

1 15A NCAC 02O .0101 is amended as published in 34:12 NCR 1116 as follows:

2  
3 **SUBCHAPTER 02O - FINANCIAL RESPONSIBILITY REQUIREMENTS FOR OWNERS AND**  
4 **OPERATORS OF UNDERGROUND STORAGE TANKS**

5  
6 **SECTION .0100 - GENERAL CONSIDERATIONS**

7  
8 **15A NCAC 02O .0101 GENERAL**

9 (a) ~~The purpose of this Subchapter is to establish the requirements for financial responsibility for owners~~Owners and  
10 operators of ~~underground storage tanks~~underground storage tank systems that are subject to regulation pursuant to 40  
11 CFR 280.10 and located in North Carolina.North Carolina, shall comply with the financial responsibility requirements  
12 in this Subchapter.

13 (b) The Department of ~~Environment, Health, and Natural Resources~~Environmental Quality (Department), Division  
14 of Waste Management (Division) shall administer the underground storage tank financial responsibility compliance  
15 program for the State of North Carolina.

16 (c) Department staff may conduct inspections ~~as necessary~~ to ensure compliance with this Subchapter.

17  
18 *History Note: Authority G.S. 143-215.3(a)(15); 143-215.94H; ~~143B-282(2)(h)~~143B-282(a)(2)(h);*

19 *Eff. July 1, 1992;*

20 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*

21 *~~2018-2018;~~*

22 *Amended Eff. May 1, 2020.*

1 15A NCAC 02O .0102 is amended as published in 34:12 NCR 1116 as follows:

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3 **15A NCAC 02O .0102 ~~COPIES OF REFERENCED FEDERAL REGULATIONS~~ FINANCIAL**  
4 **RESPONSIBILITY**

5 ~~(a) Copies of applicable Code of Federal Regulations sections incorporated in this Subchapter are available for~~  
6 ~~inspection at Department of Environment, Health, and Natural Resources regional offices. They are:~~

7 ~~(1) Asheville Regional Office, Interchange Building, 59 Woodfin Place, Asheville, North Carolina~~  
8 ~~28802;~~

9 ~~(2) Winston-Salem Regional Office, Suite 100, 8025 North Point Boulevard, Winston-Salem, North~~  
10 ~~Carolina 27106;~~

11 ~~(3) Mooresville Regional Office, 919 North Main Street, Mooresville, North Carolina 28115;~~

12 ~~(4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina~~  
13 ~~27611;~~

14 ~~(5) Fayetteville Regional Office, Wachovia Building, Suite 714, Fayetteville, North Carolina 28301;~~

15 ~~(6) Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina~~  
16 ~~27889;~~

17 ~~(7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.~~

18 ~~(b) Copies of such regulations can be made at these regional offices for ten cents (\$0.10) per page. Individual~~  
19 ~~complete copies may be obtained from the U.S. Environmental Protection Agency, Office of Underground Storage~~  
20 ~~Tanks, Post Office Box 6044, Rockville, Maryland 20850 for no charge.~~

21 ~~(a) The governing Federal Regulations set forth below are hereby incorporated by reference excluding any subsequent~~  
22 ~~amendments and editions. Copies may be obtained at [www.ecfr.gov/cgi-bin/ECFR?page=browse](http://www.ecfr.gov/cgi-bin/ECFR?page=browse) at no cost.~~

23 ~~(1) 40 CFR 280.90, "Applicability";~~

24 ~~(2) 40 CFR 280.91, "Compliance Dates";~~

25 ~~(3) 40 CFR 280.94, "Allowable Mechanisms and Combinations of Mechanisms";~~

26 ~~(4) 40 CFR 280.96, "Guarantee";~~

27 ~~(5) 40 CFR 280.98, "Surety Bond";~~

28 ~~(6) 40 CFR 280.99, "Letter of Credit";~~

29 ~~(7) 40 CFR 280.102, "Trust Fund";~~

30 ~~(8) 40 CFR 280.103, "Standby Trust Fund";~~

31 ~~(9) 40 CFR 289.104, "Local Government Bond Rating Test";~~

32 ~~(10) 40 CFR 280.105, "Local Government Financial Test";~~

33 ~~(11) 40 CFR 280.106, "Local Government Guarantee";~~

34 ~~(12) 40 CFR 280.107, "Local Government Fund";~~

35 ~~(13) 40 CFR 280.108, "Substitution of Financial Assurance Mechanisms by Owner or Operator";~~

36 ~~(14) 40 CFR 280.109, "Cancellation or Nonrenewal by a Provider of Financial Assurance";~~

37 ~~(15) 40 CFR 280.110, "Reporting by Owner or Operator";~~

1           (16) 40 CFR 280.112, “Drawing on Financial Assurance Mechanisms”;

2           (17) 40 CFR 290.113. “Release from the Requirements”.

3

4 *History Note: Authority G.S. 12-3.1(c); 143-215.3(a)(15); 143B-282(2)(h);*

5 *Eff. July 1, 1992;*

6 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*

7 *~~2018-2018;~~*

8 *Amended Eff. May 1, 2020.*

1 15A NCAC 02O .0103 is repealed as published in 34:12 NCR 1116 as follows:

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3 **15A NCAC 02O .0103 SUBSTITUTED SECTIONS**

4 ~~(a) References to sections of the Federal Regulations incorporated by reference will refer to those sections and any~~  
5 ~~subsequent amendments and editions.~~

6 ~~(b) References to 40 CFR 280.93 are to be taken as references to Rule .0204 of this Subchapter, with Paragraph~~  
7 ~~correspondence being: 40 CFR 280.93(a) corresponds to 15A NCAC 2O .0204(a) and (b); 40 CFR 280.93(b)~~  
8 ~~corresponds to 15A NCAC 2O .0204(e) and (d); 40 CFR 280.93(c) and (d) have no correspondence; and 40 CFR~~  
9 ~~280.93(e), (f), (g), and (h) correspond to 15A NCAC 2O .0204(f), (g), (h), and (i), respectively.~~

10 ~~(c) References to 40 CFR 280.95 are to be taken as references to Rule .0302 of this Subchapter, with Paragraph~~  
11 ~~correspondence being: 40 CFR 280.95(a), (e), (f), and (g) correspond to 15A NCAC 2O .0302(a), (e), (d), and (e),~~  
12 ~~respectively; 40 CFR 280.95(b) and (e) correspond to 15A NCAC 2O .0302(b); 40 CFR 280.95(d) corresponds to~~  
13 ~~15A NCAC 2O .0302(f) and (g).~~

14

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

16 *Eff. July 1, 1992;*

17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*  
18 *2018-2018;*

19 *Repealed Eff. May 1, 2020.*

1 15A NCAC 02O .0201 - .0202 are repealed through readoption as published in 34:12 NCR 1116 as follows:

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**SECTION .0200 - PROGRAM SCOPE**

4

5 **15A NCAC 02O .0201 APPLICABILITY**

6 **15A NCAC 02O .0202 COMPLIANCE DATES**

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

9

*Eff. July 1, ~~1992~~, 1992;*

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*Repealed Eff. May 1, 2020.*

1 15A NCAC 02O .0203 is readopted as published in 34:12 NCR 1116 as follows:

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3 **15A NCAC 02O .0203 DEFINITIONS**

4 (a) The definitions ~~contained in 15A NCAC 2N .0203 and 40 CFR 280.92~~ are hereby incorporated by ~~reference~~  
5 including any subsequent amendments and editions, reference, except for "Director of the Implementing Agency",  
6 "Occurrence", and "Financial Reporting Year". ~~Locations where this material is available are specified in Rule~~  
7 .0102 of this Subchapter as modified below. The federal regulation may be accessed at [www.ecfr.gov/cgi-](http://www.ecfr.gov/cgi-bin/ECFR?page=browse)  
8 bin/ECFR?page=browse at no charge.

9 (1) "Director of the Implementing Agency" shall mean the Director of the Division of Waste  
10 Management.

11 (2) "Financial reporting year" shall be modified to allow a compilation report to be used to support a  
12 financial test. The compilation report shall be prepared by a Certified Public Accountant (CPA) or  
13 Certified Public Accounting Firm (CPA Firm) as defined in 21 NCAC 08A .0301.

14 (b) The following definitions ~~are defined for the purposes of~~shall apply throughout this Subchapter:

15 (1) ~~"Annual Operating Fee" is an annual fee required to be paid by the owner or operator of each~~  
16 ~~commercial underground storage tank, as defined in G.S. 143-215.94A, in use on or after January 1~~  
17 ~~of the year, beginning with 1989.~~

18 (2) ~~"Dual Usage Tank" means an underground storage tank which has had varied usage which would~~  
19 ~~cause the tank to be considered an underground storage tank regulated in accordance with 15A~~  
20 ~~NCAC 2N during certain times and an unregulated tank during other times and for which both the~~  
21 ~~regulated and unregulated usages were integral to the operation or existence of the tank.~~

22 (3) ~~"Director of the Implementing Agency" means the Director of the Division of Environmental~~  
23 ~~Management of the Department of Environment, Health, and Natural Resources.~~

24 (4) ~~"Financial reporting year" means the latest consecutive twelve-month period for which any of the~~  
25 ~~following reports used to support a financial test is prepared:~~

26 (A) ~~a 10K report submitted to the SEC;~~

27 (B) ~~an annual report of tangible net worth submitted to Dun and Bradstreet;~~

28 (C) ~~annual reports submitted to the Energy Information Administration or the Rural~~  
29 ~~Electrification Administration; or~~

30 (D) ~~a compilation report by a Certified Public Accountant or Certified Public Accounting Firm.~~

31 (5) ~~"Occurrence" means one or more releases which result(s) in a single plume of soil, groundwater,~~  
32 ~~and/or surface water contamination (consisting of free product and/or associated dissolved~~  
33 ~~contaminants exceeding standards established under 15A NCAC 2L .0202 or any other applicable~~  
34 ~~laws, rules, or regulations) emanating from a given site.~~

35 (1) "Independent" Certified Public Accountant or Certified Public Accounting Firm shall mean a CPA  
36 or CPA firm that examines the financial records and business transactions of an owner, operator or  
37 guarantor for whom the CPA or CPA firm is not affiliated.

1           (2) “Financial assurance” shall mean per occurrence and annual aggregate amounts of financial  
2           responsibility, collectively.

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

5 *Eff. July 1, ~~1992~~, 1992;*

6 *Readopted Eff. May 1, 2020.*

1 15A NCAC 02O .0204 is readopted as published in 34:12 NCR 1116 as follows:

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3 **15A NCAC 02O .0204 AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY**

4 ~~(a) Owners or operators of petroleum underground storage tanks located in North Carolina must demonstrate financial~~  
5 ~~responsibility for at least one million dollars (\$1,000,000) per occurrence for taking corrective action and for~~  
6 ~~compensating third parties for bodily injury and property damage caused by accidental releases arising from the~~  
7 ~~operation of petroleum underground storage tanks.~~

8 ~~(b) Compliance with all laws, rules, and regulations relating to the Commercial Leaking Petroleum Underground~~  
9 ~~Storage Tank Cleanup Fund shall constitute demonstration of financial responsibility for that amount specified in~~  
10 ~~Paragraph (a) of this Rule which is in excess of the sum of the amounts required to be paid per occurrence by the~~  
11 ~~owner or operator for cleanup and for third-party claims.~~

12 ~~(c) Owners or operators of petroleum underground storage tanks located in North Carolina must demonstrate financial~~  
13 ~~responsibility for taking corrective action and for compensating third parties for bodily injury and property damage~~  
14 ~~caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the~~  
15 ~~following annual aggregate amounts:~~

16 ~~(1) For owners or operators of one to 100 petroleum underground storage tanks, one million dollars~~  
17 ~~(\$1,000,000); and~~

18 ~~(2) For owners or operators of 101 or more petroleum underground storage tanks, two million dollars~~  
19 ~~(\$2,000,000).~~

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

25 ~~(1) The average maximum amount required to be paid by an owner or operator per occurrence for~~  
26 ~~cleanup as determined in accordance with Paragraph (c) of this Rule;~~

27 ~~(2) The average maximum amount required to be paid by an owner or operator per occurrence for third~~  
28 ~~party claims as determined in accordance with Paragraph (c) of this Rule; and~~

29 ~~(3) Three percent of the multiple of:~~

30 ~~(A) the amount in Subparagraph (d)(1) of this Rule; and~~

31 ~~(B) the number of tanks being covered.~~

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

35 ~~(1) Determine the maximum amount to be paid per occurrence for each underground storage tank being~~  
36 ~~assured;~~



~~(2) Sum the values determined in Subparagraph (e)(1) of this Rule and divide by the number of underground storage tanks being assured.~~

(a) Pursuant to G.S. 143-215.94H(a)(2), owners or operators shall maintain evidence of 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. The minimum financial responsibility that must be maintained per occurrence is determined by calculating the sum of the following:

(1) \$20,000 for taking corrective action to cleanup environmental damage pursuant to G.S. 143-215.94(B)(b)(3);

(2) \$100,000 for compensating third parties for bodily injury and property damage pursuant to G.S. 143-215.94(B)(b)(5); and

(3) the multiple of \$600 and the number of petroleum underground storage tanks that an owner or operator owns or operates in the state of North Carolina.

(b) The minimum financial responsibility that shall be maintained as an annual aggregate is equal to the per occurrence amount.

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

~~(d) 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 amount of financial assurance required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.~~

~~(e) The amounts of financial assurance required under this Rule excludes legal defense costs.~~

~~(f) The required per occurrence and annual aggregate coverage amounts do amount of financial assurance does not in any way limit the liability of the owner or operator.~~

~~(g) Assurance Evidence of financial responsibility for petroleum underground storage tanks located in North Carolina must shall be provided separately from that provided for petroleum underground storage tanks not located in North Carolina.~~

*History Note: Authority G.S. 143-215.94H; 143-215.94T;*

*Eff. July 1, 1992-1992;*

*Readopted Eff. May 1, 2020.*

1 15A NCAC 02O .0301 is repealed through readoption as published in 34:12 NCR 1116 as follows:

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**SECTION .0300 - ASSURANCE MECHANISMS**

4

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

6 ~~The provisions for "Allowable Mechanisms and Combinations of Mechanisms" contained in 40 CFR 280.94 are~~  
7 ~~hereby incorporated by reference including any subsequent amendments and editions. Locations where this material~~  
8 ~~is available are specified in Rule .0102 of this Subchapter. "Guarantee" and "Surety Bond" are acceptable mechanisms~~  
9 ~~in the State of North Carolina.~~

10

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

12 *Eff. July 1, ~~1992~~1992;*

13 *Repealed Eff. May 1, 2020.*

1 15A NCAC 02O .0302 is readopted as published in 34:12 NCR 1116 as follows:

2  
3 **15A NCAC 02O .0302 SELF INSURANCE**

4 ~~(a) Assurance of financial responsibility may be provided by an owner or operator or guarantor as a self insurer if the~~  
5 ~~owner or operator has complied with all of the laws, rules, and regulations relative to the Commercial Leaking~~  
6 ~~Petroleum Underground Storage Tank Cleanup Fund and the owner or operator or guarantor either establishes a Trust~~  
7 ~~Fund as set out in Paragraph (h) of this Rule or qualifies to be a self insurer.~~  
8 An owner, operator or guarantor may meet  
9 the financial responsibility requirements by passing the financial test specified in Paragraph (b) of this Rule or a  
10 financial test of 40 CFR 280.95 of this Rule.

11 (b) ~~To qualify as an insurer, an~~An owner, ~~operator,~~operator or guarantor, individually or collectively, ~~must~~shall meet the following criteria based on year-end financial statements for the latest completed fiscal year.

12 (1) The owner or ~~operator,~~operator or guarantor, individually or collectively ~~must~~shall have a total  
13 tangible net worth of ~~at least~~at least \$150,000 and not more than \$3,000,000:

14 (A) ~~The sum of the amounts specified in Subparagraphs (b)(1)(A)(i) and (ii) of this Rule as~~  
15 ~~follows, not to exceed three million dollars (\$3,000,000) and not to be less than one~~  
16 ~~hundred fifty thousand dollars (\$150,000):~~

17 ~~(i) — the multiple of:~~

18 (2) A cleanup cost factor determined by multiplying the following:

19 ~~(I) — the number of tanks being covered by this mechanism;~~

20 (A) the number of petroleum underground storage tanks that an owner or operator owns and/or  
21 operates in the state of North Carolina and that are covered by self-insurance. USTs that  
22 are manifolded together are considered separate USTs. A multi-compartment UST is  
23 considered one UST;

24 ~~(II) — the cleanup costs required to be paid by the owner or operator per~~  
25 ~~occurrence in accordance with G.S. 143-215.94B(b);~~

26 (B) \$20,000 for taking corrective action to cleanup environmental damage pursuant to G.S.  
27 143-215.94(B)(b)(3);

28 ~~(III) — the proportion of the required financial assurance required pursuant to~~  
29 ~~Rule .0204 of this Subchapter being covered by this mechanism, and~~

30 (C) the proportion of financial assurance required pursuant to Rule .0204 of this Subchapter  
31 being covered by self-insurance; and

32 ~~(IV) — a constant representing an average value per tank calculated from 0.05~~  
33 ~~for each underground storage tank covered by this mechanism which is~~  
34 ~~in compliance with any performance standards required on December~~  
35 ~~22, 1998, and 0.18 for each underground storage tank covered by this~~  
36 ~~mechanism which is not in compliance with any performance standards~~  
37 ~~required on December 22, 1998.~~

- 1                   (D) a constant equal to 0.05.
- 2                   (ii) ~~two percent of the multiple of:~~
- 3           (3) A third party liability cost factor determined by multiplying the following:
- 4                   (I) ~~the number of tanks being covered by this mechanism,~~
- 5                   (A) the number of petroleum underground storage tanks that an owner or operator owns and/or
- 6                   operates in the state of North Carolina and that are covered by self-insurance;
- 7                   (H) ~~the amount for third party claims required to be paid by the owner or~~
- 8                   operator per occurrence in accordance with G.S. 143-215.94B(b),
- 9                   (B) \$100,000 for compensating third parties for bodily injury and property damage pursuant to
- 10                  G.S. 143-215.94(B)(b)(5); and
- 11                  (HH) ~~the proportion of the required financial assurance required pursuant to~~
- 12                  Rule .0204 of the Subchapter being covered by this mechanism,
- 13                  (C) the proportion of financial assurance required pursuant to Rule .0204 of this Subchapter
- 14                  being covered by self-insurance; and
- 15                  (D) a constant equal to 0.02.
- 16                  (B) ~~Any amount of tangible net worth used to assure financial responsibility for petroleum~~
- 17                  underground storage tanks not located in North Carolina;
- 18           (4) The amount of tangible net worth used to assure financial responsibility for petroleum underground
- 19                  storage tanks not located in North Carolina;
- 20                  (C) ~~Ten times the sum of the corrective action cost estimates, the current closure and~~
- 21                  post-closure care cost estimates, and amount of liability coverage for Hazardous Waste
- 22                  Management Facilities and Hazardous Waste Storage Facilities for which a financial test
- 23                  is used to demonstrate financial responsibility to EPA under 40 CFR Parts 264.101,
- 24                  264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state implementing
- 25                  agency under a state program authorized by EPA under 40 CFR Part 271; and
- 26           (5) Ten times the sum of the corrective action cost estimates (40 CFR 264.101(b)), the closure (40 CFR
- 27                  264.143 and 265.143) and post-closure care (40 CFR 264.145 and 265.145) cost estimates, and
- 28                  amount of liability coverage (40 CFR 264.147 and 265.147) for Hazardous Waste Management
- 29                  Facilities and Hazardous Waste Storage Facilities for which a financial test is used to demonstrate
- 30                  financial responsibility to EPA or to a State implementing agency under a State program authorized
- 31                  by EPA under 40 CFR 271; and
- 32                  (D) ~~Ten times the sum of current plugging and abandonment cost estimates for injection wells~~
- 33                  for which a financial test is used to demonstrate financial responsibility to EPA under 40
- 34                  CFR Part 144.63 or to a state implementing agency under a state program authorized by
- 35                  EPA under 40 CFR Part 145.
- 36           (6) Ten times the sum of current plugging and abandonment cost estimates for injection wells (40 CFR
- 37                  144.63) for which a financial test is used to demonstrate financial responsibility to the EPA under

1 40 CFR 144.63 or to a State implementing agency under a State program authorized by EPA under  
 2 40 CFR Part 145.

3 ~~(2)(7)~~ In addition to any other requirements of this Section, a Guarantor must~~guarantor shall~~ have a net  
 4 worth of at least ~~two hundred thousand dollars (\$200,000)~~\$200,000 greater than any tangible net  
 5 worth used by the guarantor in ~~Subparagraph (b)(1) of this Rule.~~Subparagraph (1) of this Paragraph.

6 ~~(3)~~ ~~The owner or operator, or guarantor, individually or collectively, must each have a letter signed by~~  
 7 ~~the chief financial officer, worded as specified in Paragraph (g) of this Rule, and must do one of the~~  
 8 ~~following:~~

9 ~~(A)~~ ~~Obtain annually a compilation report issued by an independent certified public accountant~~  
 10 ~~or certified public accounting firm;~~

11 ~~(B)~~ ~~File financial statements annually with the U.S. Securities and Exchange Commission, the~~  
 12 ~~Energy Information Administration, or the Rural Electrification Administration; or~~

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

15 (c) The owner or ~~operator,~~operator or guarantor, individually or collectively, ~~must~~shall each have a letter signed by  
 16 the chief financial officer, worded as specified in Paragraph (g) of this Rule, and ~~must~~shall do one of the following:

17 (1) Obtain annually a compilation report issued by an independent certified public accountant or  
 18 certified public accounting firm;

19 (2) ~~File~~Pursuant to 40 CFR 280.95(b)(4)(i), file financial statements annually with the U.S. Securities  
 20 and Exchange Commission, the Energy Information Administration, or the Rural Electrification  
 21 Administration; or

22 (3) ~~Report~~Pursuant to 40 CFR 280.95(b)(4)(ii), report annually the firm's tangible net worth to Dun and  
 23 Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or  
 24 5A.

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

27 (d) The firm's year-end financial statements cannot include an adverse accountant's report or a "going concern"  
 28 qualification.

29 ~~(e)(e) If an owner or operator is acting as a self insurer in accordance with Paragraph (b) of this Rule and finds that~~  
 30 ~~he or she no longer meets the requirements of the test in Paragraph (b) of this Rule based on the year-end financial~~  
 31 ~~statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which~~  
 32 ~~financial statements have been prepared.~~40 CFR 280.95(d), (e), (f) and (g) are incorporated by reference except that  
 33 "financial test" means the financial test specified in Paragraph (b) of this Rule.

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

~~(e) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the Department that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Department of such failure within 10 days.~~

(f) To demonstrate that it meets the financial test under Paragraph (b) of this Rule, the chief financial officer of each ~~owner or~~ owner, operator or guarantor ~~must~~ shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as in Paragraph (g) of this Rule, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

(g) LETTER FROM CHIEF FINANCIAL OFFICER

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

Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," or "guarantor"]:

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

[When appropriate, include the following for Hazardous Waste Management Facilities, Hazardous Waste Storage Facilities, and Injection Wells:

A {insert: "~~financial test,~~" or "~~guarantee,~~"} [insert: "financial test" or "guarantee"] is also used by this {insert: "~~owner or operator,~~" or "~~guarantor,~~"} [insert: "owner, operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulations	Amount
Closure (including <del>□264.143 and □265.143</del> ) <u>40 CFR 264.143 and 265-143</u> )	\$ _____
Post-Closure Care (including <del>□264.145 and □265.145</del> ) <u>40 CFR 264.145 and 265.145</u> )	\$ _____
Liability Coverage (including <del>□264.147 and □265.147</del> ) <u>40 CFR 264.147 and 265.147</u> )	\$ _____
Corrective Action (including <del>□264.101(b)</del> ) <u>40 CFR 264.101(b)</u> )	\$ _____
Plugging and Abandonment (including <del>□144.63</del> ) <u>40 CFR 144.63</u> )	\$ _____
Total	\$ _____ ]

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

4			
5	1.	a.	Number of USTs being covered _____
6		b.	Average maximum amount of cleanup costs _____
7			(Rule .0204(d)(1))
8		c.	Average maximum amount of third party costs _____
9			(Rule .0204(d)(2))
10		d.	Proportion covered _____
11		e.	Constant (Rule .0302(b)(1)(A)(i)) _____
12		f.	Cleanup Total (a x b x d x e) \$ _____
13		g.	Third Party Total (0.02 x a x c x d) \$ _____
14		h.	If Guarantor, list \$200,000 \$ _____
15	2.		Tangible assets applied to USTs not in North Carolina \$ _____
16	3.		Ten times the costs for Hazardous Waste Facilities and Injections Wells \$ _____
17	4.		Sum of lines 1f, 1g, 1h, and 2 \$ _____
18	5.		Total tangible assets \$ _____
19	6.		Total liabilities [if any of the amount reported on line 4 is included in total liabilities,
20			you may deduct that amount from this line and add that amount to line 7] \$ _____
21	7.		Tangible net worth [subtract line 6 from line 5] \$ _____
22	1.	a.	Number of USTs in North Carolina being covered _____
23		b.	Proportion covered _____
24		c.	Cleanup cost factor (multiply 0.05 x \$20,000 x #1a and #1b) \$ _____
25		d.	Third party liability cost factor (multiply 0.02 x \$100,000 x #1a and #1b) \$ _____
26	2.		Cleanup and third-party liability cost factor total (sum of #1c and #1d) \$ _____
27	3.		Guarantor factor (enter \$200,000, if guarantor) \$ _____
28	4.		Net worth used to assure environmental liabilities for Hazardous Waste Management Facilities,
29			Hazardous Waste Storage Facilities, and Injection Wells multiplied by 10 \$ _____
30	5.		Net worth used to assure environmental liabilities for USTs outside of North Carolina \$ _____
31	6.		Total net worth required to self-insure or to be a guarantor (sum of #2, #3, #4 and #5) \$ _____
32	7.		Total tangible assets \$ _____
33	8.		Total liabilities (if any of the amount reported for #6 is included in total liabilities, you may
34			deduct that amount from this line and add that amount to #9) \$ _____
35	9.		Tangible net worth (subtract #8 from #7) \$ _____
36			Yes No
37	8-10.		Is line 79 at least [for an owner or operator: \$150,000; for a guarantor: \$350,000]? _____

1 ~~9~~.11. Is line ~~7~~9 equal to or greater than line ~~4~~26? \_\_\_\_\_

2 ~~10~~.12. Has a compilation report been issued by an independent certified public accountant or certified  
3 public accounting firm? \_\_\_\_\_

4 ~~11~~.13. Have financial statements for the latest fiscal year been filed with the Securities  
5 and Exchange Commission? \_\_\_\_\_

6 ~~12~~.14. Have financial statements for the latest fiscal year been filed with the Energy Information  
7 Administration? \_\_\_\_\_

8 ~~13~~.15. Have financial statements for the latest fiscal year been filed with the Rural Electrification  
9 Administration? \_\_\_\_\_

10 ~~14~~.16. Has financial information been provided to Dun and Bradstreet, and has Dun and  
11 Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only  
12 if both criteria have been met] \_\_\_\_\_

13

14 I hereby certify that the wording of this letter is identical to the wording specified in 15A NCAC 2O .0302, as such  
15 regulations were constituted on the date shown immediately below, and that the information contained herein is  
16 complete and accurate.

17

18 [Signature of chief financial officer]

19 [Name]

20 [Title]

21 [Date]

22

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

26

27 *History Note: Authority G.S. 58-2-205; 143-215.94H; 150B-21.6;*

28 *Eff. August 3, ~~1992~~.1992;*

29 *Readopted Eff. May 1, 2020.*



1 15A NCAC 02O .0303 is repealed through readoption as published in 34:12 NCR 1116 as follows:

2

3 **15A NCAC 02O .0303 GUARANTEE**

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

7

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

9 *Eff. July 1, ~~1992~~, 1992;*

10 *Repealed Eff. May 1, 2020.*

1 15A NCAC 02O .0304 is readopted as published in 34:12 NCR 1116 as follows:

2

3 **15A NCAC 02O .0304 INSURANCE AND RISK RETENTION GROUP COVERAGE**

4 ~~The provisions for "Insurance and Risk Retention Group Coverage" contained in 40 CFR 280.97 entitled "Insurance~~  
5 ~~and Risk Retention Group Coverage" are hereby~~ incorporated by ~~reference including~~reference, ~~excluding~~ any  
6 subsequent amendments and editions,-except that "licensed to transact the business of insurance or eligible to provide  
7 insurance as an excess or surplus lines insurer in one or more states" in ~~□□280.97(b)(1);~~40 CFR 280.97(b)(1), (b)(2),  
8 and (c) is replaced by "licensed, registered, or otherwise authorized to provide insurance in North Carolina". ~~Locations~~  
9 ~~where this material is available are specified in Rule .0102 of this Subchapter.~~This document may be accessed at  
10 www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge. The requirements in 40 CFR 280.97 shall be met to  
11 demonstrate financial responsibility by insurance pursuant to G.S. 143-215.94H.

12

13 *History Note: Authority G.S. ~~58-2-125; 58-22; 143-215.94H; 150B-21.6;~~*

14 *Eff. July 1, ~~1992; 1992;~~*

15 *Readopted Eff. May 1, 2020.*

1 15A NCAC 02O .0305 - .0307 are repealed through readoption as published in 34:12 NCR 1116 as follows:

2

3 **15A NCAC 02O .0305 SURETY BOND**

4 **15A NCAC 02O .0306 LETTER OF CREDIT**

5 **15A NCAC 02O .0307 STANDBY TRUST FUND**

6

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

8 *Eff. July 1, ~~1992~~, 1992;*

9 *Repealed Eff. May 1, 2020.*

1 15A NCAC 02O .0308 is readopted as published in 34:12 NCR 1116 as follows:

2

3 **15A NCAC 02O .0308 INSURANCE POOLS**

4 (a) Insurance Pools established by owners and operators may be used alone or in combination to demonstrate financial  
5 assurance in accordance with ~~Rules .0204 and .0304~~ Rule .0204 of this Subchapter.

6 (b) To be an eligible ~~mechanism,~~ mechanism for demonstrating financial assurance, Insurance Pools ~~must~~ shall comply  
7 with the requirements of ~~G.S. 143-215.94I and any other requirements imposed by the Commissioner of Insurance of~~  
8 ~~the State of North Carolina and any relevant law, rule, or regulation.~~ G.S. 143-215.94I.

9 (c) Each owner and operator ~~provided~~ providing financial assurance through an Insurance Pool ~~must~~ shall maintain a  
10 certificate of insurance issued by the Insurance Pool ~~listing, at least:~~ that lists at a minimum the following information:

- 11 (1) the name and address of the member;
- 12 (2) the location of the facilities owned by that member where underground storage tanks are being  
13 insured by the pool;
- 14 (3) the number of insured underground storage tanks at each facility;
- 15 (4) the capacity of each insured underground storage tank;
- 16 (5) the amount of insurance provided for each underground storage tank; and
- 17 (6) the name, address, and signature of the Administrator of the Insurance Pool.

18

19 *History Note:* *Authority G.S. 143-215.94H; 143-215.94I;*

20 *Eff. July 1, ~~1992,~~ 1992;*

21 *Readopted Eff. May 1, 2020.*

1 15A NCAC 02O .0311 is repealed as published in 34:12 NCR 1116 as follows:

2

3 **15A NCAC 02O .0311 LOCAL GOVERNMENT BOND RATING TEST**

4 ~~The regulations governing "Local Government Bond Rating Test" set forth in 40 CFR 280.104 (Subpart H) are hereby~~  
5 ~~incorporated by reference.~~

6

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

8 *Eff. June 1, ~~2017-2017~~;*

9 *Repealed Eff. May 1, 2020.*

1 15A NCAC 02O .0312 - .0316 are repealed as published in 34:12 NCR 1116 as follows:

2

3 **15A NCAC 02O .0312 LOCAL GOVERNMENT FINANCIAL TEST**

4 **15A NCAC 02O .0313 LOCAL GOVERNMENT GUARANTEE**

5 **15A NCAC 02O .0314 LOCAL GOVERNMENT FUND**

6 **15A NCAC 02O .0315 SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS**

7 **15A NCAC 02O .0316 CANCELLATION OR RENEWAL BY A PROVIDER OF ASSURANCE**

8

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

10 *Eff. June 1, ~~2017~~2017;*

11 *Repealed Eff. May 1, 2020.*

1 15A NCAC 02O .0401 is repealed through readoption as published in 34:12 NCR 1116 as follows:

2

3

**SECTION .0400 - RESPONSIBILITIES OF OWNERS AND OPERATORS**

4

**15A NCAC 02O .0401 REPORTING BY OWNER OR OPERATOR**

6 The provisions for "Reporting by Owner or Operator" contained in 40 CFR 280.106 are hereby incorporated by  
7 reference including any subsequent amendments and editions. Locations where this material is available are specified  
8 in ~~Rule .0102 of this Subchapter.~~

9

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

11 *Eff. July 1, ~~1992, 1992.~~*

12 *Repealed Eff. May 1, 2020.*

1 15A NCAC 02O .0402 is readopted as published in 34:12 NCR 1116 as follows:

2  
3 **15A NCAC 02O .0402 RECORD KEEPING**

4 (a) ~~The provisions for "Record Keeping" contained in 40 CFR 280.107280.111~~  
5 entitled "Record Keeping" are hereby incorporated by reference including any reference, excluding subsequent  
6 amendments and editions. Locations where this material is available are specified in Rule .0102 of this  
7 Subchapter. This document may be accessed at [www.ecfr.gov/cgi-bin/ECFR?page=browse](http://www.ecfr.gov/cgi-bin/ECFR?page=browse) at no charge.

8 (b) In addition to the requirements incorporated in Paragraph (a) of this Rule, ~~the following are required as evidence~~  
9 of financial responsibility: an owner or operator using an Insurance Pool as a financial assurance mechanism in  
10 accordance with Rule .0308 of this Subchapter, shall maintain a copy of the signed insurance certificate as specified  
11 in Rule .0308(c) of this Subchapter.

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

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

17  
18 *History Note: Authority G.S. 143-215.94H; 150B-21.6;*

19 *Eff. July 1, 1992, 1992;*

20 *Readopted Eff. May 1, 2020.*



1 15A NCAC 02O .0501 - .0502 are repealed through readoption as published in 34:12 NCR 1116 as follows:

2

3 **15A NCAC 02O .0501 DRAWING ON FINANCIAL ASSURANCE MECHANISMS**

4 **15A NCAC 02O .0502 RELEASE FROM THE REQUIREMENTS**

5

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

7 *Eff. July 1, ~~1992~~, 1992;*

8 *Repealed Eff. May 1, 2020.*

1 15A NCAC 02O .0503 is readopted as published in 34:12 NCR 1116 as follows:

2  
3 **15A NCAC 02O .0503 INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF ASSURANCE**

4 (a) ~~The provisions for "Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance"~~  
5 ~~contained in 40 CFR 280.110, 280.114 entitled "Bankruptcy or Other Incapacity of Owner or Operator or Provider~~  
6 ~~of Financial Assurance, except for Subsection 280.110(d), are hereby~~ is ~~incorporated by reference including~~  
7 ~~any reference, excluding~~ subsequent amendments and editions. ~~Locations where this material is available are specified~~  
8 ~~in Rule .0102 of this Subchapter. This document may be accessed at [www.ecfr.gov/cgi-bin/ECFR?page=browse](http://www.ecfr.gov/cgi-bin/ECFR?page=browse) at no~~  
9 ~~charge.~~

10 (b) Within 30 days after receipt of notification that the Commercial Leaking Petroleum Underground Storage Tank  
11 Cleanup Fund has become incapable of paying for assured corrective action or third-party compensation costs, the  
12 owner or operator ~~must~~ shall obtain financial assurance for the full amounts specified in ~~Rule .0204, Paragraphs (a)~~  
13 ~~and (c), of this Subchapter. 40 CFR 280.93.~~

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

19  
20 *History Note: Authority G.S. 143-215.94H; 143-215.94T; 150B-21.6;*

21 *Eff. July 1, 1992, 1992;*

22 *Readopted Eff. May 1, 2020.*

1 15A NCAC 02O .0504 is readopted as published in 34:12 NCR 1116 as follows:

2

3 **15A NCAC 02O .0504 REPLENISHMENT**

4 (a) ~~The provisions for "Replenishment of Guarantees, Letters of Credit, or Surety Bonds" contained in 40 CFR~~  
 5 ~~280.111 are hereby~~280.115 entitled "Replenishment of Guarantees, Letters of Credit, or Surety Bonds" is  
 6 incorporated by ~~reference including any~~reference, excluding subsequent amendments and editions. ~~Locations where~~  
 7 ~~this material is available are specified in Rule .0102 of this Subchapter.~~This document may be accessed at  
 8 www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge.

9 (b) If ~~at any time after~~ a standby trust (40 CFR 280.103) is funded upon the instruction of the Department with funds  
 10 drawn from a ~~guarantee,~~guarantee (40 CFR 280.96), letter of ~~credit,~~credit (40 CFR 280.99), or surety ~~bond,~~bond (40  
 11 CFR 280.98), and the amount in the standby trust is reduced to less than the amount for which the owner or operator  
 12 is responsible per occurrence for third party claims, the owner or operator shall within 60 days from which the funds  
 13 were drawn:

- 14 (1) ~~Replenish~~replenish the value of financial assurance to equal the full amount of coverage ~~required,~~  
 15 ~~or~~required pursuant to Rule .0204 of this Subchapter; or  
 16 (2) ~~Acquire~~acquire another financial assurance mechanism for ~~the full amount of coverage provided by~~  
 17 ~~the Standby Trust.~~the amount by which funds in the standby trust fund have been reduced.

18

19 *History Note: Authority G.S. 143-215.94H; 143-215.94T; 150B-21.6;*  
 20 *Eff. July 1, 1992, 1992;*  
 21 *Readopted Eff. May 1, 2020.*