Chapter 173-360 WAC
UNDERGROUND STORAGE TANK REGULATIONS

WAC

PART I

PROGRAM SCOPE, ADMINISTRATION, AND ENFORCEMENT

PART II

NOTIFICATION, REPORTING, AND RECORDKEEPING REQUIREMENTS

PART III

PERFORMANCE STANDARDS AND OPERATING AND CLOSURE REQUIREMENTS

PART IV

FINANCIAL RESPONSIBILITY REQUIREMENTS

PART V

LOCAL PROGRAMS

PART VI

REGISTRATION AND LICENSING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SERVICE PROVIDERS AND SERVICE SUPERVISORS

PART VII

OPERATOR TRAINING REQUIREMENTS

PART VIII

SECONDARY AND UNDER-DISPENSER CONTAINMENT REQUIREMENTS

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

173-360-640 Types of licenses. [Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-640, filed 11/28/90, effective 12/29/90.] Repealed by WSR 95-04-102, filed 2/1/95, effective 3/4/95. Statutory Authority: Chapter 90.76 RCW.

173-360-650 Examination and licensing of tank services supervisors. [Statutory Authority: Chapter 90.76 RCW. WSR 91-22-020 (Order 91-26), § 173-360-650, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-650, filed 11/28/90, effective 12/29/90.] Repealed by WSR

95-04-102, filed 2/1/95, effective 3/4/95. Statutory Authority: Chapter 90.76 RCW.

173-360-655 Examination and licensing of persons who perform inspections. [Statutory Authority: Chapter 90.76 RCW. WSR 91-22-020 (Order 91-26), § 173-360-655, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-655, filed 11/28/90, effective 12/29/90.] Repealed by WSR 95-04-102, filed 2/1/95, effective 3/4/95. Statutory Authority: Chapter 90.76 RCW.

173-360-660 Study guide fees. [Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-660, filed 11/28/90, effective 12/29/90.] Repealed by WSR 95-04-102, filed 2/1/95, effective 3/4/95. Statutory Authority: Chapter 90.76 RCW.

173-360-680 Reciprocity with other states. [Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-680, filed 11/28/90, effective 12/29/90.] Repealed by WSR 95-04-102, filed 2/1/95, effective 3/4/95. Statutory Authority: Chapter 90.76 RCW.

173-360-690 Appeals. [Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-690, filed 11/28/90, effective 12/29/90.] Repealed by WSR 95-04-102, filed 2/1/95, effective 3/4/95. Statutory Authority: Chapter 90.76 RCW.

173-360-695 Inactive license. [Statutory Authority: Chapter 90.76 RCW. WSR 91-22-020 (Order 91-26), § 173-360-695, filed 10/29/91, effective 11/29/91.] Repealed by WSR 95-04-102, filed 2/1/95, effective 3/4/95. Statutory Authority: Chapter 90.76 RCW.

PART I

PROGRAM SCOPE, ADMINISTRATION, AND ENFORCEMENT

WAC 173-360-100 Purpose and authority. (1) The purpose of this chapter is to address the serious threat posed to human health and the environment by leaking underground storage systems containing petroleum and other regulated substances.

(2) The department of ecology is directed by chapter 90.76 RCW to establish an underground storage tank program designed, operated and enforced in a manner that, at a minimum, meets 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. Section 6901, et seq.). The legislative intent is that statewide requirements for underground storage tanks adopted by the department be consistent with and no less stringent than the objectives outlined in the federal regulations. Because certain areas of the state possess physical characteristics that make them especially vulnerable to threats from leaking underground storage tanks, local requirements more stringent than the statewide requirements may apply in these environmentally sensitive areas.

(Note: All codes, standards, rules, or regulations cited in this chapter are available for inspection at the Department of Ecology, P.O. Box 47655, Olympia, WA 98504-7655.)

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-100, filed 2/1/95, effective 3/4/95; WSR 90-24-017, § 173-360-100, filed 11/28/90, effective 12/29/90.]

WAC 173-360-105 Intergovernmental agreements. In order to fully implement this chapter, and to protect surface and groundwater resources that may cross jurisdictional boundaries, the department and delegated agencies may negotiate and enter into cooperative agreements with Indian tribal governments, adjacent states, and Canadian governmental agencies when agencies are delegated responsibility for carrying out all or a portion of the underground storage tank program contiguous with or affecting lands under tribal, state, or Canadian government jurisdiction. 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, and shall serve to establish a framework for intergovernmental coordination and cooperation, and shall serve to minimize duplication and efficiently utilize program resources to manage underground storage tanks and protect surface and groundwater resources.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-105, filed 11/28/90, effective 12/29/90.]

WAC 173-360-110 Applicability, exemptions, and deferrals. (1) The requirements of this chapter apply to all owners and operators of an underground storage tank (UST) system as defined in WAC 173-360-120 except as otherwise provided in subsections (2) and (3) of this section. It is the responsibility of owners and operators to ensure that any UST supervisors they employ are properly certified in accordance with WAC 173-360-600 through 173-360-630.

(2) Exemptions. The following UST systems, including any piping connected thereto, are exempt from the requirements of this chapter:

(a) Any UST system holding hazardous wastes subject to Subtitle C of the Federal Solid Waste Disposal Act, 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 Section 402 or 307(b) of the Clean Water Act.

(c) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(d) Any UST system whose capacity is one hundred ten gallons or less.

(e) Any UST system that has never contained more than a de minimis concentration of regulated substances as defined in WAC 173-360-120.

(f) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(g) Farm or residential UST systems of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes (see definition of "farm" and "residential");

(h) UST systems used for storing heating oil for consumptive use on the premises where stored; except that such systems which store in excess of one thousand one hundred gallons are subject to the release reporting requirements of WAC 173-360-372;

(i) Septic tanks;

(j) Any pipeline facility (including gathering lines) regulated under:

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

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

(iii) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in (j) (i) or (ii) of this subsection;

(k) Surface impoundments, pits, ponds, or lagoons;

(l) Storm water or wastewater collection systems;

(m) Flow-through process tanks;

(n) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or

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

(3) Deferrals. The following UST systems are subject only to the requirements of WAC 173-360-130, 173-360-140, 173-360-160, 173-360-170, 173-360-190, 173-360-200, 173-360-372, 173-360-385 and 173-360-390. Any new deferred UST systems shall also be subject to the performance standards of WAC 173-360-300:

(a) Wastewater treatment tank systems not regulated under section 307(b) or 402 of the Clean Water Act;

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

(c) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 C.F.R. Part 50 Appendix A;

(d) Airport hydrant fuel distribution systems;

(e) UST systems with field-constructed tanks.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-110, filed 2/1/95, effective 3/4/95; WSR 91-22-020 (Order 91-26), § 173-360-110, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-110, filed 11/28/90, effective 12/29/90.]

WAC 173-360-120 Definitions. For the purposes of this chapter, the following definitions shall apply:

"Abandoned" means left unused indefinitely, without being substantially emptied or permanently altered structurally to prevent reuse.

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above-ground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

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

"Ancillary equipment" means any devices including, but not limited to, 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.

"Belowground release" means any release to the subsurface of the land and/or to groundwater. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"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.

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

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

"Certified UST supervisor" means a person certified by the International Fire Code Institute or another nationally recognized organization, as approved by the department. Washington registered professional engineers who are competent, by means of examination, experience, or education, to perform site assessments, are not required to be certified for site assessment work.

"Change-in-service" means to change the substances stored in an UST system from regulated substances to unregulated substances.

"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.

"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.

"Class C operator" means an employee of an UST system owner or operator 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.

"Closure" means to take an underground storage tank out of operation, either temporarily or permanently, in accordance with WAC 173-360-380 or 173-360-385. The term is synonymous with "decommissioning."

"Compatible" means the ability of two or more substances or materials to maintain their respective physical and chemical properties upon contact with one another such that the stored substance will not pass through the wall or lining of the tank and connected piping for the design life of the tank system under conditions likely to be encountered in the UST.

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

"Consumptive use" with respect to heating oil means consumed on the premises.

"Controlling interest" means direct ownership of at least fifty percent of the voting stock of another entity.

"Corrosion expert" means a person who possesses a thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, and is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Decommissioning" means to take an underground storage tank out of operation, either temporarily or permanently, in accordance with WAC 173-360-380 or 173-360-385. The term is synonymous with "closure."

"Deferral" means a category of UST systems which are subject to certain, but not all, of the requirements of this chapter as specified in WAC 173-360-110(3).

"Delegated agency" means a state or local government agency which has been delegated responsibility by the department for administering any portion of an UST program.

"De minimis concentration" means either less than one inch of regulated substance, or less than a reportable quantity, as defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

"Department" means the department of ecology.

"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" means the director of the department of ecology.

"Dispenser" means a device used to dispense and meter regulated substances from an UST system.

"Dispenser system" means a dispenser and the aboveground equipment necessary to connect the dispenser to an UST system, including check valves, shear valves, unburied risers, flexible connectors, and other transitional components.

"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.

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

"Emergency power generator" means an engine that uses fuel to produce auxiliary electrical or mechanical energy for use in emergencies.

"Emergency power generator tank" means a tank that stores fuel solely for use by an emergency power generator.

"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.

"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: The owner or operator had obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if

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 site or installation of the tank system to be completed within a reasonable time.

"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 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" means indicating that an UST system is leaking when in fact it is tight.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property 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.

"Field-constructed tank" means an underground storage tank that is constructed in the field rather than factory built because of its large size.

"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 10-K report submitted to the SEC; an annual report of tangible net worth submitted to Dun and Bradstreet; or annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

"Firm" means any business, including but not limited to corporations, limited partnerships, and sole proprietorships, engaged in performing tank services.

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

"Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

"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.

"Groundwater" means water in a saturated zone or stratum beneath the surface of land or below a surface water body.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

"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.

"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" means largely incapable of blending or mixing.

"Installation" means the activity of placing an underground storage tank system or any part thereof in the ground and preparing it to be placed in service.

"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" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought: By the United States Environmental Protection Agency (EPA) or a state to require corrective action or to recover the costs of corrective action; by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or by any person to enforce the terms of a financial assurance mechanism.

"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.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing a regulated substance.

"Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

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

"Noncommercial purposes" with respect to motor fuel means not for resale.

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

Note: This definition is intended to assist in the understanding of WAC 173-360-400 through 173-360-499 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."

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under WAC 173-360-380 through 173- 360-398.

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

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

"Owner" means: In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and in the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use. 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, except any lien holder and 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.

"Owner or operator," means, for the purposes of WAC 173-360-400 through 173-360-499, when the owner or operator are separate parties, the party that is responsible for obtaining or has obtained financial assurances.

"Party" means a person or group concerned or having or taking part in any affair, matter, transaction, or proceeding.

"Permanently closed" means: (1) 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; (2) in the case of an UST system taken out of operation after December 21, 1988, and before the effective date of this chapter, the UST system was closed in accordance with 40 C.F.R. 280; and (3) in the case of an UST system taken out of operation on or after the effective date of this chapter, the UST system was closed in accordance with WAC 173-360-385.

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

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

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

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

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

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

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

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

"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 173-360-413 through 173-360-436, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

"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.

"Regulated substance" means:

Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C of the Federal Solid Waste Disposal Act, or a mixture of such hazardous waste and any other regulated substances); and

Petroleum, including 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). The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils. The term "regulated substance" does not include propane or asphalt or any other petroleum product which is not liquid at standard conditions of temperature and pressure.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST system to groundwater, surface water or soils.

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

"Repair" means to restore a tank or UST system component that has caused a release of a regulated substance from the UST system.

"Residential tank" is a tank located on property used primarily for dwelling purposes; such properties do not include dormitories, convents, mobile parks, apartments, hotels and similar facilities, unless the tank is used by the owner solely for his or her own personal use, rather than to maintain the overall facility.

"Retrofitting" means the repair or upgrading of an existing underground storage tank system including, but not limited to, installation of splash, spill and overfill protection, installing or replacing monitoring systems, adding cathodic protective systems, tank repair, replacement of piping, valves, fill pipes or vents and installing tank liners.

"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.

"Septic tank" is 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.

"Site assessment" means investigating an UST site for the presence of a release at the time of closure or change-in-service.

"Site check" means investigating an UST site for the presence of a release when evidence indicates that a release may have occurred.

"Storm water 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 storm water and wastewater does not include treatment except where incidental to conveyance.

"Structural defect" means a hole or crack in the tank portion of the UST system, which has either caused a release from the system or is being repaired to prevent a release from the system.

"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 "inci-

dent to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Supervisor" means a person certified by the International Fire Code Institute, or other nationally recognized organization, operating independently or employed by a contractor, who is responsible for directing and overseeing the performance of tank services at a facility.

"Surface impoundment" is 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" 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.

"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" means a tank tag, as required by RCW 90.76.020(4).

"Tank services" include underground storage tank installation, decommissioning, retrofitting, and testing.

"Temporarily closed UST system" means an UST system that has been removed from service and will be returned to service, undergo a change-in-service, or be permanently closed in the future.

"Termination" under WAC 173-360-476 and 173-360-480 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.

"Testing" means applying a method to determine the integrity of an underground storage tank.

"Tightness testing" means a procedure for testing the ability of a tank system to prevent an inadvertent release of any stored substance into the environment or, intrusion of groundwater into a tank system.

"Under-dispenser containment" or "UDC" means containment underneath a dispenser system designed to prevent leaks from the dispenser system from reaching soil or ground water.

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

"Underground release" means any below ground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground. This term does not include any of the exempt UST systems specified in WAC 173-360-110(2), or any piping connected thereto.

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

"UST site" or "site" means the location at which underground storage tanks are in place or will be placed. An UST site encompasses all of the property within a contiguous ownership that is associated with the use of the tanks.

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

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

[Statutory Authority: Chapter 90.76 RCW. WSR 12-17-041 (Order 08-08), § 173-360-120, filed 8/8/12, effective 10/1/12; WSR 95-04-102, § 173-360-120, filed 2/1/95, effective 3/4/95; WSR 91-22-020 (Order 91-26), § 173-360-120, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-120, filed 11/28/90, effective 12/29/90.]

WAC 173-360-130 Tank permits and delivery of regulated substances. (1) Requirement for a permit. After July 1, 1991, no underground storage tank system, as defined in this chapter, shall be operated without a valid permit from the department or its delegated agency. However, possession of a valid permit does not preclude enforcement against the owner or operator of the underground storage tank under this or other laws.

(2) Application for a permit. Permits for UST systems shall be obtained as follows:

(a) To apply for a permit for a new UST system the owner or operator shall complete an UST notification form, as specified in WAC 173-360-200(2) and submit it with payment of the applicable annual fee, as specified in WAC 173-360-190, to the delegated agency. If no delegated agency exists, the application shall be submitted to the department.

(b) To apply for a permit for an existing UST system not previously reported to the department, the owner or operator shall complete a Washington state underground storage tank notification form, as specified in WAC 173-360-200(2), and submit it to the delegated agency with a payment of the applicable annual fee, as specified in WAC 173-360-190, including any fees which should have been paid for earlier fiscal years if the UST system had been properly registered, but which were not paid. If no delegated agency exists, the application shall be made to the department.

(c) To apply for a permit for a tank which has been temporarily out of service, the owner or operator shall notify the department of the change in status and follow the provisions of WAC 173-360-380.

(d) Each year the department will request owners and operators of reported UST systems to certify compliance with the requirements of this chapter. UST systems which are in the department's notification data base when the department requests this certification will receive permits by July 1 of each year if:

(i) Adequate documentation of compliance, as specified by the department, is submitted to the delegated agency, or, if no delegated agency exists, to the department; and

(ii) Applicable fees have been paid.

(3) Eligibility for a permit. Tanks which are temporarily closed under WAC 173-360-380 are not eligible to receive

permits. Underground storage tank systems are eligible for a permit if the following conditions are met:

(a) The owner or operator is in compliance with all requirements of this chapter, including the financial responsibility requirements, and chapter 173-340 WAC, if applicable, or the owner or operator is in conformance with a compliance schedule negotiated with and agreed to by the department;

(b) The storage tank system is not known by the owner or operator to be leaking; and

(c) All annual state tank fees and local environmentally sensitive area tank fees have been remitted.

(4) Delivery of regulated substances. Regulated substances shall not be delivered to any underground storage tank requiring a permit under this section unless a valid permit is displayed on such tank itself or the dispensing or measuring device connected thereto or, where appropriate, in the office or kiosk of the facility where the tank is located or unless otherwise authorized in writing by the department. This subsection applies only to suppliers who directly transfer regulated substances into underground storage tank systems.

(5) Waste oil tanks. Tanks used to collect and store used or waste oil regulated under this chapter shall not be pumped by a used or waste oil collector unless a valid permit is displayed on such tank itself or a device connected thereto or, where appropriate, in the office or kiosk of the facility where the tank is located. This prohibition does not apply to a one-time removal of substances from tanks which will not be used again for the storage of used or waste oil once the substances are removed; such tanks must be properly closed or undergo the procedures for a change-in-service in accordance with WAC 173-360-385. This subsection applies only to used or waste oil collectors who directly transfer regulated substances from underground storage tanks.

(6) Delivery prohibited to leaking tanks. Suppliers shall not deliver regulated substances to any underground storage tank which is known by the supplier to be leaking, or to have leaked and not been properly repaired, regardless of the permit status of the tank.

(7) Delivery of regulated substances. If a confirmed release occurs from a permitted tank, in addition to meeting the reporting requirements of WAC 173-360-372, within twenty-four hours of having knowledge of the release the owner or operator shall lock the fill pipe and remove from display the permit for the tank from which the release has occurred. At no time can the owner or operator receive regulated substances, until all the applicable requirements of this chapter and chapter 173-340 WAC have been met. If the department determines that reasonable progress is not being made in meeting these requirements it may request that the owner or operator surrender the permit, as specified in subsection (8) of this section, for the tank from which the release occurred.

(8) Permit revocation. The department may request the surrender of a permit for any tank which does not remain in compliance with the requirements of this chapter, including financial responsibility requirements and payment of fees, or for any violation of the chapter by an underground storage tank owner or operator, including refusal of access to property under WAC 173-360-140. Upon request of a representative of the department or delegated agency or upon receipt of a letter from the department or delegated agency requesting surrender of the permit, the owner or operator must return the permit to the department or delegated agency within seven days.

(9) When a tank is closed, any active permit must be returned to ecology within thirty days of the completion of the closure procedures.

(10) Appeals. The revocation of a permit may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-130, filed 2/1/95, effective 3/4/95; WSR 91-22-020 (Order 91-26), § 173-360-130, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-130, filed 11/28/90, effective 12/29/90.]

WAC 173-360-140 Investigation and access. (1) If necessary to determine compliance with the requirements of this chapter, an authorized representative of the state engaged in compliance inspections, monitoring and 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.

(2) Any authorized representative of the state may require an owner or operator to conduct monitoring or testing.

(3) Upon reasonable notice, an authorized representative of the state may enter a premises or site subject to regulation under this chapter or in which records relevant to the operation of an underground storage tank 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 underground storage tank system.

(4) 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 or a local government that has obtained authority under RCW 90.76.030.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-140, filed 11/28/90, effective 12/29/90.]

WAC 173-360-150 Compliance monitoring. The department's compliance monitoring procedures, including procedures for recordkeeping and a program for systematic inspections, shall be consistent with and no less stringent than those required by 40 C.F.R. 281.40 and amendments thereto.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-150, filed 11/28/90, effective 12/29/90.]

WAC 173-360-160 Enforcement. (1) **Authority.** The director may seek appropriate injunctive or other judicial relief by filing an action in Thurston County Superior 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 173-360-140 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 173-360-165 and chapter 90.76 RCW; or

(e) Assess and recover civil penalties authorized under WAC 173-360-170 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. 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.

[Statutory Authority: Chapter 90.76 RCW. WSR 12-17-041 (Order 08-08), § 173-360-160, filed 8/8/12, effective 10/1/12; WSR 90-24-017, § 173-360-160, filed 11/28/90, effective 12/29/90.]

WAC 173-360-165 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 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.

[Statutory Authority: Chapter 90.76 RCW. WSR 12-17-041 (Order 08-08), § 173-360-165, filed 8/8/12, effective 10/1/12.]

WAC 173-360-170 Penalties. (1) Any 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 person who violates this chapter 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.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-170, filed 11/28/90, effective 12/29/90.]

WAC 173-360-180 Public participation and information sharing. The department's procedures for public participation and information sharing shall be consistent with and no less stringent than those required by 40 C.F.R. 281.42 and 281.43 and amendments thereto.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-180, filed 11/28/90, effective 12/29/90.]

WAC 173-360-190 Annual tank fees. (1) An annual tank fee of one hundred dollars per tank is effective from July 1, 1998, to June 30, 1999. Annually, beginning on July 1, 1999, and upon a finding by the department that a fee increase is necessary, the previous tank fee amount may be increased 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 for the upcoming biennium. The department shall use the fiscal growth factor to calculate the fee for the next year and shall publish the new fee by March 1st before the year for which the new fee is effective. The new tank fee is effective from July 1st to June 30th of every year. The tank fee shall be paid by every person who:

(a) Owns an underground storage tank located in this state; and

(b) Was required to provide notification to the department under the federal act.

This fee is not required of persons who have

(i) Permanently closed their tanks; and

(ii) If required, have completed corrective action in accordance with the rules adopted under this chapter.

(2) The department may authorize the imposition of additional annual local tank fees in environmentally sensitive areas designated under RCW 90.76.040. Annual local tank fees may not exceed fifty percent of the annual state tank fee.

(3) State and local tank fees collected under this section shall be deposited in the account established under RCW 90.76.100.

(4) Other than the annual local tank fee authorized for environmentally sensitive areas, no local government may levy an annual tank fee on the ownership or operation of an underground storage tank.

[Statutory Authority: Chapter 90.76 RCW. WSR 98-15-069 (Order 98-08), § 173-360-190, filed 7/14/98, effective 7/14/98; WSR 95-04-102, § 173-360-

190, filed 2/1/95, effective 3/4/95; WSR 90-24-017, § 173-360-190, filed 11/28/90, effective 12/29/90.]

PART II

NOTIFICATION, REPORTING, AND RECORDKEEPING REQUIREMENTS

Note: Tank owners and operators may be subject to certain local requirements in addition to the state UST regulations. Permits or approval for construction activities may be required by local jurisdictions. These may include, but are not limited to, requirements to obtain grading, building or demolition permits, and requirements for compliance with local ordinances pertaining to environmental review under the state Environmental Policy Act (chapter 43.21C RCW).

WAC 173-360-200 Notification requirements. (1) Notice of intent to install a new UST system. Except in the circumstances defined in subsection (5) of this section, any owner who intends to install a new UST system shall submit a notice of such intent to the department or delegated agency at least thirty days and not more than ninety days prior to installing the UST system. Such notice shall meet the following requirements:

(a) The notice of intent shall be provided on the appropriate Washington state form, which is available from the department;

(b) Each UST system to be installed which is regulated under this chapter shall be reported;

(c) Owners may provide notice for more than one UST system using a single form, but UST systems to be installed at separate sites shall be reported on separate forms; and

(d) The completed form shall include all of the information required on the form.

(2) Notification of new UST systems in use. Within thirty days of bringing any newly installed UST system regulated under this chapter into use, the owner shall submit notice of such UST system to the department. This notice shall meet the following requirements:

(a) The notice shall be provided on the appropriate Washington state underground storage tank notification form, which is available from the department;

(b) Each tank regulated under this chapter shall be reported;

(c) Owners may provide notice for more than one tank using a single notification form, but owners who own tanks located at more than one site shall file a separate notification form for each site;

(d) Notification required under this section shall include all of the information required on the form for each tank for which notice must be given; and

(e) Notification for tanks installed after December 22, 1988, shall also certify compliance with the following requirements:

(i) Corrosion protection of steel tanks and piping under WAC 173-360-305 (1) and (2);

(ii) Financial responsibility under WAC 173-360-400 through 173-360-499; and

(iii) Release detection under WAC 173-360-335 and 173-360-340.

(3) Certification of installation. All owners and operators of new UST systems shall ensure that the methods used to install the tanks and piping comply with the requirements in WAC 173-360-305(4). Such certification shall be accomplished by completing a notification form, which is available from the department, as specified in WAC 173-360-305(5). The form must be signed by the certified UST supervisor.

(4) Notification of existing UST systems. Owners of any existing UST system regulated under this chapter which has not previously been reported to the department shall provide notification regarding such UST system immediately, following the requirements of subsection (2) (a) through (e) of this section.

Note: Owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the department in accordance with the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, on a form published by Washington state unless notice was given pursuant to section 103(c) of CERCLA.

(5) Emergency replacement of UST systems.

(a) An exception to the thirty-day notice requirement for new installations in subsection (1) of this section is allowed when an UST system is being replaced on an emergency basis due to a release from the system being replaced. An emergency shall be regarded as a newly discovered release from an UST system which is:

(i) In operation at the time of the release;

(ii) Located at an operating facility; and

(iii) Necessary for the normal operation of the facility.

(b) Under the circumstances described in (a) of this subsection, the notice of intent to install an UST system may be provided after the installation of the new system but no more than seven days after the installation is completed. The information which must be included in the notice of intent form is the same as in subsection (1) of this section. A site assessment meeting the requirements of WAC 173-360-390 shall be completed prior to installing a tank in the excavation pit of a tank being replaced and prior to installing new piping in the piping trench of piping being replaced.

(6) Changes to UST systems. Any changes in the information initially reported in the notification form submitted under subsection (2), (4) or (5) of this section, including temporary closure of an UST system that was initially reported as being in use, shall be reported to the department or delegated agency by submitting a new notification form within thirty days after such changes occur.

(7) Beginning October 24, 1988, any person who sells a new tank which is intended to be used as an underground storage tank, or an existing UST system or property including an existing UST system which is intended to be used as an UST system, shall notify the purchaser of such tank or UST system of the owner's notification obligations under this section.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-200, filed 2/1/95, effective 3/4/95; WSR 91-22-020 (Order 91-26), § 173-360-200, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-200, filed 11/28/90, effective 12/29/90.]

WAC 173-360-210 Reporting and recordkeeping requirements. Owners and operators of UST systems shall cooperate fully with inspections, monitoring, and testing conducted by the department or delegated agency, as well as

requests for document submission, testing, and monitoring by the owner or operator pursuant to RCW 90.76.060.

(1) Reporting. Owners and operators shall submit the information specified in (a) through (e) of this subsection to the department or delegated agency:

(a) Notification for all UST systems (WAC 173-360-200), which includes certification of installation for new UST systems (WAC 173-360-305(5));

(b) Reports of all suspected releases (WAC 173-360-360), confirmed releases (WAC 173-360-372), and spills and overfills (WAC 173-360-375);

(c) Reports required for corrective actions under chapter 173-340 WAC;

(d) A notification before permanent closure or change-in-service (WAC 173-360-385); and

(e) The appropriate forms, certificates of compliance, and evidence of financial responsibility (WAC 173-360-446).

(f) Checklists required for tank service activities, site checks, and site assessments shall be signed by certified UST supervisors and submitted to the department by the owner or operator.

(2) Recordkeeping. Owners and operators shall maintain the following information:

(a) Documentation of operation of corrosion protection equipment (WAC 173-360-320);

(b) Documentation of UST system repairs (WAC 173-360-325(7));

(c) Recent compliance with release detection requirements (WAC 173-360-355);

(d) Results of the site assessment conducted at permanent closure (WAC 173-360-398);

(e) Corrective action records in accordance with chapter 173-340 WAC; and

(f) Evidence of financial assurance mechanisms used to demonstrate financial responsibility (WAC 173-360-450).

(3) Availability and maintenance of records. Owners and operators shall keep the records required either:

(a) At the UST site and immediately available for inspection by the department or delegated agency; or

(b) At a readily available alternative site and be provided for inspection to the department or delegated agency upon request.

(c) In the case of permanent closure records required under WAC 173-360-398, owners and operators are also provided with the additional alternative of mailing closure records to the department or delegated agency if they cannot be kept at the site or an alternative site as indicated above.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-210, filed 2/1/95, effective 3/4/95; WSR 90-24-017, § 173-360-210, filed 11/28/90, effective 12/29/90.]

PART III

PERFORMANCE STANDARDS AND OPERATING AND CLOSURE REQUIREMENTS

WAC 173-360-300 Performance standards for deferred UST systems. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, no person may install a deferred UST system listed in WAC 173-360-110(3) for the purpose of storing regulated substances unless the UST system (whether of single-wall or double-wall construction):

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

Note: The provisions of WAC 173-360-305 and EPA's publication *The Interim Prohibition: Guidance for Design and Installation of Underground Storage Tanks* may be used to satisfy the requirements of this section.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-300, filed 11/28/90, effective 12/29/90.]

WAC 173-360-305 Performance standards for new UST systems. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems shall meet the following requirements:

(1) Tanks. Each tank shall be properly designed and constructed with material that is compatible with and impermeable to the stored substance, and any portion underground that routinely contains regulated substances shall be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified under (a) through (d) below:

(a) The tank is constructed of fiberglass-reinforced plastic; or

Note: The following industry codes may be used to comply with subsection (1)(a) of this section: Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; Underwriter's Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or American Society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."

(b) The tank is constructed of steel and cathodically protected in the following manner:

(i) The tank is coated with a suitable dielectric material;

(ii) The tank is equipped with a factory-installed or field-installed cathodic protection system designed by a corrosion expert;

(iii) Cathodic protection systems are designed and installed to include provisions for testing to allow a determination of current operating status as required in WAC 173-360-320(2) and to facilitate testing by the department or delegated agency in accordance with WAC 173-360-325 (5) and (6); and

(iv) Cathodic protection systems are operated and maintained in accordance with WAC 173-360-320 or according to guidelines established by the department or delegated agency; or

Note: The following codes and standards may be used to comply with subsection (1)(b) of this section:

(A) Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks";

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

(C) Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or

(D) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."

(c) The tank is constructed of a steel-fiberglass-reinforced-plastic composite; or

Note: The following industry codes may be used to comply with subsection (1)(c) of this section: Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."

(d) The tank construction and corrosion protection are determined by the department or delegated agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than subsection (1)(a) through (c) of this section.

(2) Piping. The piping that routinely contains regulated substances and is in contact with the ground shall be properly designed and constructed with material that is compatible with and impermeable to the stored substance, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(a) The piping is constructed of fiberglass-reinforced plastic; or

Note: The following codes and standards may be used to comply with subsection (2)(a) of this section:

(i) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe";

(ii) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas";

(iii) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and

(iv) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."

(b) The piping is constructed of steel and cathodically protected in the following manner:

(i) The piping is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Cathodic protection systems are designed and installed to include provisions for testing to allow a determination of current operating status as required in WAC 173-360-320(2) and to facilitate testing by the department or delegated agency in accordance with WAC 173-360-325 (5) and (6); and

(iv) Cathodic protection systems are operated and maintained in accordance with WAC 173-360-320 or guidelines established by the department or delegated agency; or

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

(A) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(B) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";

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

(D) National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."

(c) The piping construction and corrosion protection are determined by the department or delegated agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in subsection (2)(a) and (b) of this section.

(d) Metal flexible underground hose connectors shall be cathodically protected or covered with sleeves or jackets that will provide corrosion protection over the operating life of the UST system.

(3) Spill and overfill prevention equipment.

(a) Except as provided in subsection (3)(b) of this section, to prevent spilling and overfilling associated with transfer of regulated substances to the UST system, owners and operators shall use the following spill and overfill prevention equipment:

(i) Spill prevention equipment that will prevent release of regulated substances to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(ii) Overfill prevention equipment that will:

(A) Automatically shut off flow into the tank when the tank is no more than ninety-five percent full;

(B) Alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level alarm; or

(C) Restrict flow thirty minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to regulated substances due to overfilling.

Note: Overflow prevention equipment that will automatically shut off or restrict flow into the tank should not be used where a pressurized fuel transfer system may be employed since an overflow may occur when the flow is suddenly shut off or restricted.

(b) Owners and operators are not required to use the spill and overfill prevention equipment specified in subsection (3)(a) of this section if:

(i) Alternative equipment is used that is determined by the department or delegated agency to be no less protective of human health and the environment than the equipment specified in subsection (3)(a)(i) or (ii) of this section; or

(ii) The UST system is filled by transfers of no more than twenty-five gallons at one time.

(4) Installation. All tanks and piping shall be properly installed by an UST supervisor who is certified in tank system installation in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

Note: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of subsection (4) of this section:

(a) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System"; or

(b) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

(c) American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," and American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System."

(5) Certification of installation. All owners and operators shall ensure compliance with subsection (4) of this section by submitting a properly completed notification form to the delegated agency, or, if no delegated agency exists, to the department. The form must be signed by a certified UST supervisor.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-305, filed 2/1/95, effective 3/4/95; WSR 91-22-020 (Order 91-26), § 173-360-305, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-305, filed 11/28/90, effective 12/29/90.]

WAC 173-360-310 Upgrading requirements for existing UST systems. (1) Alternatives allowed. Not later than December 22, 1998, all existing UST systems shall comply with one of the following requirements:

(a) New UST system performance standards under WAC 173-360-305;

(b) The upgrading requirements in subsections (2) through (4) of this section; or

(c) Closure requirements under WAC 173-360-380 through 173-360-398, including applicable requirements for corrective action under WAC 173-360-399.

(2) Tank upgrading requirements. Steel tanks shall be upgraded by a certified UST supervisor to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

(a) Interior lining. A tank may be upgraded by internal lining if:

(i) The lining is installed in accordance with the requirements of WAC 173-360-325; and

(ii) Within ten years after lining, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications, unless cathodic protection is also installed within ten years of lining the tank, as specified in WAC 173-360-310 (2)(c).

(b) Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of WAC 173-360-305 (1)(b)(ii), (iii), and (iv) and the integrity of the tank is ensured using one of the following methods:

(i) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

(ii) The tank has been installed or internally lined for less than ten years and is monitored monthly for releases in accordance with WAC 173-360-345 (6)(e) through (j); or

(iii) 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 of WAC 173-360-345 (6)(d). The first tightness test shall be conducted prior to installing the cathodic protection system. The second tightness test shall be conducted between three and six months following the first operation of the cathodic protection system; or

(iv) The tank is assessed for corrosion holes by a method that is determined by the department or delegated agency to prevent releases in a manner that is no less protective of human health and the environment than subsection (2)(b)(i) through (iii) of this section.

(c) Internal lining combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if:

(i) The lining is installed in accordance with the requirements of WAC 173-360-325; and

(ii) The cathodic protection system is installed within ten years of the tank being lined and meets the requirements of WAC 173-360-305 (1)(b)(ii), (iii), and (iv).

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

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

(B) 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";

(C) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems";

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

(E) Steel Tank Institute Publication STI F894-91 "Specifications for External Corrosion Protection FRP Composite Underground Steel Storage Tanks."

(3) Piping upgrading requirements. Metal piping that routinely contains regulated substances and is in contact with the ground shall be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and shall meet the requirements of WAC 173-360-305 (2)(b)(ii), (iii), and (iv).

Note: The codes and standards listed in the note following WAC 173-360-305 (2)(b) may be used to comply with this requirement.

(4) Spill and overfill prevention equipment. To prevent spilling and overfilling associated with transfer of regulated substances to the UST system, all existing UST systems shall comply with new UST system spill and overfill prevention equipment requirements specified in WAC 173-360-305(3), except that an UST system that is filled by transfers of no more than twenty-five gallons at a time is not required to use spill and overfill prevention equipment.

(5) Certified UST supervisors who perform any of the tank services described in this section shall certify that such services comply with the requirements of this section by signing the appropriate checklist(s) provided by the department.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-310, filed 2/1/95, effective 3/4/95; WSR 91-22-020 (Order 91-26), § 173-360-310, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-310, filed 11/28/90, effective 12/29/90.]

WAC 173-360-315 Spill and overfill control requirements. (1) Owners and operators shall ensure that releases due to spilling or overfilling do not occur. The owner and operator shall ensure that the volume available in the tank is greater than the volume of regulated substances to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

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

(2) The owner and operator shall report, investigate, and clean up any spills and overfills in accordance with WAC 173-360-375.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-315, filed 11/28/90, effective 12/29/90.]

WAC 173-360-320 Operation and maintenance of corrosion protection. All owners and operators of steel UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(1) All corrosion protection systems shall be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

(2) All UST systems equipped with cathodic protection systems shall be inspected for proper operation by an UST supervisor who is certified in cathodic protection in accordance with the following requirements:

(a) Frequency. All cathodic protection systems shall be tested when they are installed, and again between one and six months after installation, and at least every three years thereafter or according to another reasonable time frame established by the department or delegated agency; and

(b) Inspection criteria. The criteria that are used to determine that cathodic protection is adequate as required by this section shall be in accordance with a code of practice developed by a nationally recognized association.

Note: National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used to comply with subsection (2)(b) of this section.

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

(4) For UST systems using cathodic protection, records of the operation of the cathodic protection shall be maintained to demonstrate compliance with the performance standards in this section. These records shall provide the following:

(a) The results of the last three inspections required in subsection (3) of this section; and

(b) The results of testing from the last two inspections required in subsection (2) of this section.

(5) Certified UST supervisors who perform any of the tank services described in this section shall certify that such services comply with the requirements of this section by signing the appropriate checklist(s) provided by the department.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-320, filed 2/1/95, effective 3/4/95; WSR 90-24-017, § 173-360-320, filed 11/28/90, effective 12/29/90.]

WAC 173-360-323 Compatibility. Owners and operators shall use an UST system made of or lined with materials that are compatible with and impermeable to the substance stored in the UST system.

Note: Owners and operators storing alcohol blends may use the following codes to comply with the requirements of this section:

(1) American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and

(2) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-323, filed 11/28/90, effective 12/29/90.]

WAC 173-360-325 Repairs of UST systems. Repairs to UST systems shall be performed by a certified UST supervisor. Owners and operators of UST systems shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. Any UST system which is repaired to correct a structural defect must also be upgraded at the time of the repair to meet the requirements specified in WAC 173-360-310 (1)(a) or (b), and must employ a method of release detection for the tank as specified in WAC 183-360-335, 173-360-340 or 173-360-345, as applicable, and a method of release detection for the piping as specified in WAC 173-360-350. The repairs shall meet the following requirements:

(1) Repairs to UST systems shall be properly conducted by an UST supervisor certified in tank installation and retrofitting in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

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

(2) Repairs to fiberglass-reinforced plastic tanks shall be made in accordance with the manufacturer's specifications or a code of practice developed by a nationally recognized association or an independent testing laboratory.

(3) Metal pipe sections and fittings that have released regulated substances as a result of corrosion or other damage shall be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications.

(4) Repaired tanks and piping shall be tightness tested in accordance with WAC 173-360-345 (6)(d) and 173-360-350 (3)(b) within thirty days following the date of the completion of the repair except as provided in subsection (4) (a) through (c), of this section:

(a) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or

(b) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in WAC 173-360-345 (6)(e) through (j); or

(c) Another test method is used that is determined by the department or delegated agency to be no less protective of human health and the environment than those listed above.

(5) Except as specified in subsection (6) of this section, within six months following the repair of any cathodically protected UST system, the cathodic protection system shall be tested in accordance with WAC 173-360-320 (2) and (3) to ensure that it is operating properly.

(6) Any repair to a cathodic protection system shall be tested in accordance with WAC 173-360-320 (2) and (3), at the time of the repair and again between one and six months following the repair.

(7) UST system owners and operators shall maintain records of each repair for the remaining operating life of the UST site that demonstrate compliance with the requirements of this section.

(8) Certified UST supervisors who perform any of the tank services described in this section shall certify that such services comply with the requirements of this section by signing the appropriate checklist(s) provided by the department.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-325, filed 2/1/95, effective 3/4/95; WSR 90-24-017, § 173-360-325, filed 11/28/90, effective 12/29/90.]

WAC 173-360-330 Release detection compliance schedule. Owners and operators of all UST systems shall comply with the release detection requirements of WAC 173-360-330 through 173-360-355 by December 22 of the year listed in the following table:

TABLE: SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year System was installed	Year when release detection is required (by December 22 of the year indicated)						
	1989	1990	1991	1992	1993	1994	1995
Before 1965 or date unknown.	RD	P	E				
1965-69..		P/RD		E			
1970-74..		P	RD		E		
1975-79..		P		RD		E	
1980-88..		P			RD		E

New tanks (after December 22, 1988,) immediately upon installation, except that emergency generator tanks installed between 1989 and 1990 must have release detection by 1996 and emergency generator tanks installed after December 29, 1990, must have release detection immediately upon installation.

P - Except for pressurized piping associated with emergency power generator tanks, release detection required by December 22, 1990.

RD - Except for emergency power generator tanks, must begin release detection for tanks and suction piping in accordance with WAC 173-360-335 (2)(a), 173-360-350 (2)(b), and 173-360-340.

E - Must begin release detection for emergency power generator tanks and piping in accordance with WAC 173-360-335 (2)(a) and 173-360-350 (2)(a) or (b).

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-330, filed 2/1/95, effective 3/4/95; WSR 91-22-020 (Order 91-26), § 173-360-330, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-330, filed 11/28/90, effective 12/29/90.]

WAC 173-360-335 Release detection for petroleum UST systems. (1) Owners and operators of new and existing petroleum UST systems shall provide a method, or combination of methods, of release detection that:

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

(b) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(c) Meets the performance requirements in WAC 173-360-345 or 173-360-350.

(2) Owners and operators of petroleum UST systems shall monitor tanks and piping for releases as follows:

(a) Tanks. Tanks shall be monitored at least every thirty days for releases using one of the methods listed in WAC 173-360-345 (6)(e) through (j) except as provided in WAC 173-360-345 (2) through (5).

(b) Piping. Underground piping that routinely contains regulated substances shall be monitored for releases as required under WAC 173-360-350.

(3) Owners and operators of any existing UST system that cannot apply a method of release detection that complies with the applicable requirements of WAC 173-360-330 through 173-360-355 shall complete the closure procedures in WAC 173-360-380 through 173-360-398 by the date on

which release detection is required for that UST system under WAC 173-360-330.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-335, filed 2/1/95, effective 3/4/95; WSR 90-24-017, § 173-360-335, filed 11/28/90, effective 12/29/90.]

WAC 173-360-340 Release detection for hazardous substance UST systems. Owners and operators of hazardous substance UST systems shall provide release detection that meets the following requirements:

(1) Release detection at existing hazardous substance UST systems shall meet the requirements for petroleum UST systems in WAC 173-360-335. By December 22, 1998, all existing hazardous substance UST systems shall meet the release detection requirements for new systems in subsection (2) of this section.

(2) Release detection at new hazardous substance UST systems shall employ some method of release containment such as secondary containment systems, double-walled tanks, or external liners (e.g., in a pit or excavation). Such methods shall meet the following requirements:

(a) Secondary containment systems shall be designed, constructed and installed to:

(i) Contain regulated substances released from the tank system until they are detected and removed;

(ii) Prevent precipitation and groundwater from entering the external liner and prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(iii) Be checked for evidence of a release at least every thirty days.

Note: The provisions of 40 C.F.R. 265.193, Containment and Detection of Releases, may be used to comply with these requirements.

(b) Double-walled tanks shall be designed, constructed, and installed to:

(i) Contain a release from any portion of the inner tank within the outer wall; and

(ii) Detect the failure of the inner wall.

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

(i) Contain one hundred ten percent of the capacity of the largest tank within its boundary;

(ii) Prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

(iii) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

(d) Underground piping shall be equipped with secondary containment that satisfies the requirements of subsection (2)(a) of this section (e.g., trench liners, jacketing double-walled pipe). In addition, underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector in accordance with WAC 173-360-350 (3)(a).

(e) Other methods of release detection may be used if owners and operators:

(i) Demonstrate to the department or delegated agency that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in WAC 173-360-345 (6)(b) through (j) can detect a release of petroleum;

(ii) Provide information to the department or delegated agency on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and

(iii) Obtain approval from the department or delegated agency to use the alternate release detection method before the installation and operation of the new UST system.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-340, filed 2/1/95, effective 3/4/95; WSR 90-24-017, § 173-360-340, filed 11/28/90, effective 12/29/90.]

WAC 173-360-345 Methods of release detection for tanks. (1) Any method of release detection for tanks shall meet the performance requirements of this section. In addition, methods used after December 22, 1990, except for methods permanently installed prior to that date, shall be capable of detecting the leak rate or quantity specified for that method in subsection (6)(b), (c), (d), and (e) of this section with a probability of detection of 0.95 and a probability of false alarm of 0.05. (That is, under test conditions, a method will correctly detect at least ninety-five of one hundred actual releases, and will falsely indicate a release no more than five times in one hundred tests of nonleaking systems.)

Note: The establishment of leak indication thresholds is a means of setting a standard for the equipment or method used. It is not in any way meant to imply that actual leak rates less than these limits are allowable. No release is acceptable, and any indication that a release may have occurred should be investigated in accordance with WAC 173-360-360. Manufacturers and certified UST supervisors installing or utilizing leak detection equipment and/or methods must follow EPA's standard test procedures for evaluating leak detection methods to demonstrate compliance with the requirements of subsection (1) of this section.

(2) UST systems that meet the new tank or upgraded tank performance standards in WAC 173-360-305 or 173-360-310, and the inventory control requirements in subsection (6)(a) or (b) of this section, may use tank tightness testing (conducted in accordance with subsection (6)(d) of this section) at least every five years until December 22, 1998, or until ten years after the tank is installed or upgraded under WAC 173-360-310(2), whichever is later.

(3) UST systems that do not meet the new tank or upgraded tank performance standards in WAC 173-360-305 or 173-360-310 may use inventory controls (conducted in accordance with subsection (6)(a) or (b) of this section) and annual tank tightness testing (conducted in accordance with subsection (6)(d) of this section) until December 22, 1998, when the tank shall be upgraded under WAC 173-360-310 or permanently closed under WAC 173-360-385.

(4) Tanks with capacity of one thousand gallons or less may use weekly tank gauging conducted in accordance with subsection (6)(b) of this section.

(5) Tanks that store fuel solely for use by emergency power generators may use the following methods of release detection:

(a) Emergency power generator tanks with nominal capacity of one thousand gallons or less may use monthly

tank gauging conducted in accordance with subsection (6)(c) of this section.

(b) Emergency power generator tanks with nominal capacity of one thousand one to two thousand gallons may use monthly tank gauging conducted in accordance with subsection (6)(c) of this section, in conjunction with annual tank tightness testing conducted in accordance with subsection (6)(d) of this section.

(c) Except as provided in subsection (2) of this section, emergency power generator tanks with nominal capacity greater than two thousand gallons may use weekly tank gauging conducted in accordance with subsection (6)(b) of this section, in conjunction with annual tank tightness testing conducted in accordance with subsection (6)(d) of this section.

(6) Each method of release detection for tanks used to meet the requirements of WAC 173-360-335 shall be conducted in accordance with the following:

(a) Daily inventory control. Daily inventory control (or another test of equivalent performance) shall be conducted in a manner capable of detecting a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(i) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

(ii) The equipment used is capable of measuring the level of regulated substance in the tank over the full range of the tank's height to the nearest one-eighth of an inch;

(iii) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(iv) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;

(v) Dispensing of regulated substances is metered and recorded within the local standards for meter calibration or an accuracy of at least six cubic inches for every five gallons of regulated substances which is withdrawn; and

(vi) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

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

(b) Weekly tank gauging. Only tanks of one thousand gallons or less nominal capacity may use weekly tank gauging as the sole method of release detection. Tanks of one thousand one to two thousand gallons may use the method in place of daily inventory control in (a) of this subsection, in conjunction with tank tightness testing, as specified in (d) of this subsection. Tanks of greater than two thousand gallons nominal capacity may use this method to meet the requirements of WAC 173-360-330 through 173-360-355 only if such tanks store fuel solely for use by emergency power generators. Weekly tank gauging shall meet the following requirements:

(i) Tank liquid level measurements are taken weekly at the beginning and ending of a period of at least thirty-six hours during which no liquid is added to or removed from the tank;

(ii) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period (that is, four measurements shall be taken, two consecutive measurements at the beginning and two consecutive measurements at the end of the period during which no liquid has been added or removed from the tank);

(iii) The equipment used is capable of measuring the level of regulated substance in the tank over the full range of the tank's height to the nearest one-eighth of an inch;

(iv) If the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table, a leak may be occurring and the requirements of WAC 173-360-360 through 173-360-375 shall be followed:

Nominal Tank Capacity	Weekly Standard (one test)	Monthly Standard
550 gallons or less	10 gallons	5 gallons
551-1,000 gallons	13 gallons	7 gallons
1,001-2,000 gallons	26 gallons	13 gallons
2,001 gallons or more*	.75% of capacity	.5% of capacity

(*Emergency Power Generator Tanks only.)

(c) Monthly tank gauging. Only tanks that store fuel solely for use by emergency power generators with a nominal capacity of two thousand gallons or less may use monthly tank gauging as a method of release detection. Such tanks with nominal capacity of one thousand one to two thousand gallons may use manual tank gauging in conjunction with tank tightness testing conducted in accordance with this section. Monthly tank gauging shall meet the following requirements:

(i) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded whenever inputs or withdrawals occur;

(ii) Tank liquid level measurements reconciled with inventory volume measurements are taken monthly at the beginning and ending of a period of at least twenty-one days, except when extreme snowfall or other travel obstructions occurring in remote locations and preventing access are specifically documented by the owner and operator;

(iii) Level measurements are based on an average of two consecutive readings at both the beginning and ending of the period (that is, four measurements shall be taken, two consecutive measurements at the beginning and two consecutive measurements at the end of the period);

(iv) The equipment used is capable of measuring the level of regulated substance in the tank over the full range of the tank's height to the nearest one-eighth of an inch or a corresponding amount of gallons;

(v) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month;

(vi) If the variation between beginning and ending measurements exceeds the monthly standards in the following table, a leak may be occurring and the requirements of WAC 173-360-360 through 173-360-375 shall be followed:

Nominal Tank Capacity	Monthly Standard
550 gallons or less	5 gallons

Nominal Tank Capacity	Monthly Standard
551-1,000 gallons	7 gallons
1,001-2000 gallons	13 gallons

(d) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) shall be capable of detecting 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 an overfill prevention device 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. Tank tightness testing shall be conducted and the results reported in accordance with the instructions for that method.

(e) Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of regulated substance and conducts inventory control shall meet the following requirements:

(i) The automatic product level monitor test can detect at least a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains a regulated substance;

(ii) Daily inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of (a) of this subsection; and

(iii) Automatic tank gauging equipment must be operated in the test mode at least once per year, and the results kept on file.

(f) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone shall meet the following requirements:

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

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

(iii) The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than thirty days;

(iv) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

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

(vi) In the UST excavation zone, the site is evaluated for its appropriateness for installation of vapor monitors to ensure compliance with the requirements of this subsection and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains a regulated substance; and

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

Note: Monitoring wells must also comply with the minimum standards for construction, maintenance, and abandonment of resource protection wells specified in chapter 173-160 WAC. UST system owners and operators are encouraged to retain the services of a qualified professional who is experienced in determining the design and placement of vapor monitoring wells surrounding an UST system.

(g) Groundwater monitoring. Testing or monitoring for liquids on or in the groundwater shall meet the following requirements:

(i) The regulated substance stored is immiscible in water and has a specific gravity of less than one;

(ii) Groundwater is never 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 is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

(iii) The slotted portion of the monitoring well casing shall 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 ground-water conditions;

(iv) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(v) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(vi) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the groundwater in the monitoring wells;

(vii) Within and immediately below the UST system excavation zone, the site is evaluated for its appropriateness for installation of groundwater monitors to ensure compliance with the requirements in (g)(i) through (v) 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 that routinely contains a regulated substance; and

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

Note: Monitoring wells must also comply with the minimum standards for construction, maintenance, and abandonment of wells specified in chapter 173-160 WAC. UST system owners and operators are encouraged to retain the services of a qualified professional who is experienced in determining the design and placement of groundwater monitoring wells surrounding an UST system.

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

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

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

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

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

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

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

(D) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty days;

(E) The site is evaluated for its appropriateness for installation of interstitial monitors to ensure that the secondary barrier is always above the groundwater and not in a twenty-five-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and

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

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

(i) Statistical inventory reconciliation. Statistical inventory reconciliation (SIR) shall meet the following requirements:

(i) Statistical inventory reconciliation must 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; and

(ii) Daily inventory control must be performed in accordance with the requirements of (a) of this subsection; and

(iii) Owners and operators must submit daily inventory records from at least the previous thirty days on a monthly basis to a SIR vendor whose statistical analysis method has been demonstrated to meet the performance standard of (i) of this subsection; and

(iv) The SIR vendor must perform an independent SIR analysis on the daily inventory records submitted and report the results to the owner or operator within fifteen days of receiving them; and

(v) If the results of a SIR analysis show a 0.2 gallon per hour or greater leak rate in any single month, 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, it shall be determined to be a "fail." If an owner or operator receives a "fail" for two consecutive months, the owner or operator shall have a tank tightness test conducted in accordance with (d) of this subsection within fifteen days of receiving the second "fail" from the SIR vendor.

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

(i) It can detect a 0.2 gallon per hour leak rate or a release of one hundred fifty gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(ii) The department or delegated agency may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in (d) through (i) of this subsection. In comparing methods, the department or delegated agency shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department or delegated agency on its use to ensure the protection of human health and the environment.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-345, filed 2/1/95, effective 3/4/95; WSR 91-22-020 (Order 91-26), § 173-360-345, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-345, filed 11/28/90, effective 12/29/90.]

WAC 173-360-350 Methods of release detection for piping. (1) Any method of release detection for piping shall meet the performance requirements of this section, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, release detection methods, except for those methods permanently installed prior to December 22, 1990, shall be capable of detecting the leak rate or quantity specified for that method in subsection (3)(a) and (b) of this section with a probability of detection of 0.95 and a probability of false alarm of 0.05. (That is, under test conditions, a method will correctly detect at least ninety-five of one hundred actual releases, and will falsely indicate a release no more than five times in one hundred tests of nonleaking systems.)

Note: The establishment of leak indication thresholds is a means of setting a standard for the equipment or method used. It is not in any way meant to imply that actual leak rates less than these limits are allowable. No release is acceptable, and any indication that a release may have occurred should be investigated in accordance with WAC 173-360-360.

(2) Underground piping that routinely contains regulated substances shall be monitored for releases in a manner that meets one of the following requirements:

(a) Pressurized piping. Underground piping that conveys regulated substances under pressure shall:

(i) Be equipped with an automatic line leak detector conducted in accordance with subsection (3)(a) of this section; and

(ii) Have an annual line tightness test conducted by a certified UST supervisor in accordance with subsection (3)(b) of this section or have monthly monitoring conducted in accordance with subsection (3)(c) of this section.

(b) Suction piping. Underground piping that conveys regulated substances under suction shall either have a line tightness test conducted at least every three years beginning when release detection is required and in accordance with subsection (3)(b) of this section, or use a monthly monitoring method conducted in accordance with subsection (3)(c) of this section. No release detection is required for suction pip-

ing that 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 subsection (2)(b)(ii) through (iv) of this section to be readily determined.

(3) Each method of release detection for piping used to meet the requirements of WAC 173-360-335 shall be conducted in accordance with the following:

(a) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer's requirements.

(b) Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure, or if it can detect a leak rate equal to multiplying 0.1 gallon per hour by the square root of the value obtained by dividing the line pressure during testing by 1.5 times the operating pressure. Line tightness testing shall be conducted and results interpreted and reported in accordance with the department's guidance document for tightness testing, or as otherwise directed by the department or delegated agency.

(c) Applicable tank methods. Any of the methods in WAC 173-360-345 (6)(f) through (j) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

(4) Certified UST supervisors who perform any of the tank services described in this section shall certify that such services comply with the requirements of this section by signing the appropriate checklist(s) provided by the department.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-350, filed 2/1/95, effective 3/4/95; WSR 91-22-020 (Order 91-26), § 173-360-350, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-350, filed 11/28/90, effective 12/29/90.]

WAC 173-360-355 Release detection recordkeeping. All UST system owners and operators shall maintain records demonstrating compliance with all applicable requirements of WAC 173-360-330 through 173-360-355. These records shall include the following:

(1) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for five years, or for another reasonable period of time determined by the department or delegated agency, from the date of installation;

(2) The results of any sampling, testing, or monitoring shall be maintained for at least five years, or for another reasonable period of time determined by the department or delegated agency, except that the results of tank tightness testing conducted in accordance with WAC 173-360-345 (6)(d) shall be retained until the next test is conducted; and

(3) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for at least five years after the servicing work is completed, or for another reasonable time period determined by the department or delegated agency. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for five years from the date of installation.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-355, filed 11/28/90, effective 12/29/90.]

WAC 173-360-360 Reporting of suspected releases. Owners and operators of UST systems shall report to the department or delegated agency within twenty-four hours, or another reasonable time period specified by the department or delegated agency, and follow the procedures in WAC 173-360-370 when any of the following conditions apply:

(1) Owners and operators or others discover released regulated substances at the UST site or in the surrounding area (including but not limited to the presence of free product or its constituents in soils, basements, sewer and utility lines, groundwater, and/or surface water).

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

(3) Monitoring results from a release detection method required under WAC 173-360-335 and 173-360-340 indicate that a release may have occurred unless:

(a) A false alarm is confirmed;

(b) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

(c) In the case of inventory control, a second month of data does not confirm the initial result, except that 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.

Note: Other federal, state, and local laws also require reporting, and in some cases investigation, of suspected releases.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-360, filed 11/28/90, effective 12/29/90.]

WAC 173-360-365 Investigation due to offsite impacts. When required by the department or delegated agency, owners and operators of UST systems shall follow the procedures in WAC 173-360-370 to determine if the UST system is the source of offsite impacts. These impacts include the discovery of regulated substances (including but not limited to the presence of free product or its constituents in soils, basements, sewer and utility lines, groundwater, and/or sur-

face water) that has been observed by the department or delegated agency or brought to their attention by another person.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-365, filed 11/28/90, effective 12/29/90.]

WAC 173-360-370 Release investigation and confirmation steps. Unless corrective action is initiated in accordance with WAC 173-360-399, owners and operators shall immediately investigate and confirm all suspected releases of regulated substances requiring reporting under WAC 173-360-360 within seven days of discovery, or another reasonable time period specified by the department or delegated agency, using either the following steps or another procedure approved by the department or delegated agency:

(1) System test. Owners and operators shall have tests conducted (according to the requirements for tightness testing in WAC 173-360-345 (6)(d) and 173-360-350 (3)(b)) that determine whether a leak exists in any portions of the UST system that routinely contains a regulated substance, including the tank and the attached delivery piping, and in any connected tanks and piping that may or may not be in use. All such portions shall be tested either separately or together or in combinations thereof.

(a) Owners and operators shall have their system repaired, replaced, upgraded or closed by a certified UST supervisor and shall begin corrective action in accordance with WAC 173-360-399 if the test results for the system, tank, or delivery piping indicate that a leak exists.

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

(c) Owners and operators shall conduct a site check in accordance with subsection (2) of this section if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(2) Site check. Owners and operators shall have a certified UST supervisor, as specified in WAC 173-360-610, sample for the presence of a release. Such samples shall be taken, analyzed, and results reported to the department or delegated agency in accordance with the department's guidance document for site checks and site assessments, or as otherwise directed by the department or delegated agency, where contamination is most likely to be present at the UST site.

(a) If the site check results indicate that a release has occurred, owners and operators shall report to the department or delegated agency in accordance with WAC 173-360-372 and begin corrective action in accordance with WAC 173-360-399.

(b) If the site check results indicate that a release has occurred, further investigation is not required under this chapter, but the release must be characterized and remediated in accordance with chapter 173-340 WAC.

(3) Certified UST supervisors who perform any of the tank services described in this section, shall certify that such services comply with the requirements of this section by signing the appropriate checklist(s) provided by the department.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-370, filed 2/1/95, effective 3/4/95; WSR 91-22-020 (Order 91-26), § 173-360-370, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-370, filed 11/28/90, effective 12/29/90.]

WAC 173-360-372 Reporting of confirmed releases. Owners and operators shall report all confirmed releases, including but not limited to those confirmed in accordance with WAC 173-360-370 and 173-360-390, and those required to be reported under WAC 173-360-375, to the department or delegated agency within twenty-four hours.

Note: Other federal, state, and local laws also require reporting, and in some cases cleanup, of confirmed releases.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-372, filed 11/28/90, effective 12/29/90.]

WAC 173-360-375 Cleanup and reporting of spills and overfills. (1) Owners and operators of UST systems shall immediately contain and clean up any spill or overfill of petroleum or hazardous substances in accordance with subsections (2) and (3) of this section. Spills and overfills shall also be reported as follows:

(a) Owners and operators shall immediately report any spill or overfill of petroleum and the results of any related cleanup to the department or delegated agency if the spill or overfill comes in contact with soil, groundwater, or surface water. Spills or overfills of petroleum which are above a de minimis amount but do not come in contact with soil, groundwater, or surface water shall be reported within twenty-four hours. A de minimis amount of petroleum is any amount that immediately evaporates or that is specified by the department or delegated agency through guidance documents. Spills or overfills of petroleum which do not exceed a de minimis amount and do not come in contact with soil, groundwater, or surface water are not required to be reported.

(b) Owners and operators shall immediately report any spill or overfill of a hazardous substance and the results of any related cleanup to the department or delegated agency if the spill or overfill comes in contact with soil, groundwater, or surface water. Spills or overfills of hazardous substances which are above a de minimis amount but which do not come in contact with soil, groundwater, or surface water shall also be reported immediately. A de minimis amount of a hazardous substance is any amount that is below the specified reportable quantity under CERCLA. Spills or overfills of hazardous substances which do not exceed a de minimis amount and do not come in contact with soil, groundwater, or surface water are not required to be reported.

Note: A release of a hazardous substance equal to or in excess of its reportable quantity under CERCLA (40 C.F.R. 302) must also be reported immediately to the National Response Center under sections 102 and 103 of CERCLA (40 C.F.R. 302.6) and to the appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986 (40 C.F.R. 355.40).

(2) Containment and cleanup shall include the following actions:

(a) Visually inspect and take immediate action to prevent any further release and/or spreading of the regulated substance into the environment, including surrounding soils, groundwater, and surface water;

(b) Eliminate or minimize any fire, explosion, and vapor hazards, and absorb or otherwise contain all free product and

provide for proper disposal of such 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

(c) Provide for proper disposal of, or treat, any contaminated soils in accordance with all applicable federal, state, and local requirements.

(3) Owners and operators shall take appropriate action in accordance with WAC 173-360-399 in the following cases:

(a) A spill or overfill of petroleum that results in a release to the environment of less than twenty-five gallons or another reasonable amount specified by the department or delegated agency, if cleanup is not or cannot be accomplished within twenty-four hours or another reasonable time period established by the department or delegated agency;

(b) A spill or overfill of petroleum that results in a release to the environment that exceeds twenty-five gallons or another reasonable amount specified by the department or delegated agency;

(c) A spill or overfill of petroleum, regardless of amount, that results in groundwater contamination or causes a sheen on groundwater or surface water, including such water in dry wells;

(d) A spill or overfill of a hazardous substance that results in a release to the environment that is less than the reportable quantity under CERCLA, if cleanup is not or cannot be accomplished within twenty-four hours or another reasonable time period established by the department or delegated agency; and

(e) A spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 C.F.R. 302).

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-375, filed 11/28/90, effective 12/29/90.]

WAC 173-360-380 Temporary closure of UST systems. (1) When an UST system is temporarily closed, owners and operators shall continue operation and maintenance of corrosion protection in accordance with WAC 173-360-320, and any release detection in accordance with WAC 173-360-330 through 173-360-355. WAC 173-360-360 through 173-360-375 and 173-360-399 shall be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

(2) When an UST system is temporarily closed for three months or more, owners and operators shall also comply with the following requirements:

(a) Leave vent lines open and functioning; and

(b) Cap and secure all other lines, pumps, entryways, and ancillary equipment.

(3) Any UST system temporarily closed for three months or more shall be tightness tested by a certified UST supervisor in accordance with WAC 173-360-345 (6)(d) and 173-360-350 (3)(b) prior to being put back into service unless the system is subject to and in compliance with the release detection requirements of WAC 173-360-330.

(4) When an UST system is temporarily closed for more than twelve months, owners and operators shall have a certified UST supervisor permanently close the UST system if it does not either meet the performance standards in WAC 173-360-305 for new UST systems or the upgrading requirements in WAC 173-360-310 (2) and (3). Such UST systems shall be permanently closed in accordance with WAC 173-360-385 through 173-360-398 at the end of the twelve-month period unless the department or delegated agency provides an extension before expiration of the twelve-month temporary closure period. Owners and operators shall have a site assessment completed in accordance with WAC 173-360-390 before such an extension is applied for.

(5) Any active permits for those systems being temporarily closed shall be returned to the department within thirty days of completion of the temporary closure activities.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-380, filed 2/1/95, effective 3/4/95; WSR 91-22-020 (Order 91-26), § 173-360-380, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-380, filed 11/28/90, effective 12/29/90.]

WAC 173-360-385 Permanent closure and change-in-service. Permanent closure shall be completed by a certified UST supervisor.

(1) At least thirty days before beginning either permanent closure or a change-in-service under subsections (2) and (3) of this section, or within another reasonable time period determined by the department or delegated agency, owners and operators shall notify the department or delegated agency in writing of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action. The site assessment required under WAC 173-360-390 shall be performed after notifying the department or delegated agency but before completion of the permanent closure or a change-in-service.

(2) Permanent closure shall be completed by a certified UST supervisor within sixty days after expiration of the thirty-day notice, unless a written request for an extension, explaining the reason for the request, is approved by the department or delegated agency. Any UST system not permanently closed by a compliance date that the UST system is subject to, shall be in compliance with the requirement associated with the compliance date, including the payment of fees. Any UST system not in compliance with any such requirement will be subject to the penalties described in WAC 173-360-170.

(3) To permanently close an UST system, the certified UST supervisor shall empty and clean the tank by removing all liquids and accumulated sludges.

Note: Any sludges removed must also be designated and disposed of in accordance with chapter 173-303 WAC.

(4) All tanks taken out of service permanently shall also be either removed from the ground or filled with an inert solid material. All piping shall either be capped (except any vent lines) or removed from the ground.

(5) Continued use of an UST system to store a nonregulated substance is considered a change-in-service. Before a change-in-service, owners and operators shall have a certi-

fied UST supervisor empty and clean the tank by removing all liquid and accumulated sludge, and shall have a site assessment conducted in accordance with WAC 173-360-390.

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

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

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

(C) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section; and

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

(6) Owners and operators are responsible for submitting checklists for any of the tank services described in this section. Any active tank permits for the systems being closed shall be returned to the department within thirty days of closure activities.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-385, filed 2/1/95, effective 3/4/95; WSR 91-22-020 (Order 91-26), § 173-360-385, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-385, filed 11/28/90, effective 12/29/90.]

WAC 173-360-390 Site assessment at closure or change-in-service. (1) Before permanent closure or a change-in-service is completed, except as specified in subsections (2), (3), and (4) of this section, owners and operators shall have a person registered by the department to perform site assessments, as specified in WAC 173-360-610, sample for the presence of a release. Such samples shall be taken, analyzed, and the results reported to the department or delegated agency in accordance with the department's guidance document for site assessments, or as otherwise directed by the department or delegated agency, where contamination is most likely to be present at the UST site.

(2) The requirements of this section are satisfied if one of the external release detection methods allowed in WAC 173-360-345 (6)(f) and (g) is employed for the UST system being closed or undergoing a change-in-service, if the following conditions are met:

(a) The external release detection method is operating, at the time of closure or change-in-service, in accordance with the requirements of WAC 173-360-345 (6)(f) or (g), as applicable; and

(b) A report is provided to the department with sufficient information to clearly demonstrate that:

(i) The external release detection method employed was appropriately designed, installed, and operated to adequately detect any releases from the UST system; and

(ii) No release was detected from the UST system.

(3) If the department determines that the conditions specified in subsection (2)(a) and (b) of this section have not been satisfactorily met, the department may require that a site assessment be performed for the site.

(4) If contaminated soils, contaminated groundwater, or free product is discovered under subsection (1) of this section, or by any other manner, owners and operators shall report to the department or delegated agency in accordance with WAC 173-360-372 and take appropriate action in accordance with WAC 173-360-399.

(5) Persons who perform site assessments shall certify that such site assessments comply with the requirements of this section by submitting the appropriate checklist to the department in accordance with WAC 173-360-630(12).

[Statutory Authority: Chapter 90.76 RCW. WSR 91-22-020 (Order 91-26), § 173-360-390, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-390, filed 11/28/90, effective 12/29/90.]

WAC 173-360-395 Applicability to previously closed UST systems. When directed by the department or delegated agency, the owner or operator of an UST system permanently closed or abandoned before December 22, 1988, shall have a person registered to perform site assessments assess the site and shall have a licensed tank services provider close the UST system in accordance with WAC 173-360-380 through 173-360-398 if releases from the UST may, in the judgment of the department or delegated agency, pose a current or potential threat to human health and the environment.

[Statutory Authority: Chapter 90.76 RCW. WSR 91-22-020 (Order 91-26), § 173-360-395, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-395, filed 11/28/90, effective 12/29/90.]

WAC 173-360-398 Closure records. Owners and operators shall maintain records that demonstrate compliance with closure requirements under WAC 173-360-380 through 173-360-398. The results of the site assessment required in WAC 173-360-390 shall be maintained for at least five years after completion of permanent closure or change-in-service in one of the following ways:

(1) By the owners and operators who took the UST system out of service;

(2) By the current owners and operators of the UST system site; or

(3) By mailing these records to the department or delegated agency if they cannot be maintained at the closed facility.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-398, filed 11/28/90, effective 12/29/90.]

WAC 173-360-399 Corrective action requirements. Except as provided in WAC 173-360-375, upon confirmation of a release in accordance with WAC 173-360-370 or 173-360-390, or after a release from the UST system is identified in any other manner, owners and operators shall immediately undertake appropriate measures in accordance with chapter 173-340 WAC and/or this chapter, and any additional measures as directed by the department under chapter 90.48 RCW. Owners and operators shall also report such releases to the department or delegated agency within twenty-four hours in accordance with WAC 173-360-372.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-399, filed 11/28/90, effective 12/29/90.]

PART IV

FINANCIAL RESPONSIBILITY REQUIREMENTS

WAC 173-360-400 Applicability. (1) WAC 173-360-400 through 173-360-499 applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this section.

(2) Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the date for compliance established in WAC 173-360-403.

(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 WAC 173-360-400 through 173-360-499.

(4) The requirements of WAC 173-360-400 through 173-360-499 do not apply to owners and operators of any UST system described in WAC 173-360-110 (2) or (3).

(5) If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in WAC 173-360-403.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-400, filed 11/28/90, effective 12/29/90.]

WAC 173-360-403 Compliance dates. Owners of petroleum underground storage tanks are required to comply with the requirements of WAC 173-360-400 through 173-360-499 by the following dates:

(1) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of twenty million dollars or more to the United States Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration; January 24, 1989, except that compliance with WAC 173-360-410 (2) is required by July 24, 1989.

(2) All petroleum marketing firms owning 100-999 USTs; October 26, 1989.

(3) All petroleum marketing firms owning a combined total of 13-99 USTs which are located at more than one facility; April 26, 1991.

(4) All petroleum UST owners not described in subsections (1), (2), or (3) of this section, including all local government entities; the same as the requirements and deadlines adopted under 40 C.F.R. 280.91.

[Statutory Authority: Chapter 90.76 RCW. WSR 91-22-020 (Order 91-26), § 173-360-403, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-403, filed 11/28/90, effective 12/29/90.]

WAC 173-360-406 Amount and scope of required financial responsibility. (1) Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

(a) For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than ten thousand gallons of petroleum per month based on annual throughput for the previous calendar year; one million dollars.

(b) For all other owners or operators of petroleum underground storage tanks; five hundred thousand dollars.

(2) Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

(a) For owners or operators of 1 to 100 petroleum underground storage tanks, one million dollars; and

(b) For owners or operators of 101 or more petroleum underground storage tanks, two million dollars.

(3) For the purposes of subsections (2) and (4) of this section only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

(4) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds 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.

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

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

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-406, filed 11/28/90, effective 12/29/90.]

WAC 173-360-410 Allowable mechanisms and combinations of mechanisms. (1) Subject to the limitations of subsections (2) and (3) of this section, an owner or operator may use any one or combination of the mechanisms listed in WAC 173-360-413 through 173-360-436 to demonstrate financial responsibility under WAC 173-360-400 through 173-360-499 for one or more underground storage tanks.

(2) An owner or operator may use a guarantee or surety bond to establish financial responsibility under WAC 173-360-400 through 173-360-499.

(3) 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.

(4) Except as provided in subsection (5) of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(a) Taking corrective action;

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

(c) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in WAC 173-360-406 (1) and (2).

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

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-410, filed 11/28/90, effective 12/29/90.]

WAC 173-360-413 Financial test of self-insurance. (1) An owner or operator, and/or guarantor, may satisfy the requirements of WAC 173-360-406 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor shall meet the criteria of subsection (2) or (3) of this section based on year-end financial statements for the latest completed fiscal year.

(2)(a) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(i) The total of the applicable aggregate amount required by WAC 173-360-406, 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;

(ii) 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 EPA under 40 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

(iii) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 C.F.R. Part 144.63 or to a state agency under a state program authorized by EPA under 40 C.F.R. Part 145.

Note: Titles of the above-referenced 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.

(b) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten million dollars.

(c) The owner or operator, and/or guarantor, shall have a letter signed by the chief financial officer as specified in subsection (4) of this section and as set forth in WAC 173-360-470.

(d) The owner or operator, and/or guarantor, shall either:

(i) File financial statements annually with the United States Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

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

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

(3)(a) The owner or operator, and/or guarantor shall meet the financial test requirements of 40 C.F.R. 264.147 (f)(1), substituting the appropriate amounts specified in WAC 173-360-406 (2)(a) and (b) for the "amount of liability coverage" each time specified in that section.

(b) 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.

(c) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(d) The owner or operator, and/or guarantor, shall have a letter signed by the chief financial officer, worded as specified in subsection (4) of this section.

(e) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the United States Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator, and/or guarantor, shall obtain a special report by an independent certified public accountant stating that:

(i) 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

(ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) To demonstrate that it meets the financial test under subsection (2) or (3) 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 173-360-470, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

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

(6) The director may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the director 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 WAC 173-360-413 (2) or (3) and (4), the owner or operator shall obtain alternate coverage within thirty days after notification of such a finding.

(7) If the owner or operator fails to obtain alternate assurance 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 director that he or she no longer meets the requirements of the financial test, the owner or operator shall notify the director of such failure within ten days.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-413, filed 11/28/90, effective 12/29/90.]

WAC 173-360-416 Guarantee. (1) An owner or operator may satisfy the requirements of WAC 173-360-406 by obtaining a guarantee that conforms to the requirements of this section. 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.

(2) 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 173-360-413 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 173-360-413(4) and shall deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 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 director notifies the guarantor that he no longer meets the requirements of the financial test of WAC 173-360-413 (2) or (3) and (4), the guarantor shall notify the owner or operator within ten days of receiving such notification from the director. 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 173-360-460(3).

(3) The guarantee shall be worded as set forth is WAC 173-360-473, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(4) An owner or operator who uses a guarantee to satisfy the requirements of WAC 173-360-406 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 director under WAC 173-360-453. This standby trust fund shall meet the requirements specified in WAC 173-360-436.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-416, filed 11/28/90, effective 12/29/90.]

WAC 173-360-420 Insurance and risk retention group coverage. (1) An owner or operator may satisfy the requirements of WAC 173-360-406 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(2) Each insurance policy shall be amended by an endorsement worded as specified in WAC 173-360-476 or evidenced by a certificate of insurance worded as specified in WAC 173-360-480, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

(3) 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.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-420, filed 11/28/90, effective 12/29/90.]

WAC 173-360-423 Surety bond. (1) An owner or operator may satisfy the requirements of WAC 173-360-406 by obtaining a surety bond that conforms to the requirements of this section. 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.

(2) The surety bond shall be worded as set forth in WAC 173-360-483, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(4) The owner or operator who uses a surety bond to satisfy the requirements of WAC 173-360-406 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 director under WAC 173-360-453. This standby trust fund shall meet the requirements specified in WAC 173-360-436.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-423, filed 11/28/90, effective 12/29/90.]

WAC 173-360-426 Letter of credit. (1) An owner or operator may satisfy the requirements of WAC 173-360-406 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institu-

tion 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.

(2) The letter of credit shall be worded as set forth in WAC 173-360-486, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(3) An owner or operator who uses a letter of credit to satisfy the requirements of WAC 173-360-406 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 director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the director under WAC 173-360-453. This standby trust fund shall meet the requirements specified in WAC 173-360-436.

(4) 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.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-426, filed 11/28/90, effective 12/29/90.]

WAC 173-360-433 Trust fund. (1) An owner or operator may satisfy the requirements of WAC 173-360-406 by establishing a trust fund that conforms to the requirements of this section. 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.

(2) The wording of the trust agreement shall be identical to the wording specified in WAC 173-360-490, and shall be accompanied by a formal certification of acknowledgment as specified in WAC 173-360-493.

(3) 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.

(4) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the director for release of the excess.

(5) If other financial assurance as specified in WAC 173-360-400 through 173-360-499 is substituted for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the excess.

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

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-433, filed 11/28/90, effective 12/29/90.]

WAC 173-360-436 Standby trust fund. (1) An owner or operator using any one of the mechanisms authorized by WAC 173-360-416, 173-360-423, or 173-360-426 shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(2)(a) The standby trust agreement or trust agreement shall be worded as set forth in WAC 173-360-490, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(b) The standby trust agreement or trust agreement shall be accompanied by a formal certification of acknowledgment similar to that set forth in WAC 173-360-493.

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

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

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-436, filed 11/28/90, effective 12/29/90.]

WAC 173-360-440 Substitution of financial assurance mechanisms by owner or operator. (1) An owner or operator may substitute any alternate financial assurance mechanisms as specified in WAC 173-360-400 through 173-360-499, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of WAC 173-360-406.

(2) After obtaining alternate financial assurance as specified in WAC 173-360-400 through 173-360-499, 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 173-360-470 through 173-360-490.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-440, filed 11/28/90, effective 12/29/90.]

WAC 173-360-443 Cancellation or nonrenewal by a provider of financial assurance. (1) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(a) Termination of 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) Termination of insurance or risk retention group coverage, except for nonpayment or misrepresentation by the insured, or state-funded assurance 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.

(2) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in WAC 173-360-446, 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, the owner or operator shall notify the director of such failure and submit:

(a) The name and address of the provider of financial assurance;

(b) The effective date of termination; and

(c) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with WAC 173-360-450(2).

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-443, filed 11/28/90, effective 12/29/90.]

WAC 173-360-446 Reporting by owner or operator. (1) An owner or operator shall submit the appropriate forms listed in WAC 173-360-450(2) documenting current evidence of financial responsibility to the director:

(a) Within thirty days after the owner or operator identifies a release from an underground storage tank required to be reported under WAC 173-360-372, 173-360-375 or 173-360-399;

(b) If the owner or operator fails to obtain alternate coverage as required by WAC 173-360-400 through 173-360-499, within thirty days after the owner or operator receives notice of:

(i) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor, (ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism, (iii) Failure of a guarantor to meet the requirements of the financial test, (iv) Other incapacity of a provider of financial assurance; or

(c) As required by WAC 173-360-413(7) and 173-360-443(2).

(2) An owner or operator shall certify compliance with the financial responsibility requirements of WAC 173-360-400 through 173-360-499 as specified in the new tank notification form when notifying the appropriate state or local agency of the installation of a new underground storage tank under WAC 173-360-200.

(3) The director may require an owner or operator to submit evidence of financial assurance as described in WAC 173-360-450(2) or other information relevant to compliance with WAC 173-360-400 through 173-360-499 at any time.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-446, filed 11/28/90, effective 12/29/90.]

WAC 173-360-450 Recordkeeping. (1) Owners or operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under WAC 173-360-400 through 173-360-499 for an underground storage tank until released from the requirements of WAC 173-360-400 through 173-360-499 under 173-360-456. An owner or operator shall maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained offsite shall be made available upon request of the department or delegated agency.

(2) An owner or operator shall maintain the following types of evidence of financial responsibility:

(a) An owner or operator using an assurance mechanism specified in WAC 173-360-413 through 173-360-433 shall maintain a copy of the instrument worded as specified.

(b) 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.

(c) 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.

(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 covered by a financial assurance program shall maintain on file a copy of any evidence of coverage supplied by or required by the state.

(f) An owner or operator using an assurance mechanism specified in WAC 173-360-413 through 173-360-433 shall maintain an updated copy of a certification of financial responsibility worded as set forth in WAC 173-360-496, 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).

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-450, filed 11/28/90, effective 12/29/90.]

WAC 173-360-453 Drawing on financial assurance mechanisms. (1) The director shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(a)(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 director 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 director pursuant to WAC 173-360-360 through 173-360-375 or 173-360-399 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) The director may draw on a standby trust fund when:

(a) The director makes a final determination that a release has occurred and immediate or long-term corrective

action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under WAC 173-360-399; or

(b) The director 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 173-360-499, 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 WAC 173-360-400 through 173-360-499 and the director determines that the owner or operator has not satisfied the judgment.

(3) If the director determines that the amount of corrective 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 corrective action costs necessary to protect human health and the environment. The director shall pay third-party liability claims in the order in which the director receives certifications under subsection (2)(b)(i) of this section and valid court orders under subsection (2)(b)(ii) of this section.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-453, filed 11/28/90, effective 12/29/90.]

WAC 173-360-456 Release from the requirements. An owner or operator is no longer required to maintain financial responsibility under WAC 173-360-400 through 173-360-499 for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by WAC 173-360-380 through 173-360-398.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-456, filed 11/28/90, effective 12/29/90.]

WAC 173-360-460 Bankruptcy or other incapacity of owner or operator. (1) 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 director by certified mail of such commencement and submit the appropriate forms listed in WAC 173-360-450(2) documenting current financial responsibility.

(2) 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 173-360-416.

(3) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit. The owner or operator shall obtain alternate financial assurance as specified in WAC 173-360-400 through 173-360-499 within thirty days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within thirty days after such notification, he shall notify the director.

(4) Within thirty days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator shall obtain alternate financial assurance.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-460, filed 11/28/90, effective 12/29/90.]

WAC 173-360-463 Replenishment of guarantees, letters of credit, or surety bonds. (1) If at any time after a standby trust is funded upon the instruction of the director with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(a) Replenish the value of financial assurance to equal the full amount of coverage required, or (b) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(2) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by WAC 173-360-406. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-463, filed 11/28/90, effective 12/29/90.]

WAC 173-360-466 Suspension of enforcement. Reserved.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-466, filed 11/28/90, effective 12/29/90.]

WAC 173-360-470 Appendix A—Letter from chief financial officer.

LETTER FROM CHIEF FINANCIAL OFFICER

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

Underground storage tanks at the following facilities are assured by this financial test 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 173-360-200.]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 C.F.R. Parts 271 and 145:

	Amount
EPA Regulations:	
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)	$ . . . . .
	Amount
Authorized state programs:	
Closure	$ . . . . .
Post-Closure Care	$ . . . . .
Liability Coverage	$ . . . . .
Corrective Action	$ . . . . .
Plugging and Abandonment	$ . . . . .
TOTAL	$ . . . . .

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

[Fill in the information for Alternative I if the criteria of WAC 173-360-413(2) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of WAC 173-360-413(3) are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee . . . . . $ . . . . .

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

3. Sum of lines 1 and 2 . . . . . $ . . . . .

4. Total tangible assets . . . . . $ . . . . .

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] . . . . . $ . . . . .

6. Tangible net worth [subtract line 5 from line 4] . . . . . $ . . . . .

	Yes	No
7. Is line 6 at least $10 million?	. . . . .	. . . . .
8. Is line 6 at least 10 times line 3?	. . . . .	. . . . .
9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission?	. . . . .	. . . . .
10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration?	. . . . .	. . . . .
11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration?	. . . . .	. . . . .
12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met]	. . . . .	. . . . .

ALTERNATIVE II

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee $ . . . . .

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

3. Sum of lines 1 and 2 . . . . . $ . . . . .

4. Total tangible assets . . . . . $ . . . . .

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] . . . . . $ . . . . .

6. Tangible net worth [subtract line 5 from line 4] . . . . . $ . . . . .

7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.] . $ . . . . .

	Yes	No
8. Is line 6 at least $10 million?	. . . . .	. . . . .
9. Is line 6 at least 6 times line 3?	. . . . .	. . . . .
10. Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11]	. . . . .	. . . . .
11. Is line 7 at least 6 times line 3?	. . . . .	. . . . .

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

12. Current assets . . . . . $ . . . . .

13. Current liabilities . . . . . $ . . . . .

14. Net working capital [subtract line 13 from line 12] . . . . . $ . . . . .

	Yes	No
15. Is line 14 at least 6 times line 3?	. . . . .	. . . . .

16. Current bond rating of most recent bond issue . . . . . .

17. Name of rating service . . . . . .

18. Date of maturity of bond . . . . . .

19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration? . . . . . .

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

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

I hereby certify that the wording of this letter is identical to the wording specified in WAC 173-360-470 as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-470, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-473 Appendix B—Guarantee.

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 173-360-413 (2) or (3) and (4) and agrees to comply with the requirements for guarantors as specified in WAC 173-360-416(2).

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360-200, and the name and address of the facility.] This guarantee satisfies WAC 173-360-400 through 173-360-499 requirements for assuring funding for [insert: "Taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Washington state department of ecology and to any and all third parties that:

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 director of 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 director, shall fund a standby trust fund in accordance with the provisions of WAC 173-360-453, in an amount not to exceed the coverage limits specified above.

In the event that the director determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with WAC 173-360-399, the guarantor, upon written instructions from the director, shall fund a standby trust in accordance with the provisions of WAC 173-360-453, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the director, shall fund a standby trust in accordance with the provisions of WAC 173-360-453 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 173-360-413 (2) or (3) and (4), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 173-360 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 WAC

173-360-400 through 173-360-499 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 a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of WAC 173-360-406.

(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 173-360-473 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:

[Statutory Authority: Chapter 90.76 RCW. WSR 91-22-020 (Order 91-26), § 173-360-473, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-473, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-476 Appendix C—Endorsement.

ENDORSEMENT

Name: [Name of each covered location]

Address: [Address of each covered location]

Policy Number:

Period of Coverage: [Current policy period]

Name of [insurer or risk retention group]:

Address of [insurer or risk retention group]:

Name of insured:

Address of insured:

Endorsement:

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

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360-200, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental 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.

b. The ["insurer" or "group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["insurer" or "group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in WAC 173-360-413 through 173-360-433.

c. Whenever requested by the director of the Washington state department of ecology, the ["insurer" or "group"] agrees to furnish to the director 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 173-360-476 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]

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-476, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-480 Appendix D—Certificate of insurance.

CERTIFICATE OF INSURANCE

Name: [Name of each covered location]

Address: [Address of each covered location]

Policy number:

Endorsement (if applicable):

Period of coverage: [Current policy period]

Name of [insurer or risk retention group]:

Address of [insurer or risk retention group]:

Name of insured:

Address of insured:

Certification:

1. [Name of insurer or risk retention group], [the "insurer" or "group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360-200, and the name and address of the facility].

for [insert: "Taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

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

2. The ["insurer" or "group"] further certifies the following with respect to the insurance described in Paragraph 1:

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

b. The ["insurer" or "group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["insurer" or "group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in WAC 173-360-413 through 173-360-433.

c. Whenever requested by the director of the Washington state department of ecology, the ["insurer" or "group"] agrees to furnish the director 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 173-360-480 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]

[Statutory Authority: Chapter 90.76 RCW. WSR 91-22-020 (Order 91-26), § 173-360-480, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-480, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-483 Appendix E—Performance bond.

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 173-360-200, and the name and address of the facility. List the coverage guaranteed by the bond: "Taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:

Per occurrence $

Annual aggregate $

Surety's bond number:

Know All Persons by These Presents, that we, the principal and surety(ies), hereto are firmly bound to the 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 Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, to provide financial assurance for [insert: "Taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the principal shall faithfully ["take corrective action, in accordance with WAC 173-360-399 and the director of 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" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the principal shall provide alternate financial assurance, as specified in WAC 173-360-400 through 173-360-499, 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 a petroleum 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 173-360-406.

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 director of the Washington state department of ecology that the principal has failed to ["take corrective action, in accordance with WAC 173-360-399 and the director's instructions" and/or "compensate injured third parties"] as guaranteed by this bond, the surety(ies) shall either perform ["corrective action in accordance with WAC 173-360-399 and the director'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 director under WAC 173-360-453.

Upon notification by the director 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 director 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 director under WAC 173-360-453.

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 173-360-483 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: $

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-483, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-486 Appendix F—Irrevocable standby letter of credit.

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

[Name and address of director 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 Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

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

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to WAC 173-360-200, and the name and address of the facility.]

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

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

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

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of WAC 173-360-406.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in WAC 173-360-486 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"].

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-486, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-490 Appendix G—Trust agreement.

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 corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and addresses of the facility(ies) where the tanks are located that are covered by the standby trust agreement.

[Whereas, the grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.)];

Whereas, the grantor, acting through its duly authorized officers, has selected the trustee to be the trustee under this agreement, and the trustee is willing to act as trustee;

Now, therefore, the grantor and the trustee agree as follows:

Section 1. Definitions. As used in this agreement:

(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 payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the director of the 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 thereinafter provided. The trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the grantor as provider of financial assurance, any payments necessary to discharge any liability of the grantor established by the department of ecology.

Section 4. Payment for ["corrective action" and/or "third-party liability claims"]. The trustee shall make payments from the fund as the director of the department of ecology shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this agreement.

The fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

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

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of WAC 173-360-406.

The trustee shall reimburse the grantor, or other persons as specified by the director from the fund for corrective action expenditures and/or third-party liability claims in such amounts as the director shall direct in writing. In addition, the trustee shall refund to the grantor such amounts as the director 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 Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the trustee shall at all times show that all such securities are part of the fund;

(d) To deposit any cash in the fund in interest-bearing accounts maintained or savings certificates issued by the trustee, in its separate corporate capacity, or in any other banking institution affiliated with the trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the fund.

Section 9. Taxes and expenses. All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the fund shall be paid from the fund. All other expenses incurred by the trustee in connection with the administration of this trust, including fees for legal services rendered to the trustee, the compensation of the trustee to the extent not paid directly by the grantor, and all other proper charges and disbursements of the trustee shall be paid from the fund.

Section 10. Advice of counsel. The trustee may from time to time consult with counsel, who may be counsel to the grantor, with respect to any questions arising as to the construction of this agreement or any action to be taken hereunder. The trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee compensation. The trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the grantor.

Section 12. Successor trustee. The trustee may resign or the grantor may replace the trustee, but such resignation or replacement shall not be effective until the grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the trustee hereunder. Upon the successor trustee's acceptance of the appointment, the trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the fund. If for any reason the grantor cannot or does not act in the event of the resignation of the trustee, the trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the grantor and the present trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the trustee as a result of any of the acts contemplated by this section shall be paid as provided in section 9.

Section 13. Instructions to the trustee. All orders, requests, and instructions by the grantor to the trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the grantor's orders, requests, and instructions. All orders, requests, and instructions by the director of the Washington state department of ecology to the trustee shall be in writing, signed by the director, 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 director, 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 director, 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 director of the 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 director of the 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 director of the 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 173-360-490 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]

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-490, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-493 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]

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-493, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-496 Appendix I—Certification of financial responsibility.

CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Owner or operator] hereby certifies that it is in compliance with the requirements of WAC 173-360-400 through 173-360-499.

The financial assurance mechanism[s] used to demonstrate financial responsibility under WAC 173-360-400 through 173-360-499 is [are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

[Signature of owner or operator]
[Name of owner or operator]
[Title]
[Date]
[Signature of witness or notary]
[Name of witness or notary]
[Date]

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-496, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 173-360-499 Appendix J—Certification of valid claim.

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]	[Signature(s)]
Owner or Operator	Claimant(s)
Attorney for	Attorney(s) for
Owner or Operator	Claimant(s)
(Notary) Date	(Notary) Date

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-499, filed 11/28/90, effective 12/29/90.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

PART V

LOCAL PROGRAMS

Note: RCW 90.76.110 states that the rules adopted under chapter 90.76 RCW preempt and supersede any state or local underground storage tank law, ordinance, or resolution governing any aspect of regulation covered by these regulations. Exceptions are: (1) Local laws, ordinances, and resolutions pertaining to local authority to take immediate action in response to a release of a regulated substance; (2) 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 existence prior to July 1, 1990; and (3) underground storage tank ordinances that are more stringent than the federal regulations and the uniform codes adopted under chapter 19.27 RCW and that were in effect on November 1, 1988. These cities, towns, and counties were required by the statute to notify the department of the existence of that ordinance by July 1, 1989. The department has received notification from: City of Spokane, Spokane County, Tacoma-Pierce County, city of Redmond, and city of Renton.

WAC 173-360-500 Local delegation of underground storage tank programs. (1) The department encourages the delegation of underground storage tank program responsibilities to a qualified city, town, or county.

(2) A city, town, or county may apply to the department for delegation of authority to enforce, within its jurisdictional boundaries, the state underground storage tank regulations included in part or all of WAC 173-360-100 through 173-360-399.

(3) A fire protection district or political subdivision may enter into an agreement under chapter 39.34 RCW with a city, town, or county to assume all or a portion of delegated program responsibilities. Department approval shall be obtained prior to the effective date of such agreement, and such agreement shall be part of the city, county, or town's agreement or contract with the department.

(4) A city, town, or county seeking delegation of underground storage tank program activities shall submit a written application to the department, describing the portions of the state program for which delegation is sought. The application shall contain the following:

(a) A description of the scope, structure, and procedures of the proposed program; and

(b) A description, including an organization chart, of the local agency which will operate the program, including:

(i) The number of employees, occupation and general duties of each employee who will carry out the activities of the program;

(ii) An estimate of the cost of establishing and administering the program, including the cost of personnel listed in (b)(i) of this subsection, as well as administrative and technical support.

(5) Within thirty days after receiving the application, the department will review the application for completeness and request any additional information needed in order for the application to be complete.

(6) The department will begin negotiating with the applicant within thirty days of receiving a complete application, in order to establish the following:

(a) The source and amount of funding available to meet the costs listed in subsection (4)(b)(ii) of this section, including any restrictions or limitation upon this funding;

(b) The applicable procedures, including any required permit procedures;

(c) Permit forms, application forms, and reporting forms that will be used in the program;

(d) The methods to be used to assure compliance and enforcement of the program; and

(e) The procedures to be used to coordinate information with the department, including the frequency of reporting and report content.

(7) After finalizing the items listed in subsection (6) of this section, the department will prepare and mail a written agreement or contract to the applicant, which outlines the terms and conditions under which the department will delegate the state underground storage tank program, or portions of the state program, to the applicant. The applicant must sign and return the agreement or contract to the department in order for the agreement or contract to become effective.

(8) In developing agreements or contracts with local governments, the department shall, if possible, provide for an appropriate distribution of resources collected under RCW 90.76.090, while still enabling the department to operate a state program.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-500, filed 11/28/90, effective 12/29/90.]

WAC 173-360-510 Environmentally sensitive areas. (1) An environmentally sensitive area is an area, proposed by a city, town or county, and designated by the department, which possesses physical characteristics that make it especially vulnerable to threats from leaking underground storage tanks, and in which local underground storage tank requirements more stringent than statewide requirements are necessary.

(2) 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 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.

(3) An area that has been designated a sensitive area for the purposes of protecting groundwater or surface water from pollution under another statute or regulation will, upon request for designation by the local government, be approved as an environmentally sensitive area for the purposes of WAC 173-360-510. Those areas may include, but are not limited to:

(a) An aquifer identified as the primary source of supply for public water supply systems;

(b) 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;

(c) An aquifer designated as a sole source aquifer by the Federal Environmental Protection Agency;

(d) An area designated a certified groundwater management area identified under chapter 173-100 WAC; and

(e) An area designated an aquifer protection area, under chapter 36.36 RCW.

(4) The agency requesting designation shall comply with WAC 173-360-530.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-510, filed 11/28/90, effective 12/29/90.]

WAC 173-360-520 Physical criteria for environmentally sensitive areas. Except as provided for in WAC 173-360-510(3), environmentally sensitive areas shall be designated based on the criteria established by the department. One or more of the criteria shall be present and the department will evaluate the application for designation based on the overall sensitivity of the environment and consistency with WAC 173-360-510(1). Those criteria include, but are not limited to:

(1) Groundwater that is vulnerable to pollution because of specific hydrogeological characteristics, including but not limited to, recharge areas, permeability, precipitation, direction and quantity of groundwater flow, and presence of aquitards;

(2) Proximity to wetlands;

(3) Being located within a 100-year flood plain; or

(4) Proximity to other surface waters that can be shown to have a hydrogeologic link to such groundwater as is described in subsection (1) of this section, underlying an area where underground storage tank systems are installed or may be installed, if a leak from such a system has a reasonable chance of reaching groundwater.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-520, filed 11/28/90, effective 12/29/90.]

WAC 173-360-530 Application for designation of environmentally sensitive area and approval of local regulations. (1) Designation of an environmentally sensitive area under this chapter is solely for the purposes of implementing chapter 90.76 RCW, and such designation under chapter 90.76 RCW does not establish an environmentally sensitive area under any other law.

(2) The application for designation of an environmentally sensitive area shall consist of a concise, factual report and shall consider the guidelines and criteria set forth in WAC 173-360-520. The local government applicant shall provide sufficient information for the department to determine if the area should be so designated. Information provided by the applicant shall include, but need not be limited to, the following:

(a) A rationale for the proposed designation;

(b) A description of any underground water resource included within the proposed environmentally sensitive area;

(c) The geographic limits of the area where more stringent underground storage tank standards would be required;

(d) Any available maps of the aquifer and recharge area, including water table;

(e) A map of the area to be designated;

(f) A description of the more stringent underground storage tank standards proposed to be required in the area, including underground storage tank technical standards, operating standards, and administrative procedures. When proposing more stringent standards, the local jurisdiction should consider:

(i) Actions already undertaken by owners or operators to upgrade existing underground storage tank systems to federal or state standards, and the economic impacts of requiring already upgraded systems to meet more stringent standards; and

(ii) The possible impacts of contaminated groundwater on human health and the environment and whether underground storage tank systems which have already been upgraded under the requirements of the state or federal rules will effectively prevent leaks which may contaminate groundwater.

(g) A description of any other measures in place or considered to protect groundwater and/or surface water from environmental threats;

(h) Any written comments submitted by members of the public to the local government regarding the proposed designation of an environmentally sensitive area; and

(i) Documentation of coordination with affected state and local agencies and water user groups.

(3) Additional information may be required by the department if necessary to adequately evaluate the proposal. This information may include, but is not limited to, the following:

(a) The geographic limits of the groundwater recharge zone;

(b) The geographic limits of the underground water resource;

(c) The geology within both the recharge zone and the underground water resource;

(d) Location, yield, well depth and present use of wells within the limits of the threatened underground water resource;

(e) Estimated capacity of the underground water resource;

(f) Location, type and number of underground storage tanks existing in the proposed area;

(g) Such other information the department deems necessary.

(4) Prior to submitting the request for designation and approval of more stringent standards to the department, the local government applicant shall hold at least one public hearing for the purpose of receiving comments from the public, affected local, state, and tribal agencies and groundwater user groups, regarding the designation proposal. The local government shall provide adequate notice to affected parties.

The local government applicant shall submit the application for designation and approval of more stringent standards to the department and other affected agencies and groundwater user groups for their review and comment. Comments shall be submitted to the department.

(5) Within thirty days after receiving the application, the department will review the application for completeness and request any additional information needed in order for the application to be complete.

(a) Prior to approval of the application, the department may, at its discretion, hold a public hearing in the jurisdiction where the environmentally sensitive area is proposed.

(b) The department shall approve or disapprove the application for designation as an environmentally sensitive area based upon review of the application, comments received, whether the proposed area meets the guidelines and criteria of WAC 173-360-520 and 173-360-530, and whether the proposed local ordinance or resolution is reasonably con-

sistent with previously approved local regulations for similar environmentally sensitive areas.

(6) If application for the designation of an environmentally sensitive area is made later than five years after the date of final adoption of these rules, proposed local ordinances and resolutions shall only apply to new underground storage tank installations.

Ordinances and resolutions described under subsection (1) of this section and disapproved by the department may be modified by the local government and resubmitted to the department for approval.

(7) Proposed local ordinances and resolutions shall become effective when approved by the department.

(8) A local jurisdiction with an approved ordinance or resolution under this chapter may establish local tank fees, in an amount not to exceed fifty percent of the annual state tank fee, if the fee is necessary for enhanced program administration or enforcement. Pursuant to RCW 90.76.090, the fee shall be collected and deposited into the state underground storage tank account.

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-530, filed 11/28/90, effective 12/29/90.]

PART VI

REGISTRATION AND LICENSING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SERVICE PROVIDERS AND SERVICE SUPERVISORS

Note: Individuals who perform underground tank services may be subject to additional state laws and regulations. These include, but may not be limited to:
(1) Chapter 18.27 RCW and chapter 296-200 WAC, which apply to individuals who are general and specialty contractors;
(2) Chapter 18.104 RCW and chapter 173-162 WAC, which apply to individuals who install groundwater monitoring wells;
(3) Chapter 19.28 RCW, chapters 296-46 and 296-40 WAC, which apply to individuals who install and repair impressed current cathodic protection systems; and
(4) Chapter 49.17 RCW and chapter 296-62 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.

WAC 173-360-600 Purpose of Part VI. After the effective date of these regulations, individuals who perform tank services must be certified by the International Fire Code Institute, or other nationally recognized association that the department has determined provides an examination and credentials whereby individuals can demonstrate their knowledge of various regulatory codes, standards and practices pertaining to underground storage tanks, or have passed another qualifying exam approved by the department. Washington registered professional engineers who are competent, by means of examination, experience, or education, to perform site assessments, are not required to be certified for site assessment work.

The purpose of WAC 173-360-600 through 173-360-630 is to set forth standards for certification and responsibilities for certified UST supervisors.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-600, filed 2/1/95, effective 3/4/95; WSR 90-24-017, § 173-360-600, filed 11/28/90, effective 12/29/90.]

WAC 173-360-610 Scope. WAC 173-360-610 through 173-360-630 establishes requirements for:

Certification of UST supervisors who perform services on underground storage tank systems;

These rules apply to any person who performs the installation, retrofitting, decommissioning, testing, site check, site assessment, of underground storage tanks regulated by chapter 90.76 RCW.

These requirements do not apply to persons performing the activities specified in subsection (2) of this section for tanks which are exempt from the UST rule, as provided in WAC 173-360-110 (1) and (2).

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-610, filed 2/1/95, effective 3/4/95; WSR 91-22-020 (Order 91-26), § 173-360-610, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-610, filed 11/28/90, effective 12/29/90.]

WAC 173-360-620 Types of certifications. The department requires certifications in the following areas:

(1) Tank installation and retrofitting;
(2) Tank decommissioning;
(3) Tightness testing;
(4) Cathodic protection installation and testing; and
(5) Site assessment associated with tank closure.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-620, filed 2/1/95, effective 3/4/95.]

WAC 173-360-630 Responsibilities of certified UST supervisors. (1) Any certified UST supervisor shall comply with WAC 173-360-600 through 173-360-630, and comply with all federal and state regulations and procedures when performing tank services.

(2)(a) A checklist must be completed for each regulated activity performed. The certified UST supervisor shall sign the checklist provided by the department within thirty days following the completion of an underground storage tank installation, retrofit, decommissioning, or test.

(b) An as-built site plan, showing the location of completed tank system installations or retrofitted tank system, including adjacent structures, if present shall be submitted for installations and retrofits. The as-built site plan shall be submitted on the appropriate form provided by the department, or shall be an 8 1/2 inch by 11 inch single page drawing.

(3) A certified UST supervisor shall report to the department and the tank owner or operator the existence of any confirmed release from an underground tank system that poses a threat to human health and the environment. This report shall be provided to the tank owner or operator immediately, and to the department within seventy-two hours of the discovery of the condition. If the owner or operator are not immediately available, the report should be made immediately to the department.

(4) A certified UST supervisor shall be present on site at all times tank service activities are being carried out at a tank installation, retrofit, testing, decommissioning project unless otherwise determined by the department. These tasks may include but may not be limited to:

(a) Preparing the excavation immediately prior to receiving backfill and placement of the tank into the excavation;

(b) Any movement of the tank vessel, including but not limited to transferring the vessel from the vehicle used to transport it to the project site;

(c) Setting the tank and its associated piping into the excavation, including placing any anchoring devices and strapping, if any, and backfilling to the level of the tank;

(d) Placing and connecting the piping system to the tank vessel;

(e) Installing cathodic protection systems;

(f) All pressure testing of the underground storage tank system, including associated piping, performed during the installation or retrofitting;

(g) Completing the backfill and filling of the installation;

(h) Evaluating preparation for and installing any tank lining system;

(i) Tank purging or inerting;

(j) Removal of the tank, removal of sludge from the tank, and cleaning of the tank;

(k) Removing flammable vapors from tanks;

(l) Excavating around tanks for removal;

(m) Field installation and operational testing of cathodic protection systems;

(n) Inspecting of existing tank and piping systems for corrosion;

(o) Tank or line tightness testing;

(p) Inspection of existing tanks for structural integrity;

(q) Installation of release detection equipment; and

(r) Conducting a site assessment at tank closure.

(5) If a certified UST supervisor obtains knowledge, in the course of performing regulated activities, that a regulated underground storage tank has not been registered with the department, or is otherwise out of compliance with the requirements of this chapter, the individual shall inform the tank owner or operator of the notification requirement and any other applicable requirements.

(6) Proof of supervisor certification shall be available for inspection at any project site.

[Statutory Authority: Chapter 90.76 RCW. WSR 95-04-102, § 173-360-630, filed 2/1/95, effective 3/4/95; WSR 91-22-020 (Order 91-26), § 173-360-630, filed 10/29/91, effective 11/29/91; WSR 90-24-017, § 173-360-630, filed 11/28/90, effective 12/29/90.]

WAC 173-360-670 Penalties. Any person or firm who violates this chapter is subject to a civil penalty not to exceed five thousand dollars for each tank per day of violation, pursuant to RCW 90.76.080(2).

[Statutory Authority: Chapter 90.76 RCW. WSR 90-24-017, § 173-360-670, filed 11/28/90, effective 12/29/90.]

PART VII

OPERATOR TRAINING REQUIREMENTS

WAC 173-360-700 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 UST systems shall continuously comply with the requirements of this part from their installation until their permanent closure or change-in-service, including during any period of temporary closure.

[Statutory Authority: Chapter 90.76 RCW. WSR 12-17-041 (Order 08-08), § 173-360-700, filed 8/8/12, effective 10/1/12.]

WAC 173-360-710 Designation of operators. 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. Class C operators must be employees of the UST system owner or operator.

(3) Separate individuals may be designated for each operator class or an individual may be designated to more than one operator class.

[Statutory Authority: Chapter 90.76 RCW. WSR 12-17-041 (Order 08-08), § 173-360-710, filed 8/8/12, effective 10/1/12.]

WAC 173-360-720 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 173-360-730 by the dates specified in this section.

(1) Class A, Class B, and Class C operators must initially be designated and trained by December 31, 2012.

(2) Class A and Class B operators designated after December 31, 2012, must be trained within sixty days of assuming duties of the operator class.

(3) Class C operators designated after December 31, 2012, must be trained before assuming duties of the operator class.

[Statutory Authority: Chapter 90.76 RCW. WSR 12-17-041 (Order 08-08), § 173-360-720, filed 8/8/12, effective 10/1/12.]

WAC 173-360-730 Training requirements for operators. 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. Individuals designated for more than one operator class must successfully complete the training required for each operator class that he or she is designated.

(1) **Class A and Class B operators.** Each Class A and Class B operator must successfully complete a classroom, computer, or field-based training program or examination that:

(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 components;
(v) Product and equipment compatibility;
(vi) Installation and repair requirements;
(vii) Spill and overfill prevention;
(viii) Release detection;
(ix) Corrosion protection and internal lining;
(x) Secondary and under-dispenser containment;
(xi) Operation and maintenance requirements;
(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 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:
(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 173-360-760(2) and the records identify the state where they were designated and trained.

(4) **Acceptance of prior in-state training.**
(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 173-360-760(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 173-360-760(2) shall be deemed to meet the training requirements in subsection (2) of this section.

[Statutory Authority: Chapter 90.76 RCW. WSR 12-17-041 (Order 08-08), § 173-360-730, filed 8/8/12, effective 10/1/12.]

WAC 173-360-740 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. However, this provision does not apply to Class A and Class B operators who are retrained annually using a training program or examination meeting the requirements in WAC 173-360-730(1).

(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 173-360-730(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.

[Statutory Authority: Chapter 90.76 RCW. WSR 12-17-041 (Order 08-08), § 173-360-740, filed 8/8/12, effective 10/1/12.]

WAC 173-360-745 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 173-360-740.

(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:

(a) Release detection;

(b) Spill and overfill prevention;

(c) Corrosion protection, if applicable; and

(d) Internal lining, if applicable.

(5) **Recordkeeping.** Operation and maintenance plans for UST systems must be maintained and made available to the department in accordance with WAC 173-360-210(3). Plans must be maintained until UST systems are permanently closed or undergo a change-in-service.

[Statutory Authority: Chapter 90.76 RCW. WSR 12-17-041 (Order 08-08), § 173-360-745, filed 8/8/12, effective 10/1/12.]

WAC 173-360-750 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)

[Statutory Authority: Chapter 90.76 RCW. WSR 12-17-041 (Order 08-08), § 173-360-750, filed 8/8/12, effective 10/1/12.]

WAC 173-360-760 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 173-360-210(3).

(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.

[Statutory Authority: Chapter 90.76 RCW. WSR 12-17-041 (Order 08-08), § 173-360-760, filed 8/8/12, effective 10/1/12.]

PART VIII

SECONDARY AND UNDER-DISPENSER CONTAINMENT REQUIREMENTS

WAC 173-360-800 Purpose and applicability. (1) This part establishes requirements for secondary containment of tanks and piping and for under-dispenser containment.

(2) The applicability of the requirements in this part does not affect the applicability of any other requirements in this chapter.

(3) In the event of any conflict between the provisions in this part and the other provisions in this chapter, the provisions in this part shall govern.

(4) UST system owners and operators shall ensure compliance with the applicable requirements in this part.

[Statutory Authority: Chapter 90.76 RCW. WSR 12-17-041 (Order 08-08), § 173-360-800, filed 8/8/12, effective 10/1/12.]

WAC 173-360-810 Secondary containment of tanks. (1) **Applicability.** Tanks installed or replaced after October 1, 2012, must be secondarily contained and monitored for releases in accordance with the requirements in this section.

(2) **Secondary containment.** In addition to meeting the requirements in WAC 173-360-305(1), tanks must meet the secondary containment requirements in this subsection.

(a) **Performance standards.** Tanks must be double-walled. Double-walled tanks must be designed, constructed, and installed 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.

(b) **Codes of practice.** Double-walled tanks must be designed and constructed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. The following codes of practice may be used to meet this requirement:

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

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

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

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

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

(3) **Release detection.** Double-walled tanks must be monitored interstitially for releases at least every thirty days in accordance with WAC 173-360-345 (6)(h)(i). 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.

[Statutory Authority: Chapter 90.76 RCW. WSR 12-17-041 (Order 08-08), § 173-360-810, filed 8/8/12, effective 10/1/12.]

WAC 173-360-820 Secondary containment of piping. (1) **Applicability.** Piping installed or replaced after October 1, 2012, routinely containing regulated substances and in contact with the ground must be secondarily contained and monitored for releases in accordance with the requirements in this section. However, the requirements in this section do not apply to:

(a) Suction piping meeting the standards in WAC 173-360-350 (2)(b)(i) through (v); or

(b) Piping replacing less than fifty percent of a single-walled piping run.

(2) **Replacement of piping.** Unless otherwise approved or 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.

(3) **Secondary containment.** In addition to meeting the requirements in WAC 173-360-305(2), piping must meet the secondary containment requirements in this subsection.

(a) **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, constructed, and installed 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.

(ii) **Containment sumps.** Containment sumps used as part of the secondary containment and interstitial monitoring system for piping must be designed, constructed, and installed to:

(A) Be liquid-tight on its sides, bottom, and at any penetrations;

(B) Allow for visual inspection and access to the components in the sump; and

(C) 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.

(b) **Codes of practice.** Double-walled piping must be designed and constructed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. The following codes of practice may be used to meet this requirement:

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

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

(4) **Release detection.** Double-walled piping must be monitored for releases using the methods specified in this subsection.

(a) Pressurized piping must be monitored interstitially for releases at least every thirty days in accordance with WAC 173-360-345 (6)(h)(i) and be equipped with an automatic line leak detector in accordance with WAC 173-360-350 (3)(a).

(b) Suction piping not meeting the standards in WAC 173-360-350 (2)(b)(i) through (v) must be monitored interstitially for releases at least every thirty days in accordance with WAC 173-360-345 (6)(h)(i).

(c) 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.

[Statutory Authority: Chapter 90.76 RCW. WSR 12-17-041 (Order 08-08), § 173-360-820, filed 8/8/12, effective 10/1/12.]

WAC 173-360-830 Under-dispenser containment. (1) **Applicability.** UST systems connected to a dispenser must be equipped with under-dispenser containment meeting the requirements of this section if the dispenser, dispenser system, or underground piping connected to the dispenser system is installed or replaced after October 1, 2012.

(2) **Performance standards.** Under-dispenser containment must be designed, constructed, and installed to:

(a) Be liquid-tight on its sides, bottom, and at any penetrations; and

(b) Allow for visual inspection and access to the components in the containment system.

(3) **Installation and reporting.** Installation of under-dispenser containment must be:

(a) Performed by an UST supervisor certified to install UST systems under Part 6 of this chapter;

(b) Performed in accordance with the manufacturer's instructions; and

(c) Certified and reported in accordance with WAC 173-360-630 (2)(a).

[Statutory Authority: Chapter 90.76 RCW. WSR 12-17-041 (Order 08-08), § 173-360-830, filed 8/8/12, effective 10/1/12.]