

### **15A NCAC 020 .0302 SELF INSURANCE**

(a) An owner, operator, or guarantor may meet the financial responsibility requirements by passing the financial test specified in Paragraph (b) of this Rule.

(b) An owner, operator or guarantor, individually or collectively, shall meet the following criteria based on year-end financial statements for the latest completed fiscal year.

- (1) The owner, operator, or guarantor, individually or collectively shall have a total tangible net worth of at least the sum of the amounts specified in (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this Rule, not to exceed three million dollars (\$3,000,000) and not to be less than one hundred fifty thousand dollars (\$150,000):
- (2) A cleanup cost factor determined by multiplying the following:
  - (A) the number of petroleum underground storage tanks that an owner or operator owns or operates in the state of North Carolina and that are covered by self-insurance. USTs that are manifolded together are considered separate USTs. A multi-compartment UST is considered one UST;
  - (B) twenty thousand dollars (\$20,000) for taking corrective action to cleanup environmental damage pursuant to G.S. 143-215.94(B)(b)(3);
  - (C) the proportion of financial assurance required pursuant to Rule .0204 of this Subchapter being covered by self-insurance; and
  - (D) a constant equal to 0.05.
- (3) A third party liability cost factor determined by multiplying the following:
  - (A) the number of petroleum underground storage tanks that an owner or operator owns or operates in the state of North Carolina and that are covered by self-insurance;
  - (B) one hundred thousand dollars (\$100,000) for compensating third parties for bodily injury and property damage pursuant to G.S. 143-215.94(B)(b)(5); and
  - (C) the proportion of financial assurance required pursuant to Rule .0204 of this Subchapter being covered by self-insurance; and
  - (D) a constant equal to 0.02.
- (4) The amount of tangible net worth used to assure financial responsibility for petroleum underground storage tanks not located in North Carolina;
- (5) Ten times the sum of the corrective action cost estimates (40 CFR 264.101(b)), the closure (40 CFR 264.143 and 265.143) and post-closure care (40 CFR 264.145 and 265.145) cost estimates, and amount of liability coverage (40 CFR 264.147 and 265.147) for Hazardous Waste Management Facilities and Hazardous Waste Storage Facilities for which a financial test is used to demonstrate financial responsibility to EPA or to a State implementing agency under a State program authorized by EPA under 40 CFR 271; and
- (6) Ten times the sum of current plugging and abandonment cost estimates for injection wells (40 CFR 144.63) for which a financial test is used to demonstrate financial responsibility to the EPA under 40 CFR 144.63 or to a State implementing agency under a State program authorized by EPA under 40 CFR Part 145.
- (7) In addition to any other requirements of this Section, a guarantor shall have a net worth of at least two hundred thousand dollars (\$200,000) greater than any tangible net worth used by the guarantor in Subparagraph (1) of this Paragraph.

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

- (1) Obtain annually a compilation report issued by an independent certified public accountant or certified public accounting firm;
- (2) Pursuant to 40 CFR 280.95(b)(4)(i), file financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or
- (3) Pursuant to 40 CFR 280.95(b)(4)(ii), report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet shall have assigned the firm a financial strength rating of 4A or 5A.

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

(e) 40 CFR 280.95(d), (e), (f) and (g) are incorporated by reference, excluding any subsequent amendments and editions except that "financial test" means the financial test specified in Paragraph (b) of this Rule. A copy of the federal code may be obtained at [www.ecfr.gov/cgi-bin/ECFR?page=browse](http://www.ecfr.gov/cgi-bin/ECFR?page=browse) at no cost.

(f) To demonstrate that it meets the financial test under Paragraph (b) of this Rule, the chief financial officer of each owner, operator, or guarantor 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, 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 and facility number(s) assigned by the Department. 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.]

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

A [insert: "financial test" or "guarantee"] is also used by this [insert: "owner, 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 40 CFR 264.143 and 265-143)	\$ _____
Post-Closure Care (including 40 CFR 264.145 and 265.145)	\$ _____
Liability Coverage (including 40 CFR 264.147 and 265.147)	\$ _____
Corrective Action (including 40 CFR 264.101(b))	\$ _____
Plugging and Abandonment (including 40 CFR 144.63)	\$ _____
Total	\$ _____

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

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|-----|----|--|----------------|
| 1.  | a. | Number of USTs in North Carolina being covered   | _____          |
|     | b. | Proportion covered   | _____          |
|     | c. | Cleanup cost factor (multiply 0.05 x \$20,000 x #1a and #1b)   | \$ _____       |
|     | d. | Third party liability cost factor (multiply 0.02 x \$100,000 x #1a and #1b)  | \$ _____       |
| 2.  |    | Cleanup and third-party liability cost factor total (sum of #1c and #1d)   | \$ _____       |
| 3.  |    | Guarantor factor (enter \$200,000, if guarantor)   | \$ _____       |
| 4.  |    | Net worth used to assure environmental liabilities for Hazardous Waste Management Facilities, Hazardous Waste Storage Facilities, and Injection Wells multiplied by 10 | \$ _____       |
| 5.  |    | Net worth used to assure environmental liabilities for USTs outside of North Carolina  | \$ _____       |
| 6.  |    | Total net worth required to self-insure or to be a guarantor (sum of #2, #3, #4 and #5)  | \$ _____       |
| 7.  |    | Total tangible assets  | \$ _____       |
| 8.  |    | Total liabilities (if any of the amount reported for #6 is included in total liabilities, you may deduct that amount from this line and add that amount to #9)         | \$ _____       |
| 9.  |    | Tangible net worth (subtract #8 from #7)   | \$ _____       |
|     |    |  | Yes    No      |
| 10. |    | Is line 9 at least [for an owner or operator: \$150,000; for a guarantor: \$350,000]?  | _____    _____ |
| 11. |    | Is line 9 equal to or greater than line 6?   | _____    _____ |
| 12. |    | Has a compilation report been issued by an independent certified public accountant or Certified public accounting firm?  | _____    _____ |
| 13. |    | Have financial statements for the latest fiscal year been filed with the Securities  | _____    _____ |

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|-----|--|-------|-------|
|     | and Exchange Commission?   | _____ | _____ |
| 14. | Have financial statements for the latest fiscal year been filed with the Energy Information Administration?  | _____ | _____ |
| 15. | Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration?   | _____ | _____ |
| 16. | 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] | _____ | _____ |

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

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

*History Note: Authority G.S. 143-215.94H;  
 Eff. August 3, 1992;  
 Readopted Eff. January 1, 2021.*