-360A-0665(2)</u>	Site assessment
Site assessments, including site checks	WAC 173-360A-0730	Site assessment
Decommissioning tanks or piping undergoing permanent closure or <del>a</del> change-in-service	WAC 173-360A-0810 <del>(3)</del> <u>(2)</u> or <u>WAC 173-360A-0820(3)(2)</u>	Decommissioning
<b>Services involving corrosion protection<sup>384</sup></b>		
<u>Assessments of corrosion potential</u> <sup>385</sup>	<u>WAC 173-360A-0310(3)(c)</u>	<u>Corrosion expert</u>
Designing cathodic protection systems	WAC 173-360A-0310(3) <u>(b) and WAC 173-360A-0300</u>	Corrosion expert
Installing cathodic protection systems designed by corrosion expert <sup>386</sup>	WAC 173-360A-0300	Installation/repair, <del>and</del> <del>either</del> corrosion expert, or cathodic protection tester <u>(1)</u>
Testing cathodic protection systems	WAC 173-360A-0430(2)	Corrosion expert or cathodic protection tester
Evaluating cathodic protection systems that are inadequately	WAC 173-360A-0430 <u>(2) or</u>	Corrosion expert

<sup>382</sup> Specified that testing of secondary containment areas of tanks or piping used for interstitial monitoring must be performed by a service provider certified in tightness testing or installation/repair.

<sup>383</sup> Clarified that site evaluations required to use vapor or groundwater monitoring as a release detection method must be performed by a service provider certified in site assessment.

<sup>384</sup> Clarified which UST system services involving corrosion protection require a corrosion expert as opposed to a cathodic protection tester.

<sup>385</sup> Specified that assessments of corrosion potential must be performed by a corrosion expert.

<sup>386</sup> Clarified that installation of cathodic protection systems requires certification in installation/repair, as a corrosion expert, or as cathodic protection tester (if certified by the International Code Council).



UST Regulations, Chapter 173-360A WAC  
Proposed Rule: Text with Tracked Changes to Preliminary Draft

Part 9

UST <del>s</del> System <del>s</del> Service	Service <del>r</del> Requirements	Type of Certification required
protecting tanks or piping based on results of cathodic protection tests or rectifier inspections	<u>WAC 173-360A-0430(3)</u> <del>and 173-360A-490</del>	
<del>Specifying field surveys to be performed before installing or repairing cathodic protection systems</del>	<del>WAC 173-360A-300 or 173-360A-490</del>	Corrosion expert
<del>Performing field surveys specified by corrosion expert</del>	<del>WAC 173-360A-300 or 173-360A-490</del>	Corrosion expert or cathodic protection tester
<del>Evaluating results of field surveys</del>	<del>WAC 173-360A-300 or 173-360A-490</del>	Corrosion expert
<del>Evaluating results of internal inspections of metal tanks for corrosion</del>	<del>WAC 173-360A-440 and/or 173-360A-490</del>	Corrosion expert
<u>Specifying or</u> <del>D</del> designing repairs of cathodic protection systems, including <del>specifying</del> rectifier adjustments	WAC 173-360A-0310(3)(b) <u>and WAC 173-360A-0490</u>	Corrosion expert
Repairing cathodic protection systems, including making rectifier adjustments, <u>specified or</u> designed by corrosion expert <sup>387</sup>	WAC 173-360A-0490	Installation/repair, <del>and either</del> corrosion expert, or cathodic protection tester <u>(1)</u>

**Footnotes:**

(1) Cathodic protection testers may not perform the specified UST system services unless the cathodic protection testers are certified by the International Code Council.

<sup>387</sup> Clarified that repairs of cathodic protection systems requires certification in installation/repair, as a corrosion expert, or as a cathodic protection tester (if certified by the International Code Council).

**WAC 173-360A-0930 Certification of service providers**

Owners and operators shall ensure that service providers performing UST system services are certified in accordance with the requirements of this section.

- (1) Installation and repair.** To perform or directly supervise UST system services requiring certification in installation and repair, a service provider must be certified as having sufficient education and experience by:

  - (a) The International Code Council ([UST Installation/Retrofitting – U1](#));<sup>388</sup>
  - (b) Another nationally or internationally recognized association approved by the department that provides a qualifying examination; or
  - (c) Passing another qualifying examination approved by the department.
- (2) Tightness testing.** To perform or directly supervise UST system services requiring certification in tightness testing, a service provider must be certified as having sufficient education and experience by:

  - (a) The International Code Council ([UST Tank Tightness Testing – U3](#));
  - (b) Another nationally or internationally recognized association approved by the department that provides a qualifying examination; or
  - (c) Passing another qualifying examination approved by the department.
- (3) Site assessment.** To perform or directly supervise UST system services requiring certification in site assessment, a service provider must be certified as having sufficient education and experience by:

  - (a) The International Code Council ([Washington State Site Assessment – U7](#));
  - (b) Another nationally or internationally recognized association approved by the department that provides a qualifying examination;
  - (c) Passing another qualifying examination approved by the department; or
  - (d) Being licensed as a professional engineer or hydrogeologist<sup>389</sup> in Washington state under chapter 18.43 or 18.220 RCW and being able to demonstrate competence in site assessment by means of examination, experience, or education.
- (4) Decommissioning.** To perform or directly supervise UST system services requiring certification in decommissioning, a service provider must be certified as having sufficient education and experience by:

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<sup>388</sup> Updated reference to International Code Council throughout this Part.

<sup>389</sup> Consistent with §280.45(a) of the federal rule, added being licensed as a professional hydrogeologist in Washington state as a method of being certified as a site assessor, provided the person is able to demonstrate competence in site assessment by means of examination, experience, or education.

- (a) The International Code Council (UST Decommissioning – U2);
  - (b) Another nationally or internationally recognized association approved by the department that provides a qualifying examination; or
  - (c) Passing another qualifying examination approved by the department.
- (5) **Corrosion expert.** To perform or directly supervise UST system services requiring certification as a corrosion expert, as defined in WAC 173-360A-0150(13), a service provider must be certified as having sufficient education and experience by:
- (a) The National Association of Corrosion Engineers;
  - (b) Another nationally or internationally recognized association approved by the department that provides a qualifying examination;
  - (c) Passing another qualifying examination approved by the department; or
  - (d) Being licensed as a professional engineer in Washington state under chapter 18.43 RCW and certified as cathodic protection tester under subsection (6) of this section.
- (6) **Cathodic protection tester~~inger~~.** To perform or directly supervise UST system services requiring certification as a cathodic protection tester, as defined in WAC 173-360A-0150(4), a service provider must be certified as having sufficient education and experience by:
- (a) The International Code Council (UST Cathodic Protection – U4);
  - (b) The National Association of Corrosion Engineers;
  - (c) The Steel Tank Institute;<sup>390</sup>
  - (d) Another nationally or internationally recognized association approved by the department that provides a qualifying examination; or
  - (e) Passing another qualifying examination approved by the department.

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<sup>390</sup> Added certification by the Steel Tank Institute as a method of being certified as a cathodic protection tester.

**WAC 173-360A-0940 Responsibilities of service providers**

Service providers shall comply with the requirements of this section.

**(1) Certification and records.**

- (a) Service providers must be certified to perform or directly supervise the performance of UST system services in accordance with WAC 173-360A-0920 and 173-360A-0930.
- (b) Service providers shall maintain proof that they are certified to perform or directly supervise the performance of UST system services under WAC 173-360A-0920 and 173-360A-0930, such as licenses or certificates, and make such proof readily available for inspection upon request by the department.

**(2) Performance of services.** Services providers shall perform or directly supervise the performance of UST system services in accordance with the requirements of this chapter and any other legally applicable requirements, including:

- (a) Chapters 18.27 RCW and ~~chapter~~ 296-200A WAC, which apply to individuals who are general and specialty contractors;
- (b) Chapters 18.104 RCW and ~~chapter~~ 173-162 WAC, which apply to individuals who install groundwater monitoring wells;
- (c) Chapters 19.28 RCW, and ~~chapters~~ 296-46B WAC, which apply to individuals who install and repair impressed current cathodic protection systems; and
- (d) Chapters 49.17 RCW and ~~chapter~~ 296-62 and 296-802 WAC, which apply to individuals engaged in activities involving hazardous chemicals and substances and who perform confined space entry during field activities, and chapter 296-155 WAC, which sets forth safety standards for construction work.<sup>391</sup>

**(3) Presence during services.** Service providers must be present at the UST facility when and where UST system services are performed, including during the activities specified in this subsection.

- (a) When installing tanks or piping, services providers must be present when:
  - (i) Preparing the excavation zone immediately before receiving backfill and placing the tanks or piping into the excavation zone;
  - (ii) Any movement of the tanks at the UST facility, including transferring the tanks from the vehicle used to transport them to the facility;
  - (iii) Setting the tanks or piping into the excavation zone, including placing any anchoring devices or strapping, and backfilling to the level of the tank or piping;
  - (iv) Placing and connecting the piping to tanks or dispensers;

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<sup>391</sup> Incorporated into the rule and updated references to other legally applicable requirements that may apply to the performance of UST system services.

- (v) Pressure testing the tanks or piping during installation; and
  - (vi) Completing the backfill and filling of the excavation zone.
- ~~(b) When performing site assessments around tanks or piping runs undergoing permanent closure, service providers must be present when the tanks or piping are removed from the ground.~~
- ~~(c)~~(b) When decommissioning tanks or piping runs undergoing permanent closure or a change-in-service, service providers must be present when:
- (i) Purging or inerting the tanks or piping;
  - (ii) Excavating around the tanks or piping before removal;
  - (iii) Removing the tanks from the excavation zone;
  - (iv) Removing or capping the piping;
  - (v) Cleaning the tanks, including removing and disposing of any accumulated sludge; and
  - (vi) Undertaking ~~Any~~ movement of the tanks at the UST facility, including transferring tanks to the vehicle used to transport them from the facility.
- (c) Tanks and piping runs undergoing permanent closure may not be removed from the ground unless both the service provider decommissioning the tanks or piping runs and the service provider performing the site assessment are present.<sup>392</sup>
- (4) ~~Reporting of~~Documenting services. ~~Service providers shall certify and report UST system services in accordance with WAC 173-360A-230(3)(b).~~Service providers shall document the UST system services specified in WAC 173-360A-0230(3) by completing the applicable checklists and reports required under this chapter.
- (5) **Reporting non-compliance.** If a service provider determines that an UST system for which they are providing services ~~does not have a facility compliance tag displayed or is otherwise~~ not in compliance with the requirements of this chapter, then the service provider shall notify the owner or operator of the determination within twenty-four hours.<sup>393</sup>
- (6) **Reporting confirmed releases.** If a service provider confirms ~~that~~ a release from an UST system ~~has occurred and determines~~ that ~~the release~~ may pose a threat to human health or the environment, then the service provider shall notify:
- (a) The owner or operator of the UST system immediately; and

<sup>392</sup> Added requirement that tanks and piping runs undergoing permanent closure may not be removed from the ground unless both the service provider decommissioning the tanks or piping runs and the service provider performing the site assessment are present.

<sup>393</sup> Clarified how quickly service providers must report non-compliance to owners or operators (within 24 hours).

- (b) The department within twenty-four hours.<sup>394</sup> However, if an owner or operator of the UST system is not immediately available, the service provider shall notify the department immediately.
- (7) **Enforcement and penalties.** Service providers who violate the requirements of this chapter or submit false information under this chapter are subject to enforcement and civil penalties under WAC 173-360A-0270 and 173-360A-0290.

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<sup>394</sup> Changed deadline for service providers to report confirmed releases to Ecology from within 72 hours to within 24 hours to make consistent with reporting requirements for owners and operators.

## **Part 10:**

# **Financial Responsibility**

## Crosswalk of Sections

TOPIC	AMENDED RULE §	CURRENT RULE §	FEDERAL RULE §
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<del>Compliance dates</del> [DELETED]	--	403	91
Definition of terms	1005	In 120	92
Period of financial responsibility	1010	456	113
Scope and amount of financial responsibility	1015	406	93
Allowable mechanisms and combination of mechanisms	1020	410	94
Substitution of mechanisms by owners or operators	1025	440	108
Termination of mechanisms by providers	1030	443	109
Responsibilities upon bankruptcy or other incapacity of owner or operator or provider of financial assurance	1035	460	114
Recordkeeping by owners or operators	1040	450	111
Reporting by owners or operators	1045	446 460(1)	110 114(a)
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Financial test of self-insurance	1060	413	95
Guarantee	1061	416	96
Insurance and risk retention group coverage	1062	420	97
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TOPIC	AMENDED RULE §	CURRENT RULE §	FEDERAL RULE §
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Appendix H – Certification of acknowledgement	1087	493	In 103
Appendix I – <del>LG</del> Local government bond rating test – Letter from chief financial officer of general purpose local governments	1088	--	In 104
Appendix J – <del>LG</del> Local government bond rating test – Letter from chief financial officer of non-general purpose local governments	1089	--	In 104
Appendix K – <del>LG</del> Local government financial test – Letter from chief financial officer	1090	--	In 105
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Appendix M – <del>LG</del> Local government guarantee with standby trust made by a local government	1092	--	In 106
Appendix N – <del>LG</del> Local government guarantee without standby trust made by a state	1093	--	In 106
Appendix O – <del>LG</del> Local government guarantee without standby trust made by a local government	1094	--	In 106
Appendix P – <del>LG</del> Local government fund – Letter from chief financial officer	1095	--	In 107
Appendix Q – Certification of financial responsibility	1096	496	In 111
Appendix R – Certification of valid claim	1097	499	In 112

~~\*LG = local government~~



**WAC 173-360A-1000 Applicability**

- (1) This Part applies to owners and operators of all UST systems except as otherwise provided in this section.<sup>395</sup>
- (2) This Part does not apply to owners and operators of any exempt UST system described in WAC 173-360A-0110(1) ~~or any partially exempt UST system described in WAC 173-360A-110(2)(a)(i) through (iii). This Part does apply to aboveground storage tanks associated with airport hydrant fuel distribution systems and UST systems with field constructed tanks, as described in WAC 173-360A-110(2)(a)(iv).~~<sup>396</sup>
- (3) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this Part.
- (4) If the owner and operator of an UST system are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance.

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<sup>395</sup> Changed applicability of financial responsibility requirements to include hazardous substance UST systems, consistent with legislative direction in authorizing state statute in RCW 90.76.020(1)(g). All such systems already have qualifying financial assurances.

<sup>396</sup> Eliminated compliance dates for existing UST systems, consistent with changes in §§280.90(b) and 280.91 of the federal rule. Compliance dates for previously deferred UST systems are specified in WAC 173-360A-0110(3).

~~WAC 173-360A-403—Compliance dates.~~<sup>397</sup>

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<sup>397</sup> Eliminated compliance dates for existing UST systems, consistent with changes in §§280.90(b) and 280.91 of the federal rule. Compliance dates for previously deferred UST systems are specified in WAC 173-360A-0110(3).

**WAC 173-360A-1005 Definition of terms**<sup>398</sup>

For the purposes of this part, the following definitions shall apply unless the context clearly indicates otherwise.

- (1) **"Accidental release"** means any sudden or non-sudden release of regulated substances arising from operating an underground storage tank that results in a need for remedial action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.<sup>399</sup>
- (2) **"Bodily injury"** shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.
- (3) **"Chief financial officer,"** in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.<sup>400</sup>
- (4) **"Controlling interest"** means direct ownership of at least fifty percent of the voting stock of another entity.
- (5) **"Financial reporting year"** means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared: (a) ~~a~~ A 10-K report submitted to the ~~SEC~~ U.S. Securities and Exchange Commission; (b) an annual report of tangible net worth submitted to Dun and Bradstreet; or (c) annual reports submitted to the Energy Information Administration or the Rural Utilities Service. "Financial reporting year" may thus comprise a fiscal or a calendar year period.
- (6) **"Legal defense cost"** means any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:
  - (a) ~~By the United States~~ U.S. Environmental Protection Agency (~~EPA~~) or a state to require remedial action or to recover the costs of remedial action;
  - (b) ~~b~~ By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or
  - (c) ~~b~~ By any person to enforce the terms of a financial assurance mechanism.
- (7) **"Local government"** shall have the meaning given this term by applicable state law and includes Indian tribes. The term is generally intended to include:

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<sup>398</sup> Consistent with §280.92 of the federal rule, moved definitions of terms used only in Part 10 (financial responsibility) from the general definition section in WAC 173-360A-0150.

<sup>399</sup> Consistent with §280.92 of the federal rule, changed definition of "accidental release" to clarify that owners and operators are required to have financial responsibility for releases arising from the operating USTs (including releases due to filling USTs and releases occurring at dispensers).

<sup>400</sup> Consistent with §280.92 of the federal rule, added definition of term "chief financial officer" to implement the local government financial assurance options also added from the federal rule.

~~(1)(a)~~ (a)—Counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and

~~(2)(b)~~ (b)—Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.<sup>401</sup>

- (8) **"Occurrence"** means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank. This definition is intended to assist in the understanding of this Part 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."
- (9) **"Owner or operator,"** means, for the purposes of this Part, when the owner or operator are separate parties, the party that is responsible for obtaining or has obtained financial assurances.
- (10) **"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.
- ~~(11)~~ **~~"Petroleum marketing firms"~~**<sup>402</sup>
- (11) **"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 remedial action associated with releases from underground storage tanks which are covered by the policy.
- (12) **"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 WAC 173-360A-1060 through 173-360A-1073, including a guarantor, insurer, risk retention group, surety, or issuer of a letter of credit.
- (13) **"Substantial business relationship"** means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.
- (14) **"Substantial governmental relationship"** means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that

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<sup>401</sup> Consistent with §280.92 of the federal rule, added definition of term "local government" to implement the local government options also added from the federal rule.

<sup>402</sup> Consistent with §280.92 of the federal rule, eliminated definition of term "petroleum marketing firms." The term, which was used to set compliance dates for existing UST systems, is no longer used in the rule.

relationship” if it arises from a clear commonality of interest in the event of an underground storage tank 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.<sup>403</sup>

- (15) **"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.
- (16) **"Termination"** under WAC 173-360A-1082 and 173-360A-1083 means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

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<sup>403</sup> Consistent with §280.92 of the federal rule, added definition of term “substantial government relationship” to implement the local government options also added from the federal rule.

**WAC 173-360A-1010 Period of financial responsibility<sup>404</sup>**

- (1) **General requirement.** Except as provided in subsection (2) of this section, an owner or operator shall continuously demonstrate financial responsibility for an UST system from the date of its installation until the date of its permanent closure or change-in-service.
- (2) **Suspension during temporary closure.** An owner or operator is not required to demonstrate financial responsibility for an UST system while it is temporarily closed if:
- (a) The UST system is emptied in accordance with WAC 173-360A-0800(2); and
  - (b) After the UST system is emptied, a site assessment around the UST system is completed and reported in accordance with WAC 173-360A-0730. Unless otherwise directed by the department, a site assessment is not required if:
    - (i) A release from the UST system had previously been confirmed and reported to the department; and
    - (ii) Further remedial action is necessary to investigate or clean up the confirmed release under WAC 173-360A-0750(4).

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<sup>404</sup> Consistent with §280.113 of the federal rule, specified that financial responsibility must be maintained until the UST system is permanently closed or undergoes a change-in-service. However, unlike the federal rule:

- Specified that financial responsibility does not need to be maintained during temporary closure if the UST system is emptied and a site assessment is completed after the system is emptied. A site assessment is not needed if a release had previously been confirmed and further remedial action is needed to clean up the confirmed release.
- Specified that financial responsibility does not need to be maintained after permanent closure or change-in-service until any releases from the UST system are cleaned up.



**WAC 173-360A-1015 Scope and amount of financial responsibility**

- (1) **Scope.** Owners or operators of underground storage tanks shall demonstrate financial responsibility for taking remedial action<sup>405</sup> and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks.
- (2) **Amount.**
- (a) **Per occurrence amounts.** Owners or operators of underground storage tanks shall demonstrate financial responsibility for the ~~costs~~types of coverage specified in subsection (1) of this section in at least the following per-occurrence amounts:
- (i) For owners or operators of underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than ten thousand gallons of regulated substances per month based on annual throughput for the previous calendar year, one million dollars; and
- (ii) For all other owners or operators of underground storage tanks, five hundred thousand dollars.
- (b) **Annual aggregate amounts.** Owners or operators of underground storage tanks shall demonstrate financial responsibility for the ~~costs~~types of coverage specified in subsection (1) of this section in at least the following annual aggregate amounts:
- (i) For owners or operators of ~~1~~one to ~~100~~one hundred underground storage tanks, one million dollars; and
- (ii) For owners or operators of ~~101~~one hundred one or more underground storage tanks, two million dollars.
- (c) **Use of separate mechanisms for different ~~costs~~types of coverage.** Except as provided in (d) of this subsection, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for the following, then the amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in (a) and (b) of this subsection:
- (i) Taking remedial action;
- (ii) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

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<sup>405</sup> Replaced federal term “corrective action” with state term “remedial action” to make usage consistent with the state cleanup rules in Chapter 173-340 WAC, which governs the cleanup of releases from UST systems. Made change throughout the rule.

- (iii) Compensating third parties for bodily injury and property damage caused by non-sudden accidental releases.<sup>406</sup>
- (d) **Use of separate mechanisms for different tanks.** If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different underground storage tanks, then the annual aggregate amount required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.<sup>407</sup>
- (e) **Review of aggregate amounts.** 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 one hundred, the owner or operator shall demonstrate financial responsibility in the amount of at least two million dollars 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 two million dollars 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.
- (f) **Amounts exclude legal costs.** The amounts of assurance required under this section exclude legal defense costs.
- (g) For the purposes of (b) and (e) of this subsection only, "an underground storage tank" means a single containment unit and does not mean combinations of single containment units.
- (3) **Liability of owner or operator.** The scope and amount of required financial responsibility specified in subsections (1) and (2) of this section ~~does~~do not in any way limit the liability of the owner or operator.

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<sup>406</sup> Subsection (2)(c) was moved from former Section 410 (now Section 1020) to ensure compliance with those requirements when Section 1015 is referenced elsewhere in this Part.

<sup>407</sup> Subsection (2)(d) was moved from former Section 410 (now Section 1020) to ensure compliance with those requirements when Section 1015 is referenced elsewhere in this Part.

**WAC 173-360A-1020 Allowable mechanisms and combinations of mechanisms**<sup>408 409</sup>

- (1) For all owners or operators.** Subject to the limitation of subsection (3) of this section, an owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in WAC 173-360A-1060 through 173-360A-1066 to demonstrate financial responsibility under this Part for one or more underground storage tanks.
- (2) For only local governments owners or operators.** Subject to the limitation of subsection (3) of this section, a local government owner or operator may also use any one or combination of the mechanisms listed in WAC 173-360A-1070 through 173-360A-1073 to demonstrate financial responsibility under this Part for one or more underground storage tanks.<sup>410</sup>
- (3) Limitation on combining self-insurance and guarantee.** 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.

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<sup>408</sup> Former subsection (2) of this section was eliminated as duplicative of subsection (1) of this section. The federal rule placed limitations on when states could use these mechanisms. The state met those obligations. See §280.94(b) of the federal rule.

<sup>409</sup> Subsections (4) and (5) of this section were moved to Section 1015. They were moved to ensure compliance with the requirements when Section 1015 is referenced elsewhere in this Part.

<sup>410</sup> Consistent with the federal rule, include §280.94(a)(3), added local government options as allowable financial assurance mechanisms for local governments. Incorporated applicable requirements and boilerplates from the federal rule throughout this Part of the rule.

**WAC 173-360A-1025 Substitution of mechanisms by owners or operators**

- (1) **Authority.** An owner or operator may substitute any alternate financial assurance mechanisms as specified in this Part, provided that at all times ~~he~~the owner or operator maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of WAC 173-360A-1015.
- (2) **Cancellation.** After obtaining alternate financial assurance as specified in this Part, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance in accordance with requirements for cancellation set forth for the specific mechanism in WAC 173-360A-1060 through 173-360A-1073.

**WAC 173-360A-1030 Termination of mechanisms by providers**

- (1) Authority.** 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.
- (2) Date of termination.**

  - (a) Guarantee, surety bond, or letter of credit.** Termination of a local government guarantee,<sup>411</sup> a guarantee, a surety bond, or a letter of credit may not occur until one hundred twenty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
  - (b) Insurance or risk retention group coverage.** Termination of insurance or risk retention group coverage, except for nonpayment or misrepresentation by the insured, may not occur until sixty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of ten days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
- (3) Obtaining alternate coverage.**

  - (a) If provider incapacitated.** If a provider of financial assurance cancels or fails to renew for reasons of incapacity of the provider, then the owner or operator shall obtain alternate coverage as specified in WAC 173-360A-1035.<sup>412</sup>
  - (b) If provider not incapacitated.** If a provider of financial assurance cancels or fails to renew for reasons other than incapacity of the provider, then the owner or operator shall obtain alternate coverage as specified in this section within sixty days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within sixty days after receipt of the notice of termination, then by that date the owner or operator shall notify the department<sup>413</sup> of the failure and submit:

    - (i)** The name and address of the provider of financial assurance;
    - (ii)** The effective date of termination; and
    - (iii)** The evidence of the financial assurance mechanism subject to the termination maintained in accordance with WAC 173-360A-1040(2).

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<sup>411</sup> Consistent with §280.109(a)(1) of the federal rule, added local government guarantee to the types of mechanisms that cannot be terminated until 120 days after receipt of notice of termination.

<sup>412</sup> Added cross-reference to requirements governing finding alternative coverage when financial assurance provider cancels or fails to renew for reasons of incapacity.

<sup>413</sup> Replaced the term “director” with the term “department” throughout this Part of the rule.

**WAC 173-360A-1035 Responsibilities upon bankruptcy or other incapacity of owner or operator or provider of financial assurance<sup>414</sup>**

- (1) Notifying department upon bankruptcy of owners or operators.** Within ten 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 shall notify the department by certified mail of such commencement and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).
- (2) Notifying owners or operators upon bankruptcy of guarantor.** Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in WAC 173-360A-1061.
- (3) Notifying department upon bankruptcy of local government owner or operator.** Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the department by certified mail of such commencement and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).<sup>415</sup>
- (4) Notifying owners or operators upon bankruptcy of guarantor providing local government assurance.** Within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in WAC 173-360A-1072.<sup>416</sup>
- (5) Obtaining alternate financial assurance upon bankruptcy or incapacity of provider.** An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit. The owner or operator shall obtain alternate financial assurance as specified in this Part within thirty days after receiving notice of such an event. If the owner or operator fails to obtain alternate coverage within thirty days after such notification, then by that date the owner or operator shall notify the department

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<sup>414</sup> Eliminated requirement to obtain alternative financial assurance following notice of insolvency of state fund since there is no such option.

<sup>415</sup> Consistent with §280.114(c) of the federal rule, added requirements governing responsibility of local government owner or operator upon bankruptcy.

<sup>416</sup> Consistent with §280.114(d) of the federal rule, added requirements governing responsibilities of guarantor providing local government assurance upon bankruptcy.

of the failure and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).<sup>417</sup>

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<sup>417</sup> Clarified that owner or operator must both notify the department and submit evidence of financial responsibility if fail to obtain alternative coverage within thirty days of being notified of bankruptcy or incapacity of provider, consistent with reporting requirements in WAC 173-360A-1045.

**WAC 173-360A-1040 Recordkeeping by owners and operators<sup>418</sup>**

- (1) Requirement to maintain evidence.** Owners or operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this Part for an underground storage tank until released from the requirements of this Part under WAC 173-360A-1010. Owners or operators shall make records readily available upon request by the department.<sup>419</sup>
- (2) Types of evidence required.** An owner or operator shall maintain the following types of evidence of financial responsibility:<sup>420</sup>

  - (a) Certification of financial responsibility.** An owner or operator using an assurance mechanism specified in WAC 173-360A-1060 through 173-360A-1073 shall maintain an updated copy of a certification of financial responsibility worded as set forth in WAC 173-360A-1096, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. The owner or operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).
  - (b) Assurance mechanism instrument.** An owner or operator using an assurance mechanism specified in WAC 173-360A-1060 through 173-360A-1065 or ~~WAC 173-360A-1070~~ through 173-360A-1073 shall maintain a copy of the instrument worded as specified.
  - (c)** An owner or operator using a financial test or guarantee shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence shall be on file no later than one hundred twenty days after the close of the financial reporting year.
  - (d)** An owner or operator using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.
  - (e)** An owner or operator using a guarantee, surety bond, or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
  - (f)** A local government owner or operator using the local government bond rating test under WAC 173-360A-1070 shall maintain a copy of its bond rating published within the last twelve months by Moody's or Standard ~~and~~& Poor's.

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<sup>418</sup> Eliminated recordkeeping requirements for state fund option since there is no such option.

<sup>419</sup> Eliminated requirement that specifies where financial responsibility records must be maintained. Records must still be made readily available upon request by the department.

<sup>420</sup> Consistent with §280.111(b) of the federal rule, specified recordkeeping requirements for local government options.



- (g) A local government owner or operator using the local government financial test under WAC 173-360A-1071 or the local government guarantee under WAC 173-360A-1072 supported by the local government financial test shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence shall be on file no later than one hundred twenty days after the close of the financial reporting year.
- (h) A local government owner or operator using the local government guarantee under WAC 173-360A-1072 supported by the local government bond rating test under WAC 173-360A-1070 shall maintain a copy of the guarantor's bond rating published within the last twelve months by Moody's or Standard ~~and~~& Poor's.
- (i) A local government owner or operator using the local government guarantee under WAC 173-360A-1072(4)(a) shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
- (j) An owner or operator using a local government fund under WAC 173-360A-1073 shall maintain the following documents:
  - (i) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund; and
  - (ii) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under WAC 173-360A-1073(3)(c) using incremental funding backed by bonding authority, then the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.
- (k) An owner or operator using a local government fund established under WAC 173-360A-1073(3)(c) using incremental funding backed by bonding authority shall also maintain documentation of the required bonding authority, including either:
  - (i) The results of a voter referendum under WAC 173-360A-1073(3)(c)(i); or
  - (ii) Attestation by the ~~S~~state ~~A~~attorney ~~G~~general as specified under WAC 173-360A-1073(3)(c)(ii).

**WAC 173-360A-1045 Reporting by owners and operators**

**(1) Demonstration of financial responsibility.**<sup>421</sup>

- (a) Upon application for a license.** When applying for a license for an underground storage tank, the owner or operator must submit to the department of revenue a copy of the following to demonstrate financial responsibility for the underground storage tank:
  - (i)** Certification of financial responsibility (WAC 173-360A-1096); and
  - (ii)** If the financial assurance mechanisms used include insurance or risk retention group coverage, then the endorsement (WAC 173-360A-1082) or certificate of insurance (WAC 173-360A-1083).<sup>422</sup>
- (b) Upon renewal or substitution of financial assurances.** Upon renewal or substitution of, or any other changes to, ~~in~~ the financial assurance mechanism(s) used to demonstrate financial responsibility, the owner or operator shall immediately submit to the department of revenue an updated copy of the following:
  - (i)** Certification of financial responsibility (WAC 173-360A-1096); and
  - (ii)** If the financial assurance mechanism(s) used include insurance or risk retention group coverage, then the endorsement (WAC 173-360A-1082) or certificate of insurance (WAC 173-360A-1083).
- (c) Upon cancellation or termination of financial assurances.** Upon receipt of a notice of cancellation or termination of any financial assurance mechanism used to demonstrate financial responsibility, the owner or operator shall immediately submit a copy of the notice to the department of revenue.

**(2) Submission of ~~evidence of~~ financial responsibility records.**

- (a) Upon confirmed release.** An owner or operator shall submit to the department the ~~evidence of~~ financial responsibility records specified in WAC 173-360A-1040(2) within thirty days after the owner or operator confirms a release from an underground storage tank required to be reported under WAC 173-360A-0750.
- (b) Upon bankruptcy of owner or operator.** An owner or operator shall submit to the department the ~~evidence of~~ financial responsibility records specified in WAC 173-360A-

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<sup>421</sup> Updated financial responsibility certification requirements to make consistent with changes in licensing procedures based on changes in RCW 90.76.020(4) of the authorizing state statute. The owner or operator must provide proof of financial responsibility to the Department of Revenue (DOR) upon application for a license. DOR must also be notified of any substitution of financial assurances and any cancellation or termination of financial assurances. DOR will not renew licenses without current proof of financial responsibility.

<sup>422</sup> Clarified which documents must be submitted to DOR to demonstrate financial responsibility. For insurance, specified that need to submit both certification of financial responsibility and certificate of insurance or endorsement.

1040(2) within ten days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor.<sup>423</sup>

(c) **Upon failure of owner or operator to obtain alternate coverage.**

- (i) **Upon failure to pass financial test.** If a self-insured owner or operator fails to meet the requirements of the applicable financial test in WAC 173-360A-1060 and fails to obtain alternate coverage by the specified date, then by that date the owner or operator shall notify the department of the failure and submit the ~~evidence of~~ financial responsibility records specified in WAC 173-360A-1040(2).
- (ii) **Upon failure to pass local government bond rating or financial test.** If a self-insured local government owner or operator fails to meet the bond rating test requirements in WAC 173-360A-1070 or the financial test requirements in WAC 173-360A-1071 and fails to obtain alternate coverage by the specified date, then by that date the local government owner or operator shall notify the department of the failure and submit the ~~evidence of~~ financial responsibility records specified in WAC 173-360A-1040(2).<sup>424</sup>
- (iii) **Upon incapacity of provider.** If an owner or operator fails to obtain alternate coverage within thirty days after receiving notice of the following, then by that date the owner or operator shall notify the department of the failure and submit the ~~evidence of~~ financial responsibility records specified in WAC 173-360A-1040(2):
  - (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 WAC 173-360A-1061;
  - (D) Failure of a local government guarantor to meet the requirements of WAC 173-360A-1072;<sup>425</sup> or
  - (E) Other incapacity of a provider of financial assurance.

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<sup>423</sup> Added provision to reflect requirement in WAC 173-360A-1035(1) that evidence of financial responsibility must be submitted upon bankruptcy of owner or operator.

<sup>424</sup> Added requirement that evidence of financial responsibility must be reported upon failure to pass local government bond rating test or financial test, consistent with addition of the local government options.

<sup>425</sup> Added requirement that evidence of financial responsibility must be reported upon failure of local government guarantor to meet the requirements of the local government guarantee, consistent with the addition of the local government options.

- (iv) **Upon other termination by provider.** If a provider cancels or fails to renew a financial assurance mechanism for reasons other than incapacity and the owner or operator fails to obtain alternate coverage within sixty days after receiving notice of termination by the provider, then by that date the owner or operator shall notify the department of the failure and submit the information required in WAC 173-360A-1030(3)(b).
- (3) **Requests by department.** The department may require an owner or operator to submit the ~~evidence of~~ financial responsibility records specified in WAC 173-360A-1040(2) or other information relevant to compliance with this Part at any time.

**WAC 173-360A-1050 Use of standby trusts<sup>426</sup>**

- (1) **Funding of trust.** Except as specified in WAC 173-360A-1055, the department shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the department, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:
- (a) The following conditions are satisfied:
    - (i) The owner or operator fails to establish alternate financial assurance within sixty days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and
    - (ii) The department 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 department pursuant to Part 7 of this chapter of a release from an underground storage tank covered by the mechanism; or
  - (b) The conditions of subsection (2)(a), (b)(i) or (ii) of this section are satisfied.
- (2) **Drawing on trust.** The department may draw on a standby trust fund when:
- (a) The department makes a final determination that a release has occurred and immediate or long-term remedial action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted remedial action as required under WAC 173-360A-0750; or
  - (b) The department has received either:
    - (i) 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 shall be worded as set forth in WAC 173-360A-1097, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; or
    - (ii) 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 Part and the department determines that the owner or operator has not satisfied the judgment.
- (3) **Priority of payments.** If the department determines that the amount of remedial action costs and third-party liability claims eligible for payment under subsection (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 remedial action costs necessary to protect

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<sup>426</sup> This section combines former WAC 173-360-453, 173-360-463, and 173-360-436(3).

human health and the environment. The department shall pay third-party liability claims in the order in which the department receives certifications under subsection (2)(b)(i) of this section and valid court orders under subsection (2)(b)(ii) of this section.

**(4) Replenishment of mechanisms.**<sup>427</sup>

**(a) General.** If at any time after a standby trust is funded upon the instruction of the department with funds drawn from a guarantee, local government guarantee with standby trust,<sup>428</sup> letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, then 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 under WAC 173-360A-1015(2)~~1~~; or
- (ii) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

**(b) Combination of mechanisms.** If a combination of mechanisms was used to provide the assurance funds which were drawn upon, then the owner or operator shall take the actions required under (a)(i) or (ii) of this subsection by the earliest anniversary date among the mechanisms.

**(5) Refunding of trust balance to providers.**<sup>429</sup> The department will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the department determines that no additional remedial 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.

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<sup>427</sup> Subsection (4) was moved from former WAC 173-360-463.

<sup>428</sup> Consistent with §280.115(a) of the federal rule, added local government guarantee with standby trust to provision governing replenishment.

<sup>429</sup> Subsection (5) was moved from former WAC 173-360-436(3).

**WAC 173-360A-1055 Use of local government guarantees without standby trusts<sup>430</sup>**

A governmental entity acting as guarantor without a standby trust under WAC 173-360A-1072(4)(c) or (d) shall make payments as directed by the department under the circumstances described in WAC 173-360A-1050(1) through (3).

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<sup>430</sup> Consistent with §280.112(d) of the federal rule, added requirement governing use of local government guarantees without standby trusts.

**WAC 173-360A-1060 Mechanism – Financial test of self-insurance-**

- (1) Applicability of mechanism.** An owner or operator, and/or guarantor, may satisfy the requirements of WAC 173-360A-1015 by passing a financial test as specified in this section.
- (2) Financial test requirements.** To pass the financial test of self-insurance, the owner or operator, and/or guarantor shall meet the criteria of (a) or (b) of this subsection based on year-end financial statements for the latest completed fiscal year.
  - (a) First test.**
    - (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 WAC 173-360A-1015, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department under this section;
      - (B) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPAthe U.S. Environmental Protection Agency (EPA) under 40 ~~CFR~~C.F.R. Parts 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state agency under a state program authorized by EPA under Part 271; and
      - (C) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPAthe U.S. Environmental Protection Agency (EPA) under 40 ~~CFR~~C.F.R. Part 144.63 or to a state agency under a state program authorized by EPA under 40 ~~CFR~~C.F.R. Part 145.
    - Note: Titles of the above-referenced ~~CFR~~C.F.R. citations are as follows: Part 264.101 - Corrective Action for Solid Waste Management Units; Part 264.143 - Financial Assurance for Closure; Part 264.145 - Financial Assurance for Post-Closure Care; Part 265.143 - Financial Assurance for Closure; Part 265.145 - Financial Assurance for Post-Closure Care; Part 264.147 - Liability Requirements; Part 265.147 - Liability Requirements; Part 144.63 - Financial Assurance for Plugging and Abandonment; and Part 145 - State UIC Program Requirements.
  - (ii) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten million dollars.
  - (iii) The owner or operator, and/or guarantor, shall have a letter signed by the chief financial officer as specified in subsection (3) of this section and as set forth in WAC 173-360A-1080.



- (iv) The owner or operator, and/or guarantor, shall either:
  - (A) File financial statements annually with the ~~United States~~U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Utilities Service; 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.

**(b) Second test.**

- (i) The owner or operator, and/or guarantor shall meet the financial test requirements of 40 ~~CFR~~C.F.R. 264.147(f)(1), substituting the appropriate amounts specified in WAC 173-360A-1015(2)(b)(i) and (ii) 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, shall 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, shall have a letter signed by the chief financial officer, worded as specified in subsection (3) of this section and as set forth in WAC 173-360A-1080.
- (v) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the ~~United States~~U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Utilities Service, the owner or operator, and/or guarantor, shall obtain a special report by an independent certified public accountant stating that:
  - (A) He or she 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.

- (3) Letter from chief financial officer.** To demonstrate that it meets the financial test under subsection (2)(a) or (b) of this section, the chief financial officer of the owner or operator, and/or guarantor, shall sign, within one hundred twenty 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 set forth in WAC 173-360A-1080, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

- (4) **Obtaining alternate coverage if fail test.** 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 shall obtain alternate coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.
- (5) **Requests by department and findings of failure.** The department may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the department 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 (2)(a) or (b) and (3) of this section, the owner or operator shall obtain alternate coverage within thirty days after notification of such a finding.
- (6) **Notification of department if fail to obtain alternate coverage.** If the owner or operator fails to obtain alternate coverage within one hundred fifty 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 thirty days of notification by the department that he or she no longer meets the requirements of the financial test, then by that date the owner or operator shall notify the department of such failure and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).<sup>431</sup>

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<sup>431</sup> Clarified by when Ecology must be notified if the owner or operator fails to obtain alternate coverage after it is determined the owner or operator no longer meets requirements of financial test, consistent with requirements in WAC 173-360A-1045 (reporting of owners or operators).

**WAC 173-360A-1061 Mechanism – Guarantee<sup>+</sup>**

- (1) Applicability of mechanism.** An owner or operator may satisfy the requirements of WAC 173-360A-1015 by obtaining a guarantee that conforms to the requirements of this section.
- (2) Eligibility of guarantor.** The guarantor shall be:
  - (a) A firm that:
    - (i) Possesses a controlling interest in the owner or operator;
    - (ii) Possesses a controlling interest in a firm described under (a)(i) of this subsection; or
    - (iii) Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or
  - (b) 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.
- (3) Financial test of guarantor.** Within one hundred twenty days of the close of each financial reporting year the guarantor shall demonstrate that it meets the financial test criteria of WAC 173-360A-1060 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in WAC 173-360A-1060(3) and shall deliver the letter to the owner or operator.
- (4) Responsibilities upon failure of test.** If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within one hundred twenty 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 department notifies the guarantor that the guarantor no longer meets the requirements of the financial test of WAC 173-360A-1060(2)(a) or (b) and (3), the guarantor shall notify the owner or operator within ten days of receiving such notification from the department. In both cases, the guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternate coverage as specified in WAC 173-360A-1035(5).
- (5) Content of guarantee.** The guarantee shall be worded as set forth in WAC 173-360A-1081, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- (6) Standby trust.** An owner or operator who uses a guarantee to satisfy the requirements of WAC 173-360A-1015 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the department under WAC 173-360A-1050. This standby trust fund shall meet the requirements specified in WAC 173-360A-1066.

**WAC 173-360A-1062 Mechanism – Insurance and risk retention group coverage.**

- (1) Applicability of mechanism.** An owner or operator may satisfy the requirements of WAC 173-360A-1015 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) Eligibility of provider.** Each insurance policy shall 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.
- (3) Content of policy.** Each insurance policy shall be amended by an endorsement worded as specified in WAC 173-360A-1082 or evidenced by a certificate of insurance worded as specified in WAC 173-360A-1083, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted. Each insurance policy must cover a claim arising from an accidental release arising from the operation of underground storage tanks, regardless of how the release was discovered or identified. No endorsement may amend an insurance policy to restrict coverage of such a claim based on the how the release was discovered or identified.<sup>432</sup>

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<sup>432</sup> Clarified that insurance must cover claims arising from an accidental release arising from the operation of underground storage tanks, regardless of how the release was discovered or identified. This includes accidental releases discovered or identified during any removal of underground storage tanks or environmental investigation, regardless of whether the action was required by the department. This also includes releases discovered or identified by persons other than the insured.

**WAC 173-360A-1063 Mechanism – Surety bond.**

- (1) Applicability of mechanism.** An owner or operator may satisfy the requirements of WAC 173-360A-1015 by obtaining a surety bond that conforms to the requirements of this section.
- (2) Eligibility of surety.** The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.
- (3) Content of surety bond.** The surety bond shall be worded as set forth in WAC 173-360A-1084, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.
- (4) Liability of surety.** 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.
- (5) Standby trust.** The owner or operator who uses a surety bond to satisfy the requirements of WAC 173-360A-1015 shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the department under WAC 173-360A-1050. This standby trust fund shall meet the requirements specified in WAC 173-360A-1066.

**WAC 173-360A-1064 Mechanism – Letter of credit.**

- (1) Applicability of mechanism.** An owner or operator may satisfy the requirements of WAC 173-360A-1015 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section.
- (2) Eligibility of issuing institution.** The issuing institution shall be an entity that has the authority to issue letters of credit in Washington state and whose letter-of-credit operations are regulated and examined by a federal or state agency.
- (3) Content of letter of credit.** The letter of credit shall be worded as set forth in WAC 173-360A-1085, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- (4) Term of letter of credit.** The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit be automatically renewed for the same term as the original term, unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.
- (5) Standby trust.** An owner or operator who uses a letter of credit to satisfy the requirements of WAC 173-360A-1015 shall 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 department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the department under WAC 173-360A-1050. This standby trust fund shall meet the requirements specified in WAC 173-360A-1066.

**WAC 173-360A-1065 Mechanism – Trust fund.**

- (1) Applicability of mechanism.** An owner or operator may satisfy the requirements of WAC 173-360A-1015 by establishing a trust fund that conforms to the requirements of this section.
- (2) Eligibility of trustee.** The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.
- (3) Content of trust agreement.** The wording of the trust agreement shall be identical to the wording specified in WAC 173-360A-1086, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- (4) Certification of acknowledgment.** The trust agreement shall be accompanied by a formal certification of acknowledgment worded as specified in WAC 173-360A-1087, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- (5) Amount of required funding.** The trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.
- (6) Release of excess funds.**
  - (a) Requests.**
    - (i) 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 department for release of the excess.
    - (ii) If other financial assurance as specified in this Part is substituted for all or part of the trust fund, the owner or operator may submit a written request to the department for release of the excess.
  - (b) Response by department.** Within sixty days after receiving a request from the owner or operator for release of funds as specified in (a)(i) or (ii) of this subsection, the department will instruct the trustee to release to the owner or operator such funds as the department specifies in writing.

WAC 173-360A-1066 Mechanism – Standby trust fund<sup>433</sup>

- (1) **Applicability of mechanism.** An owner or operator using any one of the mechanisms authorized by WAC 173-360A-1061, 173-360A-1063, or 173-360A-1064 shall establish a standby trust fund when the mechanism is acquired.
- (2) **Eligibility of trustee.** The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.
- (3) **Content of trust agreement.** The standby trust agreement or trust agreement shall be worded as set forth in WAC 173-360A-1086, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- (4) **Certification of acknowledgment.** The standby trust agreement or trust agreement shall be accompanied by a formal certification of acknowledgment worded as specified in WAC 173-360A-1087, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.
- (5) **Use of trust as depository for multiple assurances.** An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

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<sup>433</sup> Former subsection (3) has been moved under WAC 173-360A-1050 (use of standby trusts).



**WAC 173-360A-1070 Mechanism – Local government bond rating test<sup>434</sup>**

- (1) Applicability of mechanism.** A local government owner or operator and/or local government serving as a guarantor may satisfy the requirements of WAC 173-360A-1015 by meeting the bond rating test requirements in subsection (2) of this section.
- (2) Bond rating test requirements.**
  - (a) General purpose local governments.** To pass the bond rating test, a general purpose local government owner or operator and/or local government must have a currently outstanding issue or issues of general obligation bonds of one million dollars or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard ~~and~~ & Poor's, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.
  - (b) Non-general purpose local governments.** To pass the bond rating test, a local government owner or operator or local government that is not a general-purpose local government and does not have the legal authority to issue general obligation bonds must have a currently outstanding issue or issues of revenue bonds of one million dollars or more, excluding refunded issues, and by also having a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.
- (3) Letter from chief financial officer.**
  - (a) General purpose local governments.** To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator and/or guarantor must sign a letter worded exactly as specified in WAC 173-360A-1088, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.
  - (b) Non-general purpose local governments.** To demonstrate that it meets the local government bond rating test, the chief financial officer of local government owner or operator and/or guarantor other than a general purpose government must sign a letter worded exactly as specified in WAC 173-360A-1089, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

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<sup>434</sup> Consistent with §280.104 of the federal rule, added local government bond rating test as a financial assurance mechanism.

- (4) **Maintaining records of bond rating.** The local government owner or operator and/or guarantor must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.
- (5) **Obtaining alternate coverage if fail test.** If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, then the local government owner or operator shall obtain alternate coverage within one hundred fifty days of the change in status.
- (6) **Requests by department and findings of failure.** The department may require reports of financial condition at any time from the local government owner or operator, and/or local government guarantor. If the department finds, on the basis of such reports or other information, that the local government owner or operator, and/or guarantor, no longer meets the local government bond rating test requirements of this section, the local government owner or operator must obtain alternate coverage within thirty days after notification of such a finding.
- (7) **Notification of department if fail to obtain alternate coverage.** If a local government owner or operator fails to obtain alternate coverage within one\_hundred fifty days of finding that it no longer meets the requirements of the bond rating test or within thirty days of notification by the department that it no longer meets the requirements of the bond rating test, then by that date the owner or operator shall notify the department of such failure and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).<sup>435</sup>

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<sup>435</sup> Clarified by when Ecology must be notified if a local government owner or operator fails to obtain alternate coverage after it is determined the owner or operator no longer meets requirements of the bond rating test, consistent with requirements in WAC 173-360A-1045 (reporting of owners or operators).

**WAC 173-360A-1071 Mechanism – Local government financial test<sup>436</sup>**

- (1) **Applicability of mechanism.** A local government owner or operator may satisfy the requirements of WAC 173-360A-1015 by passing the financial test specified in this section.
- (2) **Eligibility requirements.** To be eligible to use the financial test, the local government owner or operator must have the ability and authority to assess and levy taxes or to freely establish fees and charges.
- (3) **Financial test requirements.** To pass the local government financial test, the owner or operator must meet the following criteria based on year-end financial statements for the latest completed fiscal year:
  - (a) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion;
  - (b) The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade; and
  - (c) The local government owner or operator must have a letter signed by the chief financial officer worded as specified in WAC 173-360A-1090.
- (4) **Financial information requirements.** The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year:
  - (a) **Total revenues**, consisting of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt;
  - (b) **Total expenditures**, consisting of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds

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<sup>436</sup> Consistent with §280.105 of the federal rule, added local government financial test as a financial assurance mechanism.

under the direct control of the local government using the financial test (interfund transfers);

- (c) **Local revenues**, consisting of total revenues (as defined in (a) of this subsection) minus the sum of all transfers from other governmental entities, including all monies received from ~~F~~ederal, state, or local government sources;
  - (d) **Debt service**, consisting of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest bearing warrants. Excludes payments on non-interest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments;
  - (e) **Total funds**, consisting of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Includes ~~F~~ederal securities, ~~F~~ederal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets; and
  - (f) **Population**, consisting of the number of people in the area served by the local government.
- (5) **Letter from chief financial officer.** To demonstrate that it meets the financial test under subsection (3) of this section, the chief financial officer of the local government owner or operator, must sign, within one hundred twenty 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 specified in WAC 173-360A-1090, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.
- (6) **Obtaining alternate coverage if fail test.** If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternate coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.
- (7) **Requests by department and findings of failure.** The department may require reports of financial condition at any time from the local government owner or operator. If the department finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of subsection (3) of this section, the owner or operator must obtain alternate coverage within thirty days after notification of such a finding.

- (8) **Notification of department if fail to obtain alternate coverage.** If a local government owner or operator fails to obtain alternate coverage within one- hundred fifty days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within thirty days of notification by the department that it no longer meets the requirements of the financial test, then by that date the owner or operator shall notify the department of such failure and submit the evidence of financial responsibility specified in WAC 173-360A-1040(2).<sup>437</sup>

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<sup>437</sup> Clarified by when Ecology must be notified if a local government owner or operator fails to obtain alternate coverage after it is determined the owner or operator no longer meets requirements of the financial test, consistent with requirements in WAC 173-360A-1045 (reporting of owners or operators).

**WAC 173-360A-1072 Mechanism – Local government guarantee<sup>438</sup>**

- (1) Applicability of mechanism.** A local government owner or operator may satisfy the requirements of WAC 173-360A-1015 by obtaining a guarantee that conforms to the requirements of this section.
- (2) Eligibility of guarantor.** The guarantor must be either the state in which the local government owner or operator is located or a local government having a “substantial governmental relationship” with the owner and operator and issuing the guarantee as an act incident to that relationship.
- (3) Test of guarantor.** A local government acting as the guarantor shall:
  - (a) Demonstrate that it meets the bond rating test requirements of WAC 173-360A-1070 and deliver a copy of the chief financial officer’s letter as required in WAC 173-360A-1070(3) to the local government owner or operator;
  - (b) Demonstrate that it meets the financial test requirements of WAC 173-360A-1071 and deliver a copy of the chief financial officer’s letter as required in WAC 173-360A-1071(5) to the local government owner or operator; or
  - (c) Demonstrate that it meets the local government fund requirements of WAC 173-360A-1073 and deliver a copy of the chief financial officer’s letter as required in WAC 173-360A-1073(4) to the local government owner or operator.
- (4) Content of guarantee.** The content of the guarantee depends on whether the guarantor is a state or a local government and whether the guarantor guarantees to fund a standby trust.
  - (a) If the guarantor is a state and, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the department, then the guarantee must be worded as specified in WAC 173-360A-1091, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
  - (b) If the guarantor is a local government and, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the department, then the guarantee must be worded as specified in WAC 173-360A-1092, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
  - (c) If the guarantor is a state and, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the department for taking remedial action or compensating third parties for bodily injury and property damage, then the guarantee must be worded as specified in WAC 173-360A-1093, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

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<sup>438</sup> Consistent with §280.106 of the federal rule, added local government guarantee as a financial assurance mechanism.

- (d) If the guarantor is a local government and, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the department for taking remedial action or compensating third parties for bodily injury and property damage, then the guarantee must be worded as specified in WAC 173-360A-1094, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.
- (5) **Responsibilities upon failure of test.** If the local government guarantor is unable to demonstrate financial assurance under WAC 173-360A-1070, 173-360A-1071, or 173-360A-1073, at the end of the financial reporting year, then the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternate coverage as specified in WAC 173-360A-1035(5).

**WAC 173-360A-1073 Mechanism – Local government fund<sup>439</sup>**

- (1) Applicability of mechanism.** A local government owner or operator may satisfy the requirements of WAC 173-360A-1015 by establishing a dedicated fund account that conforms to the requirements of this section.
- (2) Restrictions on commingled funds.** Except as specified in subsection (3)(b) of this section, a dedicated fund may not be commingled with other funds or otherwise used in normal operations.
- (3) Local government fund requirements.** To be considered eligible, a dedicated fund must meet one of the following requirements:
  - (a) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking remedial action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks and is funded for the full amount of coverage required under WAC 173-360A-1015, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage;
  - (b) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking remedial action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks, and is funded for five times the full amount of coverage required under WAC 173-360A-1015, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under WAC 173-360A-1015, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund; or
  - (c) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking remedial action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks. A payment must be made to the fund once every year for seven years until the fund is fully-funded. This seven year period is hereafter referred to as the “pay-in-period.” Equation 1073-1 must be used to determine the amount of each payment; and

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<sup>439</sup> Consistent with §280.107 of the federal rule, added local government fund as a financial assurance mechanism.



<del>Equation 1073-1</del>
Payment amount = $\frac{TY - CF}{Y}$
Where: TY = The total required financial assurance for the owner or operator CF = The current amount in the fund Y = Number of years remaining in the pay period

- (i) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking remedial action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks; or
  - (ii) The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.
- (4) **Letter from chief financial officer.** To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator and/or guarantor must sign a letter worded exactly as specified in WAC 173-360A-1095, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

**WAC 173-360A-1080 Appendix A – 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 remedial action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," 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. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to WAC 173-360A-0200.]

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 U.S. Environmental Protection Agency \(EPA\)](#) regulations or state programs authorized by EPA under 40 [CFR C.F.R.](#) Parts 271 and 145:

<b>EPA Regulations</b>	<b>Amount</b>
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) .....	\$ _____
<b>Authorized State Programs</b>	<b>Amount</b>
Closure .....	\$ _____
Post-Closure Care .....	\$ _____
Liability Coverage .....	\$ _____
Plugging and Abandonment .....	\$ _____
<b>Total</b> .....	\$ _____

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

[Fill in the information for Alternative I if the criteria of WAC 173-360A-1060(2)(a) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of WAC 173-360A-1060(2)(b) are being used to demonstrate compliance with the financial test requirements.]

**Alternative I**

**UST Regulations, Chapter 173-360A WAC**  
**Proposed Rule: Text with Tracked Changes to Preliminary Draft**

**Part 10**

1.	Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee	\$ _____	
2.	Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee	\$ _____	
3.	Sum of lines 1 and 2	\$ _____	
4.	Total tangible assets	\$ _____	
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	\$ _____	
6.	Tangible net worth [subtract line 5 from line 4]	\$ _____	
7.	Is line 6 at least \$10 million?	Yes ____	No ____
8.	Is line 6 at least 10 times line 3?	Yes ____	No ____
9.	Have financial statements for the latest fiscal year been filed with the <u>U.S.</u> Securities and Exchange Commission?	Yes ____	No ____
10.	Have financial statements for the latest fiscal year been filed with the Energy Information Administration?	Yes ____	No ____
11.	Have financial statements for the latest fiscal year been filed with the Rural Utilities Service?	Yes ____	No ____
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]	Yes ____	No ____

**Alternative II**

1.	Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee	\$ _____
2.	Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee	\$ _____
3.	Sum of lines 1 and 2	\$ _____
4.	Total tangible assets	\$ _____

**UST Regulations, Chapter 173-360A WAC**  
**Proposed Rule: Text with Tracked Changes to Preliminary Draft**

**Part 10**

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.]	\$_____	
8.	Is line 6 at least \$10 million?	Yes ____	No ____
9.	Is line 6 at least 6 times line 3?	Yes ____	No ____
10.	Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11]	Yes ____	No ____
11.	Is line 7 at least 6 times line 3?	Yes ____	No ____
[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]	\$_____	
15.	Is line 14 at least 6 times line 3?	Yes ____	No ____
16.	Current bond rating of most recent bond issue	_____	
17.	Name of rating service	_____	
18.	Date of maturity of bond	_____	
19.	Have financial statements for the latest fiscal year been filed with the <span style="color: red;">SEC</span> <u>U.S. Securities and Exchange Commission</u> , the Energy Information Administration, or the Rural Utilities Service? [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.]	Yes ____	No ____

[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 WAC 173-360A-1080 as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

**WAC 173-360A-1081    Appendix B – Guarantee**

Guarantee made this [date] by name of guaranteeing entity, a business entity organized under the laws of (name of state), herein referred to as Guarantor, to the Washington State Department of Ecology and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

*Recitals*

1. Guarantor meets or exceeds the financial test criteria of WAC 173-360A-1060(2)(a) or (b) and (3) and agrees to comply with the requirements for guarantors as specified in WAC 173-360A-1061(3).
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 WAC 173-360A-0200, and the name and address of the facility.] This Guarantee satisfies the requirements of Part 10 of chapter 173-360A WAC for assuring funding for [insert: "Taking remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.
3. [Insert appropriate phrase: "On behalf of our subsidiary" (if Guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if Guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if Guarantor is providing the Guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], Guarantor guarantees to the Washington State Department of Ecology and to any and all third parties that:
  - a. In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this Guarantee and the Washington State Department of Ecology has determined or suspects that a release has occurred at an underground storage tank covered by this Guarantee, the Guarantor, upon instructions from the Department, shall fund a standby trust fund in accordance with the provisions of WAC 173-360A-1050, in an amount not to exceed the coverage limits specified above.
  - b. In the event that the Department determines that [owner or operator] has failed to perform remedial action for releases arising out of the operation of the above-identified tank(s) in accordance with WAC 173-360A-0750, the Guarantor, upon written instructions from the Department, shall fund a standby trust in accordance with the provisions of WAC 173-360A-1050, in an amount not to exceed the coverage limits specified above.
  - c. 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

"non-sudden"] 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 Department, shall fund a standby trust in accordance with the provisions of WAC 173-360A-1050 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 WAC 173-360A-1060(2)(a) or (b) and (3), 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 chapter 173-360A WAC.
7. Guarantor agrees to remain bound under this Guarantee for so long as [owner or operator] shall comply with the applicable financial responsibility requirements of Part 10 of chapter 173-360A WAC 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, 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 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 WAC 173-360A-1015.
9. Guarantor expressly waives notice of acceptance of this Guarantee by the Washington State Department of Ecology, 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 WAC 173-360A-1081 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:

**WAC 173-360A-1082 Appendix C – Endorsement**

Name: [name of each covered location]  
Address: [address of each covered location]  
Policy Number:  
Period of Coverage: [current policy period]  
Policy Retroactive Date:<sup>440</sup>  
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 WAC 173-360A-0200, and the name and address of the facility.]

for [insert: "taking remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental release"; 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 2 are hereby amended to conform with subsections (a) through (e):
  - a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

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<sup>440</sup> Added "policy retroactive date" to information that must be included on endorsements to insurance policies.



- b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of remedial 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 WAC 173-360A-1060 through 173-360A-1065 and 173-360A-1070 through 173-360A-1073.<sup>441</sup>
- c. Whenever requested by the Washington State Department of Ecology, the ["Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 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 nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in WAC 173-360A-1082 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]

Endorsement Holder:<sup>442</sup>

Business Licensing Service

<sup>441</sup> Consistent with §280.97 of the federal rule, in boilerplate endorsement, added local government options as other available financial assurance options.

<sup>442</sup> Added contact information for Business Licensing Service to help inform both the insurer and insured who holds the endorsement.

P.O. Box 9034  
Olympia, WA 98507-9034

**WAC 173-360A-1083 Appendix D – 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]  
Policy Retroactive Date:<sup>443</sup>  
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 WAC 173-360A-0200, and the name and address of the facility.]  
  
for [insert: "Taking remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-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.

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<sup>443</sup> Added "policy retroactive date" to information that must be included on certificate of insurance.

- b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of remedial 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 WAC 173-360A-1060 through 173-360A-1065 and 173-360A-1070 through 173-360A-1073.<sup>444</sup>
- c. Whenever requested by the Washington State Department of Ecology, the ["Insurer" or "Group"] agrees to furnish the Department a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such 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 the cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in WAC 173-360A-1083 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]

Certificate Holder:<sup>445</sup>

Business Licensing Service

<sup>444</sup> Consistent with §280.97 of the federal rule, in boilerplate certificate of insurance, added local government options as other available financial assurance options.

<sup>445</sup> Added contact information for Business Licensing Service to help inform both the insurer and insured who holds the certificate of insurance.

P.O. Box 9034  
Olympia, WA 98507-9034

**WAC 173-360A-1084 Appendix E – 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 WAC 173-360A-0200, and the name and address of the facility.

List the coverage guaranteed by the bond: "Taking remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden 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 Washington State Department of Ecology, 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 the Solid Waste Disposal Act, as amended, and chapter 90.76 RCW<sup>446</sup> to provide financial assurance for [insert: "Taking remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden 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<sup>7</sup>; 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 remedial action, in accordance with WAC 173-360A-0750 and the Washington State Department of Ecology's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] arising from operating the tank(s) identified above, or if the Principal shall provide

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<sup>446</sup> In boilerplate performance bond, added reference to state law, which also requires financial assurance.

alternate financial assurance, as specified in Part 10 of chapter 173-360A WAC, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

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

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

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

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

(5) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of WAC 173-360A-1015.

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 Washington State Department of Ecology that the Principal has failed to ["take remedial action, in accordance with WAC 173-360A-0750 and the Department's instructions" and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["remedial action in accordance with WAC 173-360A-0750 and the Department'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 Department under WAC 173-360A-1050.

Upon notification by the Department 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 Department 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 Department under WAC 173-360A-1050.

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

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

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

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

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

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in WAC 173-360A-1084 as such regulations were constituted on the date this bond was executed.

*Principal*

[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate seal]

*Corporate Surety(ies)*

[Name and address]  
[State of incorporation:]  
[Liability limit: \$]  
[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]  
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]  
Bond premium: \$



**WAC 173-360A-1085 Appendix F – Irrevocable standby letter of credit**

[Name and address of issuing institution]

[Name and address of the Washington State Department of Ecology]

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 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 the Solid Waste Disposal Act, as amended, and chapter 90.76 RCW."<sup>447</sup>

This letter of credit may be drawn on to cover [insert: "taking remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden 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 WAC 173-360A-0200, 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 an 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 WAC 173-360A-1015.

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

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<sup>447</sup> In boilerplate letter of credit, added reference to state law, which also requires financial assurances.

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 WAC 173-360A-1085 as such regulations were constituted on the date shown immediately below.

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

[Date]

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

**WAC 173-360A-1086 Appendix G – Trust agreement**

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

Whereas, the Department of Ecology, "Ecology", an agency of the state of Washington, 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 remedial action and third-party compensation for bodily injury and property damage caused by sudden and non-sudden 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 addresses of the facility(ies) where the tanks are located that are covered by the [insert "standby" where trust agreement is standby trust agreement] trust agreement.<sup>448</sup>

[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:

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

(2) 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 Washington State Department of Ecology. 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

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<sup>448</sup> Made editorial correction, consistent with changes in §280.103 of the federal rule.

payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Washington State Department of Ecology's instruction are transferred to the Trustee and are referred to as the fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The fund shall be held by the Trustee, IN TRUST, as thereafter 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 Washington State Department of Ecology.

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

The trustee shall make payments from the fund as the Washington State Department of Ecology shall direct, in writing, to provide for the payment of the costs of [insert: "taking remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden 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 an 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 WAC 173-360A-1015.

The Trustee shall reimburse the Grantor, or other persons as specified by the Department from the fund for remedial action expenditures and/or third-party liability claims in such amounts as the Department shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the fund as defined herein.

*Section 5. Payments Comprising the Fund.*

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

*Section 6. Trustee Management.*

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

(a) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(1), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

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

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

*Section 7. Commingling and Investment.*

The Trustee is expressly authorized in its discretion:

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

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

*Section 8. Express Powers of Trustee.*

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

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

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

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

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

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

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

*Section 9. Taxes and Expenses.*

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

*Section 10. Advice of Counsel.*

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

*Section 11. Trustee Compensation.*

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

*Section 12. Successor Trustee.*

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in ~~s~~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 Washington State Department of Ecology to the Trustee shall be in writing, signed by the Department, 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 Department, 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 Department, except as provided for herein.

*Section 14. Amendment of Agreement.*

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Washington State Department of Ecology, if the Grantor ceases to exist.

*Section 15. Irrevocability and Termination.*

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

*Section 16. Immunity and Indemnification.*

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

*Section 17. Choice of Law.*

This Agreement shall be administered, construed, and enforced according to the laws of the state of Washington, 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 WAC 173-360A-1086 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]

Attest:

[Signature of Witness]  
[Name of Witness]  
[Title]  
[Seal]



**WAC 173-360A-1087 Appendix H – Certification of acknowledgment**

State of Washington

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]

**WAC 173-360A-1088 Appendix I – Local government bond rating test – Letter from chief financial officer of general purpose local governments**

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: “taking remedial action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” or “non-sudden accidental releases” or “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 bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue date	Maturity date	Outstanding amount	Bond Rating	Rating Agency
				[Moody’s or Standard and Poor’s]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding general obligation bonds issued by this government that have been rated by Moody’s or Standard & Poor’s are rated as at least investment grade (Moody’s Baa or Standard & Poor’s BBB) based on the most recent ratings published within the last 12 months. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in WAC 173-360A-1088 as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

**WAC 173-360A-1089 Appendix J – Local government bond rating test – Letter from chief financial officer of non-general purpose local governments**

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: “taking remedial action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” or “non-sudden accidental releases” or “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). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue date	Maturity date	Outstanding amount	Bond Rating	Rating Agency
				[Moody’s or Standard <del>and</del> & Poor’s]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding revenue bonds issued by this government that have been rated by Moody’s or Standard & Poor’s are rated as at least investment grade (Moody’s Baa or Standard & Poor’s BBB) based on the most recent ratings published within the last 12 months. The revenue bonds listed are not backed by third-party credit enhancement or insured by a municipal bond insurance company. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in WAC 173-360A-1089 as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

**WAC 173-360A-1090 Appendix K – Local government financial test – Letter from chief financial officer**

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: “taking remedial action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” or “non-sudden accidental releases” or “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 [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to WAC 173-360A-0200.]

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody’s rating of Aaa, Aa, A, or Baa or a Standard ~~and~~& Poor’s rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody’s rating of Aaa, Aa, A, or Baa and a Standard ~~and~~& Poor’s rating of AAA, AA, A, or BBB.

WORKSHEET FOR MUNICIPAL FINANCIAL TEST

PART I – BASIC INFORMATION

1. Total Revenues

a. Revenues (dollars): \_\_\_\_\_

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

b. Subtract interfund transfers (dollars): \_\_\_\_\_

c. Total Revenues (dollars): \_\_\_\_\_

2. Total Expenditures

a. Expenditures (dollars): \_\_\_\_\_

Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.

b. Subtract interfund transfers (dollars): \_\_\_\_\_

c. Total Expenditures (dollars): \_\_\_\_\_

3. Local Revenues

- a. Total Revenues (from 1c) (dollars): \_\_\_\_\_
- b. Subtract total intergovernmental transfers (dollars): \_\_\_\_\_
- c. Local Revenues (dollars): \_\_\_\_\_

4. Debt Service

- a. Interest and fiscal charges (dollars): \_\_\_\_\_
- b. Add debt retirement (dollars): \_\_\_\_\_
- c. Total Debt Service (dollars): \_\_\_\_\_

5. Total Funds (Dollars): \_\_\_\_\_

Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds.

6. Population (Persons): \_\_\_\_\_

PART II – APPLICATION OF TEST

7. Total Revenues to Population

- a. Total Revenues (from 1c): \_\_\_\_\_
- b. Population (from 6): \_\_\_\_\_
- c. Divide 7a by 7b: \_\_\_\_\_
- d. Subtract 417: \_\_\_\_\_
- e. Divide by 5,212: \_\_\_\_\_
- f. Multiply by 4.095: \_\_\_\_\_

8. Total Expenses to Population

- a. Total Expenses (from 2c): \_\_\_\_\_
- b. Population (from 6): \_\_\_\_\_
- c. Divide 8a by 8b: \_\_\_\_\_
- d. Subtract 524: \_\_\_\_\_
- e. Divide by 5,401: \_\_\_\_\_
- f. Multiply by 4.095: \_\_\_\_\_

9. Local Revenues to Total Revenues

- a. Local Revenues (from 3c): \_\_\_\_\_
- b. Total Revenues (from 1c): \_\_\_\_\_
- c. Divide 9a by 9b: \_\_\_\_\_
- d. Subtract 0.695: \_\_\_\_\_
- e. Divide by 0.205: \_\_\_\_\_
- f. Multiply by 2.840: \_\_\_\_\_

10. Debt Service to Population

- a. Debt Service (from 4c): \_\_\_\_\_

- b. Population (from 6): \_\_\_\_\_
  - c. Divide 10a by 10b: \_\_\_\_\_
  - d. Subtract 51: \_\_\_\_\_
  - e. Divide by 1,038: \_\_\_\_\_
  - f. Multiply by -1.866: \_\_\_\_\_
11. Debt Service to Total Revenues
- a. Debt Service (from 4c): \_\_\_\_\_
  - b. Total Revenues (from 1c): \_\_\_\_\_
  - c. Divide 11a by 11b: \_\_\_\_\_
  - d. Subtract 0.068: \_\_\_\_\_
  - e. Divide by 0.259: \_\_\_\_\_
  - f. Multiply by -3.533: \_\_\_\_\_
12. Total Revenues to Total Expenses
- a. Total Revenues (from 1c): \_\_\_\_\_
  - b. Total Expenses (from 2c): \_\_\_\_\_
  - c. Divide 12a by 12b: \_\_\_\_\_
  - d. Subtract 0.910: \_\_\_\_\_
  - e. Divide by 0.899: \_\_\_\_\_
  - f. Multiply by 3.458: \_\_\_\_\_
13. Funds Balance to Total Revenues
- a. Total Funds (from 5): \_\_\_\_\_
  - b. Total Revenues (from 1c): \_\_\_\_\_
  - c. Divide 13a by 13b: \_\_\_\_\_
  - d. Subtract 0.891: \_\_\_\_\_
  - e. Divide by 9.156: \_\_\_\_\_
  - f. Multiply by 3.270: \_\_\_\_\_
14. Funds Balance to Total Expenses
- a. Total Funds (from 5): \_\_\_\_\_
  - b. Total Expenses (from 2c): \_\_\_\_\_
  - c. Divide 14a by 14b: \_\_\_\_\_
  - d. Subtract 0.866: \_\_\_\_\_
  - e. Divide by 6.409: \_\_\_\_\_
  - f. Multiply by 3.270: \_\_\_\_\_
15. Total Funds to Population
- a. Total Funds (from 5): \_\_\_\_\_
  - b. Population (from 6): \_\_\_\_\_
  - c. Divide 15a by 15b: \_\_\_\_\_
  - d. Subtract 270: \_\_\_\_\_

- e. Divide by 4,548: \_\_\_\_\_
  - f. Multiply by 1.866: \_\_\_\_\_
16. Add  $7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937$ : \_\_\_\_\_

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in WAC 173-360A-1090 as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

**WAC 173-360A-1091    Appendix L – Local government guarantee with standby trust made by a state**

Guarantee made this [date] by [name of state], herein referred to as Guarantor, to the Washington State Department of Ecology and to any and all third parties, and obliges, on behalf of [local government owner or operator].

*Recitals*

1. Guarantor is a state.
2. [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this Guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-0200, and the name and address of the facility.] This Guarantee satisfies requirements of Part 10 of chapter 173-360A WAC for assuring funding for [insert: “taking remedial action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden 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. Guarantor guarantees to the Washington State Department of Ecology and to any and all third parties that:
  - a. In the event that [local government owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this Guarantee and the Washington State Department of Ecology has determined or suspects that a release has occurred at an underground storage tank covered by this Guarantee, the Guarantor, upon instructions from the Department shall fund a standby trust fund in accordance with the provisions of WAC 173-360A-1050, in an amount not to exceed the coverage limits specified above.
  - b. In the event that the Department determines that [local government owner or operator] has failed to perform remedial action for releases arising out of the operation of the above-identified tanks(s) in accordance with WAC 173-360A-0750, the Guarantor upon written instructions from Department shall fund a standby trust fund in accordance with the provisions of WAC 173-360A-1050, in an amount not to exceed the coverage limits specified above.
  - c. 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 “non-sudden”] 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 Department, shall fund a standby trust in accordance with the



provisions of WAC 173-360A-1050 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

4. 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.
5. Guarantor agrees to remain bound under this Guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 173-360A WAC.
6. Guarantor agrees to remain bound under this Guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of Part 10 of chapter 173-360A WAC 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.
7. The Guarantor's obligation does not apply to any of the following:
  - a. Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
  - b. Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];
  - c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
  - d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government 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 WAC 173-360A-1015.
8. Guarantor expressly waives notice of acceptance of this Guarantee by the Washington State Department of Ecology, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this Guarantee is identical to the wording specified in WAC 173-360A-1091 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:

**WAC 173-360A-1092 Appendix M – Local government guarantee with standby trust made by a local government**

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of [name of state], herein referred to as Guarantor, to the Washington State Department of Ecology and to any and all third parties, and obliges, on behalf of [local government owner or operator].

*Recitals*

1. Guarantor meets or exceeds [select one: the local government bond rating test requirements of WAC 173-360A-1070, the local government financial test requirements of WAC 173-360A-1071, or the local government fund requirements of WAC 173-360A-1073].
2. [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this Guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-0200, and the name and address of the facility.] This Guarantee satisfies the requirements of Part 10 of chapter 173-360A WAC for assuring funding for [insert: “taking remedial action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.
3. Incident to our substantial governmental relationship with [local government owner or operator], Guarantor guarantees to Washington State Department of Ecology and to any and all third parties that:
  - a. In the event that [local government owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this Guarantee and the Washington State Department of Ecology has determined or suspects that a release has occurred at an underground storage tank covered by this Guarantee, the Guarantor, upon instructions from the Department shall fund a standby trust fund in accordance with the provisions of WAC 173-360A-1050, in an amount not to exceed the coverage limits specified above.
  - b. In the event that the Department determines that [local government owner or operator] has failed to perform remedial action for releases arising out of the operation of the above-identified tank(s) in accordance with WAC 173-360A-0750, the Guarantor upon written instructions from the Department shall fund a standby trust fund in accordance with the provisions of WAC 173-360A-1050, in an amount not to exceed the coverage limits specified above.
  - c. 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 “non-sudden”] 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 Department, shall fund a standby trust in accordance with the provisions of WAC 173-360A-1050 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

4. Guarantor agrees that, if at the end of any fiscal year before cancellation of this Guarantee, the Guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), Guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.
5. Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under 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 chapter 173-360A WAC.
7. Guarantor agrees to remain bound under this Guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of Part 10 of chapter 173-360A WAC 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 [local government owner or operator] under a workers’ compensation, disability benefits, or unemployment compensation law or other similar law;
  - b. Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];
  - c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
  - d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government 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 WAC 173-360A-1015.
9. Guarantor expressly waives notice of acceptance of this Guarantee by the Washington State Department of Ecology, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this Guarantee is identical to the wording specified in WAC 173-360A-1092 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:

**WAC 173-360A-1093 Appendix N – Local government guarantee without standby trust made by a state**

Guarantee made this [date] by [name of state], herein referred to as Guarantor, to the Washington State Department of Ecology and to any and all third parties, and obliges, on behalf of [local government owner or operator].

*Recitals*

1. Guarantor is a state.
2. [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this Guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-0200, and the name and address of the facility.] This Guarantee satisfies the requirements of Part 10 of chapter 173-360A WAC for assuring funding for [insert: “taking remedial action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden 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. Guarantor guarantees to the Washington State Department of Ecology and to any and all third parties and obliges that:
  - a. In the event that [local government owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this Guarantee and the Washington State Department of Ecology has determined or suspects that a release has occurred at an underground storage tank covered by this Guarantee, the Guarantor, upon written instructions from the Department shall make funds available to pay for remedial actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.
  - b. In the event that the Department determines that [local government owner or operator] has failed to perform remedial action for releases arising out of the operation of the above-identified tank(s) in accordance with WAC 173-360A-0750, the Guarantor upon written instructions from the Department shall make funds available to pay for remedial actions in an amount not to exceed the coverage limits specified above.
  - c. 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 “non-sudden”] 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 Department, shall make funds available to compensate third

parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

4. Guarantor agrees 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.
5. Guarantor agrees to remain bound under this Guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 173-360A WAC.
6. Guarantor agrees to remain bound under this Guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of Part 10 of chapter 173-360A WAC 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. If notified of a probable release, the Guarantor agrees to remain bound to the terms of this Guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the Guarantee with respect to future releases.
7. The Guarantor's obligation does not apply to any of the following:
  - a. Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;
  - b. Bodily injury to an employee of [insert local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];
  - c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
  - d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government 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 WAC 173-360A-1015.
8. Guarantor expressly waives notice of acceptance of this Guarantee by the Washington State Department of Ecology, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this Guarantee is identical to the wording specified in WAC 173-360A-1093 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:



**WAC 173-360A-1094 Appendix O – Local government guarantee without standby trust made by a local government**

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of [name of state], herein referred to as Guarantor, to the Washington State Department of Ecology and to any and all third parties, and obliges, on behalf of [local government owner or operator].

*Recitals*

1. Guarantor meets or exceeds [select one: the local government bond rating test requirements of WAC 173-360A-1070, the local government financial test requirements of WAC 173-360A-1071, or the local government fund requirements of WAC 173-360A-1073].
2. [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this Guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360A-0200, and the name and address of the facility.] This Guarantee satisfies the requirements of Part 10 of chapter 173-360A WAC for assuring funding for [insert: “taking remedial action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.
3. Incident to our substantial governmental relationship with [local government owner or operator], Guarantor guarantees to the Washington State Department of Ecology and to any and all third parties and obliges that:
  - a. In the event that [local government owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this Guarantee and the Washington State Department of Ecology has determined or suspects that a release has occurred at an underground storage tank covered by this Guarantee, the Guarantor, upon written instructions from the Department shall make funds available to pay for remedial actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.
  - b. In the event that the Department determines that [local government owner or operator] has failed to perform remedial action for releases arising out of the operation of the above-identified tank(s) in accordance with WAC 173-360A-0750, the Guarantor upon written instructions from the Department shall make funds available to pay for remedial actions in an amount not to exceed the coverage limits specified above.
  - c. 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 “non-sudden”] 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 Department, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

4. Guarantor agrees that if at the end of any fiscal year before cancellation of this Guarantee, the Guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), Guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.
5. Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under 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 chapter 173-360A WAC.
7. Guarantor agrees to remain bound under this Guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of Part 10 of chapter 173-360A WAC 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. If notified of a probable release, the Guarantor agrees to remain bound to the terms of this Guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the Guarantee with respect to future releases.
8. The Guarantor's obligation does not apply to any of the following:
  - a. Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;
  - b. Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];
  - c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
  - d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government 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 WAC 173-360A-1015.

9. Guarantor expressly waives notice of acceptance of this Guarantee by the Washington State Department of Ecology, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this Guarantee is identical to the wording specified in WAC 173-360A-1094 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:

**WAC 173-360A-1095 Appendix P – Local government fund – Letter from chief financial officer**

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: “taking remedial action” and/or “compensating third parties for bodily injury and property damage”] caused by [insert: “sudden accidental releases” or “non-sudden accidental releases” or “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 local government fund mechanism: [List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: “The local government fund is funded for the full amount of coverage required under WAC 173-360A-1015, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage,” or “The local government fund is funded for five times the full amount of coverage required under WAC 173-360A-1015, or funded for part of the required amount of coverage and used in combination with other mechanisms(s) that provide the remaining coverage,” or “A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund” or “A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government’s debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority”].

The details of the local government fund are as follows:

Amount in Fund (market value of fund at close of last fiscal year): \_\_\_\_\_

[If fund balance is incrementally funded as specified in WAC 173-360A-1073(3)(c), insert: Amount added to fund in the most recently completed fiscal year: \_\_\_\_\_

Number of years remaining in the pay-in period: \_\_\_\_\_

A copy of the state constitutional provision, or local government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in WAC 173-360A-1095 as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

**WAC 173-360A-1096 Appendix Q – Certification of financial responsibility**

[Owner or operator] hereby certifies that it is in compliance with the requirements of Part 10 of chapter 173-360A WAC.

The financial assurance mechanism[s] used to demonstrate financial responsibility under Part 10 of chapter 173-360A WAC 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 remedial action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden 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]

**WAC 173-360A-1097 Appendix R – Certification of valid claim**

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[\_\_\_\_\_].

[Signatures]

Owner or Operator

Attorney for Owner or Operator

(notary)

Date

[Signature(s)]

Claimant(s)

Attorney(s) for Claimant(s)

(notary)

Date

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