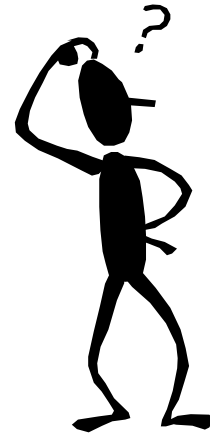


Frequently Asked Questions

Aboveground Storage Tanks

Financial Responsibility



This document comprises a set of questions and answers pertaining to the **Virginia Petroleum Aboveground Storage Tank Program**. The questions and answers contained in this document represent general guidance to assist operators in preparing the required financial assurance documentation; it is not a regulatory document and does not represent a final interpretation of individual situations. If you have any questions regarding the requirements, please contact the Virginia Department of Environmental Quality's Office of Financial Responsibility Programs & Data Management at (804) 698-4205. A toll-free number is available for Virginia residents during normal business hours at (800) 592-5482. If you dial the toll free number, please request extension 4205. Business hours are 8:15 A.M. to 5:00 P.M.

Table of Contents

Applicability/Virginia Petroleum Underground Storage Tank Fund	3
Financial Test	3
Insurance Policies	5
Fully Funded Trust Fund	7
Irrevocable Standby Letter of Credit.....	8
Certificate of Deposit Assignment.....	8
General	8

Applicability

I own and operate a number of petroleum aboveground storage tanks at multiple locations throughout the Commonwealth of Virginia. Am I required to demonstrate financial responsibility for each site individually or must I demonstrate for all sites at once?

The amount of financial responsibility an operator must demonstrate is based upon the combined aggregate aboveground storage tank capacity of *all* petroleum aboveground storage tank facilities it operates in the Commonwealth of Virginia that have an individual aggregate aboveground storage tank capacity greater than 25,000 gallons. Operators are required to demonstrate a total of five cents per gallon of aggregate regulated aboveground storage tank capacity. Evidence of financial responsibility must be maintained either at the site where the aboveground storage tanks are located, or at the operator's place of work if located in the Commonwealth. In all cases, records maintained off site must be made available upon request of the Virginia Department of Environmental Quality (DEQ).

Financial Test

What is Dun & Bradstreet and how do I obtain a sufficient rating from them?

Dun & Bradstreet is a financial strength rating service. Businesses that submit certain financial information to Dun & Bradstreet receive a rating based on a number of indicators, including total assets and liabilities. For example, a Dun & Bradstreet rating of EE indicates an organization has a net worth of \$20,000-\$34,999. By verifying an operator's financial strength rating through Dun & Bradstreet, the DEQ can assess whether an owner/operator's net worth satisfies the financial responsibility requirements.

Operators who have received an acceptable rating from Dun & Bradstreet (i.e., a rating that meets or exceeds its financial responsibility requirement) also meet the requirement for submission of financial data and are not required to obtain certification from a Certified Public Accountant.

To receive a Dun & Bradstreet rating, operators must contact a Dun & Bradstreet representative and request a rating based upon "*worth from interim or fiscal balance sheet.*" Dun & Bradstreet does issue other types of ratings, such as ratings that indicate the number of employees within an organization, so it is important that owners/operators accurately specify which type of rating they need during the application process. The only type of Dun & Bradstreet rating that is acceptable for purposes of the financial responsibility requirements is the rating based upon "*worth from interim or fiscal balance sheet.*"

In some cases, an operator may already have such a rating. If not, Dun & Bradstreet will most likely charge a fee for obtaining the information necessary to issue a rating. For more information on Dun & Bradstreet's full range of financial rating services or for information on receiving a financial strength rating, access the Dun & Bradstreet website at www.dnb.com or call toll-free at (800) 234-3867.

I employ a bookkeeper who is responsible for handling the financial affairs of my company, ACME Petroleum Company. Can my bookkeeper provide the verification that is required to support the financial data contained in the Letter from the Chief Financial Officer? I also have an employee who happens to be a Certified Public Accountant. Can she provide the required service?

Only an independent Certified Public Accountant is qualified to provide the services required to support the financial data contained in the Letter from the Chief Financial Officer. An employee of the company who also is a Certified Public Accountant is *not* considered independent and, therefore, cannot provide the required service. Financial statements certified by bookkeepers, licensing agents, enrolled agents or accountants that are not otherwise Certified Public Accountants are also not acceptable.

My Certified Public Accountant prepares a Compiled or Reviewed Year End Financial Statement for my business. Is this service sufficient to provide financial data verification for my financial test?

No. A Compilation or Review is not sufficient. The CPA must provide an audited Year End Financial Statement. An Audited Year End Financial Statement is also acceptable.

I am the sole proprietor of a regulated aboveground storage tank facility located within the Commonwealth of Virginia. In preparing my year-end financial information as required by the Letter from the Chief Financial Officer, can I apply the equity in my home and other personal assets for the purposes of calculating my net worth?

Owners/operators who are sole proprietors may use both personal and business related financial information when determining assets and liabilities for purposes of complying with the Regulation.

Who can qualify as a Chief Financial Officer for purposes of completing the financial test of self-insurance? I am the owner of a relatively small gas company and don't have an official "Chief Financial Officer." In this case, who should sign my letter?

The Chief Financial Officer is the corporate officer officially designated as "Chief Financial Officer" or the functional equivalent of a senior financial officer. In the case of a corporation, the Chief Financial Officer is usually designated through the incorporation process, and thus will already be identified as part of the corporate structure. In the absence of such a designation, the most senior person with the authority and responsibility for the collection, disbursement, and use of funds can be considered the Chief Financial Officer for purposes of completing the Letter from the Chief Financial Officer. In the case of many small businesses, this will most likely be the operator. Bookkeepers, accountants and attorneys are not eligible to serve as a Chief Financial Officer unless employed by the organization and specifically designated to the appropriate position.

I am in the process of filling out the Letter from the Chief Financial Officer, which asks me if I file reports with the Securities & Exchange Commission, the Energy Information Administration, or the Rural Utilities Service. I have never heard of these things. What are they and how do I determine if I am filed with them?

Operators and guarantors completing Appendix I or Appendix XI must verify financial data provided as part of the Letter from the Chief Financial Officer (e.g., total tangible assets, total liabilities, and tangible net worth). One of the ways owners/operators can do this is by filing financial statements with the Securities & Exchange Commission (SEC), the Energy Information Administration (EIA), or the Rural Utilities Service. These agencies are entities of the federal government and have financial data verification requirements similar to those of the Commonwealth's aboveground storage tank financial

responsibility requirements. Most likely, operators who file with one of these entities will already be aware that they conduct such filings. A brief description of each organization is provided below.

The SEC requires all public companies in the United States with over \$10 million in assets and more than 500 shareholders to file periodic reports demonstrating financial health. Owners/operators of organizations who submit such reports to the SEC fulfill the requirement for financial data. For more information, visit the SEC website at www.sec.gov.

The EIA, created by Congress in 1977, is a statistical agency of the U.S. Department of Energy. Major energy-producing companies based in the United States report financial and operating data annually as part of EIA's global financial reporting system. Only the largest petroleum facilities (i.e., those that account for more than 1% of the total petroleum production) report via this system. In addition, all organizations reporting to the EIA also submit to the SEC. For more information, access the EIA website at www.eia.doe.gov.

The Rural Utilities Service (RUS) is an agency of the U.S. Department of Agriculture. The RUS supports the development of power and other utilities in rural communities by financing electric, telecommunications, and water/wastewater projects through low-interest loans and grants to communities of fewer than 10,000 residents. Organizations that receive financing through RUS are required to provide detailed financial information to the administration. For more information, access the RUS website at www.usda.gov/rus.

Insurance Policies

I maintain a commercial general liability insurance policy for my business. Can I just use this policy to satisfy the Virginia Aboveground Storage Tank Financial Responsibility Requirements Regulation?

A commercial general liability policy usually will *not* contain sufficient provisions specific to the aboveground storage tank financial responsibility requirements. In fact, many commercial general liability policies specifically exclude pollution incidents such as releases from aboveground storage tanks. Consequently, the Regulation requires operators to obtain specific documentation that demonstrates the coverage provided by their policy conforms to the financial responsibility requirements. This documentation can be either an endorsement to an existing policy or a separate certificate of insurance. Specific wording is provided in the regulations for each alternative. Please note that insurance companies *must* use this language when developing the appropriate documents. In all cases, operators should contact a licensed insurance agent to review the scope of coverage provided by any existing insurance policies to evaluate whether a particular policy can be used to satisfy the regulatory requirements.

I am exploring the option of getting a pollution liability insurance policy to comply with the Virginia Aboveground Storage Tank Financial Responsibility Requirements Regulation. What kind of coverage do I need to get?

Operators demonstrating financial responsibility by using an insurance policy must obtain pollution liability insurance from a qualified insurer that is licensed to practice insurance in the Commonwealth of Virginia. The provisions of the policy must apply to any containment and cleanup activities resulting from a tank release as well as any claims filed by third parties.

The value of the insurance policy must be in an amount that is *at least equal* to the operator's required level of financial responsibility. An exception to this is in situations where an operator is using a combination of mechanisms to demonstrate financial responsibility. When using a combination of mechanisms, the sum of coverage provided by the mechanisms must be at least equal to the operator's required level of financial responsibility.

What kinds of premiums and deductibles can I expect if I choose to obtain a pollution liability insurance policy to satisfy the aboveground storage tank financial responsibility requirements?

The costs of any premiums or deductibles associated with an underground storage tank insurance policy will vary. In general, insurance companies assess these costs based on a series of risk factors associated with operating an aboveground storage tank. The primary factors an insurance company considers are the construction materials of the tanks and associated piping, the age of the tanks, the type and quality of the leak detection equipment in place, and the number of tanks to be insured. Past or present contamination of the site in question can also be a factor.

In all cases, operators considering a pollution liability insurance policy to satisfy the financial responsibility requirements should contact a qualified insurance agent to gain a more accurate perspective of the costs and procedures associated with their particular situation.

Is a list available of insurance companies that provide the type of coverage required under Virginia's Petroleum Aboveground Storage Tank Financial Responsibility Regulations?

The DEQ does not provide a list of pollution liability insurance providers; however, the United States Environmental Protection Agency (EPA) publishes a document, entitled *List of Known Insurance Providers for Underground Storage Tanks* (EPA510-B-00-004; January 2000). Most, if not all, of these insurance providers also provide liability insurance for aboveground storage tanks. This publication can be ordered through EPA's RCRA/Superfund/EPCRA Hotline by calling (800) 424-9346. In addition, the most current edition of the document is available on the Internet at <http://www.epa.gov/swerust1/pubs/inlist5.pdf>.

In every case, an insurance company chosen to provide coverage as required by the Regulation must be licensed to transact the business of insurance in the Commonwealth of Virginia or eligible to provide insurance as an excess or approved surplus lines insurer in Virginia. The EPA insurance provider publication discussed above does not specify the states in which a particular insurance company has been licensed; rather, it lists insurance companies that provide this type of pollution liability coverage.

How do I know whether an insurance company is licensed to practice insurance in the Commonwealth of Virginia?

Operators can verify the eligibility of an insurance company to provide insurance in the Commonwealth of Virginia by contacting the State Corporation Commission's Bureau of Insurance toll-free at (800) 552-7945 or in Richmond at (804) 371-9741. The Bureau of Insurance also has a list of licensed insurance companies available on the Internet at www.state.va.us/scc/division/boi/webpages/coinfoaccess/pc.htm. A list of surplus lines carriers is available at <http://www.state.va.us/scc/division/boi/webpages/coinfoaccess/sl.htm>.

Someone told me that if I use a pollution liability insurance policy to comply with the Virginia Aboveground Storage Tank Financial Responsibility Requirements Regulation I will lose my access to the Virginia Petroleum Storage Tank Fund. Is this true?

Special provisions apply to operators demonstrating financial responsibility using a pollution liability insurance policy. State law operators to exhaust the value of an insurance policy fully *before* accessing the Fund for costs associated with containment and cleanup. For more information on Fund access in conjunction with insurance policies, please contact Josiah Bennett at the Office of Financial Responsibility Programs & Data Management at (804) 698-4205, toll-free at (800) 592-5482 (ext. 4205).

Fully Funded Trust Fund

What is a fully funded trust fund?

A fully funded trust fund is a fund that contains an owner/operator's entire financial responsibility demonstration amount upon creation and is actively managed by a trustee. If a release occurs from a regulated petroleum aboveground storage tank, DEQ can access the money contained in a trust fund directly in order to pay for necessary corrective action measures and/or third party liability claims. Appendix VII contains the specific language that must be used to constitute the fully-funded trust fund.

My bank has informed me that it is unable to set up a fully funded trust fund because it does not have a regulated trust department. What should I do?

Any institution, or trustee, establishing a fully funded trust fund to satisfy the financial responsibility requirements must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission. While most national-level banks have departments established for this purpose specifically, many of the smaller community banks may not. If a bank is unable to establish a fully funded trust fund, operators may want to consider inquiring with the bank as to any arrangements the bank may have with one of the larger institutions in the area. It is possible an operator could access the services provided by a larger bank through their community bank. If this is not the case, owners/operators should contact one of the larger national-level banks directly to establish a fully funded trust fund.

Can I comply with the Virginia Petroleum Aboveground Storage Tank Financial Responsibility Regulations by hiring an attorney to establish and manage the fully funded trust fund?

No. Attorneys cannot establish trust funds to demonstrate compliance with the Regulation. According to the Regulation, trustees must have the authority to act as a trustee and their trust operations must be regulated and examined by a federal agency or the State Corporation Commission. Attorneys do not satisfy either of these requirements, and thus are unable to serve as trustee for either a fully funded trust fund. Operators considering establishing a fully funded trust fund should contact their bank to determine whether it has the appropriate authorization.

Irrevocable Standby Letter of Credit

Can I have my bank provide a letter of credit on my behalf for the amount of financial responsibility that I'm required to demonstrate?

Yes. Banks do issue irrevocable standby letters of credit to demonstrate financial responsibility for underground storage tanks using wording required by the Regulation. A bank typically charges anywhere from 2-4% of the face value of the letter of the letter of credit as an annual fee and may also require collateral in the form of either equity in property (i.e. a deed of trust) or an equivalently funded certificate of deposit on hold with the bank.

Certificate of Deposit Assignment

If I am able to fund a certificate of deposit for the required amount of financial responsibility, why do I have to obtain a letter of credit from a bank and pay an additional annual fee for that service?

You don't have to obtain a letter of credit in addition to a certificate of deposit. If you are able to fund a certificate of deposit for the required amount of financial responsibility and your bank is willing to cosign (with you) an agreement to assign all rights to that certificate of deposit to the Department for the duration of your obligation to demonstrate financial responsibility for the underground storage tanks in question or until you provide an acceptable alternate mechanism, you may do so.

General

Can I submit my bank statement to the DEQ to prove that I have enough money in my bank accounts to cover my aboveground storage tank financial responsibility amounts?

No. Submission of bank statements is not an acceptable method of demonstrating financial assurance for the aboveground storage tank financial responsibility regulations. The regulation provides six allowable mechanisms from which owners/operators may choose to demonstrate financial responsibility. These mechanisms include the following: financial test of self-insurance, letter of credit, surety bond, insurance policy, trust agreement, and corporate guarantee. Operators should examine the requirements for each of these mechanisms when determining which mechanism best suits their situation.

Do I have to submit all of the mechanisms listed in the Virginia Petroleum Aboveground Storage Tank Financial Responsibility Regulations?

No. Operators are required to select one of six allowable financial assurance mechanisms provided in the regulation in order to demonstrate compliance with the financial responsibility requirements. Operators also have the option of using a combination of mechanisms to comply with the financial responsibility requirements.

Which financial assurance mechanism is the least expensive?

The costs of complying with the allowable financial assurance mechanisms will be different for every operator and will depend upon several factors. Below is a *general* idea of the various types of costs associated with each mechanism. Actual costs will vary according to geographic region and the owner/operator's specific situation (e.g., financial responsibility amount, financial strength, number of tanks, and condition of tanks). In all cases, operators must consult the appropriate industry representative to gain a more complete understanding of actual costs.

Mechanism	Types of Costs Associated with Compliance*
Financial Test of Self-Insurance	<ul style="list-style-type: none"> • Financial data verification costs (e.g., Certified Public Accountant certification or Dun & Bradstreet financial strength rating)
Insurance	<ul style="list-style-type: none"> • Policy premium costs (1-3% of face value) • High deductibles
Surety Bond	<ul style="list-style-type: none"> • 1-3% of face value • Possible collateral requirements
Letter of Credit	<ul style="list-style-type: none"> • 1-2% of face value • Possible collateral requirements
Guarantee	<ul style="list-style-type: none"> • Financial test of self-insurance costs
Trust Fund	<ul style="list-style-type: none"> • Maintenance Fees (up to \$5,000) • Taxes (varies)
Certificate of Deposit Assignment	<ul style="list-style-type: none"> • Dollar amount of certificate of deposit, no annual fees
*These costs do not include accounting fees, banking fees, taxes, etc.	