



Financial Assurance for Petroleum Storage Tanks

A guide for owners and operators of underground storage tanks

This is a general guide to laws and regulations about underground and aboveground storage tanks and an aid in minimizing potential risks; it does not replace those laws and regulations, which take precedence over any information contained herein. If your tank system is located in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, or Williamson County, additional requirements related to the protection of the Edwards or the Trinity Aquifer may apply (Title 30, Texas Administrative Code [30 TAC], Chapters 213 and 214). In addition to the laws and TCEQ rules, local governments and other state and federal agencies may have rules that apply. The owner and operator are responsible for ensuring compliance with all applicable laws and regulations.

What is financial assurance?

Financial assurance is the ability to pay for a cleanup of a leak or release from the UST system. It is also known as *financial responsibility* and should be an approved mechanism, such as insurance.

Under 30 TAC Chapter 37, Subchapter I, owners or operators of USTs must demonstrate financial assurance for **corrective action** and **third-party liability**.

Financial assurance for **corrective action** covers the cost of action to correct the results of an accidental release arising from the operation of a UST.

Financial assurance for **third-party liability** compensates third parties for bodily injury and property damaged caused by accidental releases arising from the operation of a UST.

The owner or operator of the UST must demonstrate financial assurance. Only one person is required to demonstrate financial assurance; however, both owner and operator are liable in the event of noncompliance.

Why do I need it?

It is particularly important that someone be prepared to pay for cleanup so that it can begin as quickly as possible. Without fast action at a site, contamination can spread and significantly increase the chance of damage to the environment and human health.

Complying with the financial responsibility requirements also protects **you** as an owner or operator of USTs. If your UST leaks, you may be faced with expensive cleanup costs and with lawsuits brought by third parties.

Evidence of financial assurance must accompany all self-certification forms. The TCEQ will not issue delivery certificates until it has verified acceptable financial assurance. In addition, failure to produce evidence of financial assurance when requested by an inspector or other TCEQ employee could result in violations, fines, or shutdown.

What are my options?

Owners and operators may choose from any of the options listed for financial assurance:

- **insurance**—obtained from an insurance agent
- **financial test**—self-insurance used by only the largest companies
- **corporate guaranty**—self-insurance provided by a parent company of the owner or operator*
- **surety bond**—obtained from an insurance agent*
- **letter of credit**—obtained from a financial institution such as a bank*
- **trust**—set up with a financial institution such as a bank
- **local-government financial test**—self-insurance for local governments

Regardless of the option you choose, you must have a mechanism worded exactly as required by 30 TAC, Chapter 37, Subchapter I. Mechanisms worded per federal regulations in Title 40, Code of Federal Regulations, Chapter 280 are not acceptable, with the exception of the local government financial test which should be worded in accordance with that chapter.

Tank Insurance

Insurance is the most common choice among owners or operators. General liability policies do not cover pollution events and don't meet regulatory requirements. In the industry, the required insurance is sometimes known as *pollution liability for underground storage tanks*. Most major insurance companies will supply the certificate of insurance required by 30 TAC 37 as evidence of coverage within the policy. Make sure the information on the certificate regarding the tank owner or operator and the number and location of tanks exactly matches the information reflected on your registration forms.

Rules also allow an endorsement worded in accordance with 30 TAC 37 in lieu of a certificate of insurance, but such endorsements are not used by insurance companies. Certificates from the Association for Cooperative Operations

* In addition, this mechanism requires that a separate unfunded, standby trust be established.

Research and Development (ACORD) are included with policies but are not acceptable proof of coverage.

How much coverage is needed?

Financial assurance has both **per occurrence** and **annual aggregate** requirements for minimum coverage.

- **Per occurrence** refers to the amount of funds that must be available to pay the costs from each occurrence of a leaking UST.
- **Annual aggregate** is the total amount of funds available for all accidental leaks that might occur in one year.

The amount of financial responsibility coverage you need is determined by the type of business you operate, the amount of throughput of your tanks, and the number of tanks you own. If you have one or more tanks at a petroleum marketing (retail) facility, you must have the following coverage.

- If you own 100 tanks or **fewer**, you must demonstrate that you have coverage of \$1 million per occurrence and \$1 million annual aggregate.
- If you own **more** than 100 tanks, you must demonstrate that you have coverage of \$1 million per occurrence and \$2 million annual aggregate.

If your tanks are not located at a petroleum production, refining, or marketing facility and you have a monthly throughput of 10,000 gallons or less for all tanks, you need \$500,000 per occurrence. If your facility has more than a monthly throughput of 10,000 gallons you must have at least \$1 million per occurrence. The required per-occurrence and annual-aggregate coverage amounts do not in any way limit the liability of the owner or operator. Tank owners may find that increased coverage limits are not much more expensive.

How long do I need to keep financial assurance?

You must maintain financial assurance until the tanks are properly removed from service or, if corrective action is required, until the action is completed. If you no longer have financial assurance, any remaining product must be removed from tanks within 90 days after financial assurance terminates unless the owner or operator renews the financial-assurance mechanism.

The TCEQ recommends that financial assurance be maintained until all sampling results confirm that no release has occurred.

Filing an Insurance Claim

Tank owners or operators should be aware of their insurance policy's requirements for filing a successful insurance claim. Pay particular attention to the following:

- **Technical compliance** with tank regulations, including proper use of release-detection methods, may affect your ability to make a successful claim.
- **Prompt reporting** of suspected or confirmed releases and filing a claim within a specific time period may be required. Suspected or confirmed releases must be reported to the TCEQ within 24 hours of their occurrence. This is also a good time to notify your insurance company of the suspected or confirmed release.
- **Sale or transfer** of a business or property does not transfer policy coverage to a new tank owner. New coverage must be obtained.
- **Pre-existing contamination** may pose issues for coverage for cleanup; be sure to investigate property conditions.

What records do I need to keep?

An owner or operator must maintain a financial assurance mechanism worded exactly as required by 30 TAC 37, Subchapter I, for the mechanism type selected. Proof of financial assurance should be kept at the UST site or at the owner or operator's place of business and must be supplied to the TCEQ upon request. Records maintained off-site must be made available in a timely manner. Keep the records until your UST site is properly closed.

- When using a financial test (including a local-government financial test) or a guarantee, you must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial-reporting year. This documentation must be redone each year within 120 days after the close of the financial reporting year.
- An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby-trust-fund agreement and copies of any amendments to the agreement.

Where do I find more information?

The complete requirements for financial assurance may be found in 30 TAC 37, Subchapter I.

For questions concerning financial assurance, please contact the Financial Assurance Section at 512-239-0300.

For confidential environmental compliance assistance for small businesses and local governments, contact Small Business and Local Government Assistance via the hot line at 800-447-2827 or online at <www.sblga.info>.