

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 5 PETROLEUM STORAGE TANKS
PART 117 FINANCIAL RESPONSIBILITY

20.5.117.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
[20.5.117.1 NMAC - N, 07/24/2018]

20.5.117.2 SCOPE: This part applies to owners and operators of petroleum storage tanks as defined in 20.5.101 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners and operators of AST systems with capacities of 55,000 gallons or more associated with UST systems with field-constructed tanks as these terms are defined in 20.5.101 NMAC. If the owner and operator are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.
[20.5.117.2 NMAC - N, 07/24/2018]

20.5.117.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-15 NMSA 1978.
[20.5.117.3 NMAC - N, 07/24/2018]

20.5.117.4 DURATION: Permanent.
[20.5.117.4 NMAC - N, 07/24/2018]

20.5.117.5 EFFECTIVE DATE: July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.
[20.5.117.5 NMAC - N, 07/24/2018]

20.5.117.6 OBJECTIVE: The purpose of this part is to require owners and operators of petroleum storage tanks systems to demonstrate financial responsibility for their systems and to protect the public health, safety and welfare and the environment of the state.
[20.5.117.6 NMAC - N, 07/24/2018]

20.5.117.7 DEFINITIONS: The definitions in 20.5.101 NMAC apply to this part.
[20.5.117.7 NMAC - N, 07/24/2018]

20.5.117.8 to 20.5.17.1699 [RESERVED]

20.5.117.1700 APPLICABILITY:

A. This part applies to owners and operators of all petroleum storage tank systems except as otherwise provided in this section.

B. Owners and operators of petroleum above ground storage tank systems are subject to these requirements in accordance with 20.5.117.1701 NMAC.

C. 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 this part.

D. The requirements of this part do not apply to owners and operators of storage tank systems described in Subsection B or D of 20.5.101.2 NMAC.

E. If the owner and operator of a petroleum storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.
[20.5.117.1700 NMAC - N, 07/24/2018]

20.5.117.1701 PHASE-IN FOR ABOVE GROUND STORAGE TANKS: Owners and operators of above ground storage tanks shall comply with the requirements of 20.5.117 NMAC by July 1, 2007.
[20.5.117.1701 NMAC - N, 07/24/2018]

20.5.117.1702 [RESERVED]

20.5.117.1703 AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY:

A. Owners and operators of petroleum 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 storage tanks in at least the following per-occurrence amounts:

(1) For owners or operators of petroleum storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year, \$1,000,000; and

(2) For all other owners or operators of petroleum storage tanks, \$500,000.

B. Owners and 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:

(1) for owners or operators of one to 100 petroleum underground storage tanks, \$1,000,000; and

(2) for owners or operators of 101 or more petroleum underground storage tanks, \$2,000,000.

C. Owners and operators of petroleum above ground 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 above ground storage tanks in at least the following annual aggregate amounts:

(1) for owners or operators of one to 100 petroleum above ground storage tanks, \$1,000,000; and

(2) for owners or operators of 101 or more petroleum above ground storage tanks, \$2,000,000.

The annual aggregate on above ground storage tanks is separate from the annual aggregate on underground storage tanks, although an owner or operator of both above ground and underground storage tanks may include both types of tanks within the same annual aggregate if the aggregate is no less than the total of the annual aggregates required for each type of tank.

D. For the purposes of Subsections B, C and G of this section only, “a petroleum underground storage tank” or “a petroleum above ground storage tank” means a single containment unit and does not mean combinations of single containment units.

E. Except as provided in Subsection F of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(1) taking corrective action;

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

(3) compensating third parties for bodily injury and property damage caused by non-sudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in Subsections A, B and C of this section.

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

G. Owners and operators shall review the amount of aggregate assurance provided whenever additional petroleum storage tanks are acquired or installed. If the number of either petroleum underground storage tanks or petroleum above ground storage tanks for which assurance shall be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance for that particular type of tank (UST or AST) 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, owner and operators shall demonstrate financial responsibility in the amount of at least \$2,000,000 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.

H. The amounts of assurance required under this section exclude legal defense costs.

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

[20.5.117.1703 NMAC - N, 07/24/2018]

20.5.117.1704 ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS:

A. Subject to the limitations of Subsections B and C and the requirements of Subsection D of this section:

(1) an owner or operator may use any one or combination of the mechanisms listed in 20.5.117.1705 NMAC through 20.5.117.1713 NMAC to demonstrate financial responsibility under this part for one or more storage tanks; and

(2) a local government owner or operator may use any one or combination of the mechanisms listed in 20.5.117.1705 NMAC through 20.5.117.1717 NMAC to demonstrate financial responsibility under this part for one or more storage tanks.

B. An owner or operator may use a guarantee or surety bond under 20.5.117.1708 NMAC to establish financial responsibility only if the attorney general of the state has submitted a written statement to the department that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in this state. The department received this statement on July 24, 1988.

C. 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.

D. An owner or operator who intend to use one mechanism or a combination of mechanisms for tanks in more than one state may use the federal forms found in 40 CFR Part 280. If an owner or operator uses the federal forms, the owner or operator shall attach the following addendum: It is hereby acknowledged and agreed that, with respect to the storage tanks located in New Mexico, any and all references to Subtitle I of the federal Resource Conservation and Recovery Act or to one or more of the regulations of the United States environmental protection agency promulgated under Subtitle I and included in 40 CFR Part 280 are deemed references to the New Mexico Hazardous Waste Act and the applicable provisions of 20.5 NMAC, the New Mexico petroleum storage tank regulations.

[20.5.117.1704 NMAC - N, 07/24/2018]

20.5.117.1705 FINANCIAL TEST OF SELF INSURANCE:

A. An owner or operator, or guarantor, may satisfy the requirements of 20.5.117.1703 NMAC by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, or guarantor, shall meet the criteria of Subsection B or C of this section based on year-end financial statements for the latest completed fiscal year.

B. Criteria for option one.

(1) The owner or operator, or guarantor, shall have a tangible net worth of at least 10 times:

(a) the total of the applicable aggregate amounts required by 20.5.117.1703 NMAC based on the number of storage tanks for which a financial test is used to demonstrate financial responsibility to the department under this section;

(b) 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 CFR 264.101, Sections 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and

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

(2) The owner or operator, or guarantor, shall have a tangible net worth of at least \$10,000,000.

(3) The owner or operator, or guarantor, shall have a letter signed by the chief financial officer worded as specified in 20.5.117.1755 NMAC.

(4) The owner or operator, or guarantor, shall either:

(a) file financial statements annually with the United States securities and exchange commission, the energy information administration, or the rural utilities service; or

(b) 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.

(5) 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.

C. Criteria for option two.

(1) The owner or operator, or guarantor, shall meet the financial test requirements of 40 CFR Section 264.147(f)(1), substituting the appropriate amounts specified in Paragraphs (1) and (2) of Subsection B of 20.5.117.1703 NMAC for the “amount of liability coverage” each time specified in that section.

(2) The fiscal year-end financial statements of the owner or operator, or guarantor, shall be examined by an independent certified public accountant and be accompanied by the accountant’s report of the examination.

(3) The firm’s year-end financial statements cannot include an adverse auditor’s opinion, a disclaimer of opinion, or a “going concern” qualification.

(4) The owner or operator, or guarantor, shall have a letter signed by the chief financial officer, worded as specified in 20.5.117.1755 NMAC.

(5) If the financial statements of the owner or operator, or guarantor, are not submitted annually to the United States securities and exchange commission, the energy information administration or the rural utilities service, the owner or operator, or guarantor, shall obtain a special report by an independent certified public accountant stating that:

(a) the accountant 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, or guarantor, with the amounts in such financial statements; and

(b) in connection with that comparison, no matters came to the accountant’s attention which caused the accountant to believe that the specified data should be adjusted.

D. To demonstrate that it meets the financial test under Subsection B or C of this section, the chief financial officer of the owner or 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 shown in 20.5.117.1755 NMAC.

E. If owners or operators using the test to provide financial assurance finds that they no longer meet the requirements of the financial test based on the year-end financial statements, the owner or operator shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

F. The secretary may require reports of financial condition at any time from the owner or operator, or guarantor. If the secretary finds, on the basis of such reports or other information, that the owner or operator, or guarantor, no longer meets the financial test requirements of Subsections B or C and D of 20.5.117.1705 NMAC, the owner or operator shall obtain alternate coverage within 30 days after notification of such a finding.

G. If owners or operators fail to obtain alternate assurance within 150 days of finding that they no longer meet the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the secretary that they no longer meet the requirements of the financial test, the owner or operator shall notify the secretary of such failure within 10 days.

[20.5.117.1705 NMAC - N, 07/24/2018]

20.5.117.1706 GUARANTEE:

A. An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be:

(1) a firm that:

(a) possesses a controlling interest in the owner or operator;

(b) possesses a controlling interest in a firm described under Subparagraph (a) of

Paragraph (1) of Subsection A of this section; or

(c) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

(2) 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.

B. Within 120 days of the close of each financial reporting year the guarantor shall demonstrate that it meets the financial test criteria of 20.5.117.1705 NMAC based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in 20.5.117.1755 NMAC 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 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. If the secretary notifies the guarantor that he no longer meets the requirements of the financial test of Subsection B or C of 20.5.117.1705 NMAC and 20.5.117.1755 NMAC, the guarantor shall notify the owner or operator within 10 days of receiving such notification from the secretary. In both

cases, the guarantee will terminate no less than 120 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 Subsection E of 20.5.117.1724 NMAC.

C. The guarantee shall be worded as specified in 20.5.117.1756 NMAC.

D. An owner or operator who uses a guarantee to satisfy the requirements of 20.5.117.1703 NMAC 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 secretary under 20.5.117.1722 NMAC. This standby trust fund shall meet the requirements specified in 20.5.117.1713 NMAC.

[20.5.117.1706 NMAC - N, 07/24/2018]

20.5.117.1707 INSURANCE AND RISK RETENTION GROUP COVERAGE:

A. An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC 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.

B. Each insurance policy shall be amended by an endorsement worded as specified in Subsection A of 20.5.117.1757 NMAC or evidenced by a certificate of insurance worded as specified in Subsection B of 20.5.117.1757 NMAC, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

C. 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.

[20.5.117.1707 NMAC - N, 07/24/2018]

20.5.117.1708 SURETY BOND:

A. An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC 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 United States department of the treasury.

B. The surety bond shall be worded as specified in 20.5.117.1758 NMAC.

C. 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.

D. The owner or operator who uses a surety bond to satisfy the requirements of 20.5.117.1703 NMAC 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 secretary under 20.5.117.1722 NMAC. This standby trust fund shall meet the requirements specified in 20.5.117.1713 NMAC.

[20.5.117.1708 NMAC - N, 07/24/2018]

20.5.117.1709 LETTER OF CREDIT:

A. An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall be an entity that has the authority to issue letters of credit in each state where used and whose letter-of-credit operations are regulated and examined by a federal or state agency.

B. The letter of credit shall be worded as specified in 20.5.117.1759 NMAC.

C. An owner or operator who uses a letter of credit to satisfy the requirements of 20.5.117.1703 NMAC 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 secretary will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the secretary under 20.5.117.1722 NMAC. This standby trust fund shall meet the requirements specified in 20.5.117.1713 NMAC.

D. 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 120 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 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

[20.5.117.1709 NMAC - N, 07/24/2018]

20.5.117.1710 USE OF STATE REQUIRED MECHANISM:

A. An owner or operator may use a state-required financial mechanism to meet the requirements of 20.5.117.1703 NMAC if the secretary determines that the state mechanism is at least equivalent to the financial mechanisms specified in this part.

B. The secretary will evaluate the equivalency of a state-required mechanism principally in terms of: certainty of the availability of funds for taking corrective action or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The secretary may also consider other factors as is necessary.

C. The state, an owner or operator, or any other interested party may submit to the secretary a written petition requesting that one or more of the state-required mechanisms be considered acceptable for meeting the requirements of 20.5.117.1703 NMAC. The submission shall include copies of the appropriate state statutory and regulatory requirements and shall show the amount of funds for corrective action or for compensating third parties assured by the mechanism(s). The secretary may require the petitioner to submit additional information as is deemed necessary to make this determination.

D. Any petition under this section may be submitted on behalf of all of the state's petroleum underground storage tank owners and operators, petroleum above ground storage tank owners and operators, or both petroleum underground and above ground storage tank owners and operators.

E. The secretary will notify the petitioner of the determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this part. Pending this determination, the owners and operators using such mechanisms will be deemed to be in compliance with the requirements of 20.5.117.1703 NMAC for storage tanks located in the state for the amounts and types of costs covered by such mechanisms.

[20.5.117.1710 NMAC - N, 07/24/2018]

20.5.117.1711 STATE FUND OR OTHER STATE ASSURANCE:

A. An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC for storage tanks located in New Mexico if the state assures that monies will be available from a state fund or state assurance program to cover costs up to the limits specified in 20.5.117.1703 NMAC or otherwise assures that such costs will be paid if the secretary determines that the state's assurance is at least equivalent to the financial mechanisms specified in this part.

B. The secretary will evaluate the equivalency of a state fund or other state assurance principally in terms of: certainty of the availability of funds for taking corrective action; the amount of funds that will be made available; and the types of costs covered. The secretary may also consider other factors as is necessary.

C. The secretary shall consider a description of the state fund or other state assurance to be supplied as financial assurance, along with a list of the classes of storage tanks to which the funds may be applied. The secretary may also consider additional information as is deemed necessary to make a determination regarding the acceptability of the state fund or other state assurance. Pending the determination by the secretary, the owner or operator of a covered class of storage tanks will be deemed to be in compliance with the requirements of 20.5.117.1703 NMAC for the amounts and types of costs covered by the state fund or other state assurance.

D. Within 60 days after the secretary determines the state's fund or other assurance is acceptable in lieu of other financial mechanisms specified in 20.5.117 NMAC the secretary shall provide to each owner or operator for which it is assuming financial responsibility a letter or certificate describing the nature of the state's assumption of responsibility. The letter or certificate from the secretary shall include, or have attached to it, the following information: the facility's name and address and the amount of funds for corrective action or for compensating third parties that is assured by the state. The owner or operator shall maintain this letter or certificate on file as proof of financial responsibility in accordance with Paragraph (8) of Subsection B of 20.5.117.1721 NMAC.

[20.5.117.1711 NMAC - N, 07/24/2018]

20.5.117.1712 TRUST FUND:

A. An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC 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.

B. The wording of the trust agreement shall be identical to the wording specified in 20.5.117.1763 NMAC with the addition of the addendum required by Subsection D of 20.5.117.1704 NMAC, and shall be accompanied by a formal certification of acknowledgment as specified in Subsection B of 20.5.117.1763 NMAC.

C. 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.

D. 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 secretary for release of the excess.

E. If other financial assurance as specified in this part is substituted for all or part of the trust fund, the owner or operator may submit a written request to the secretary for release of the excess.

F. Within 60 days after receiving a request from the owner or operator for release of funds as specified in Subsection D or E of this section, the secretary will instruct the trustee to release to the owner or operator such funds as the secretary specifies in writing.

[20.5.117.1712 NMAC - N, 07/24/2018]

20.5.117.1713 STANDBY TRUST FUND:

A. An owner or operator using any one of the mechanisms authorized by 20.5.117.1706, 1708, or 1709 NMAC shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund 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.

B. The standby trust agreement shall be worded as specified in 20.5.117.1763 NMAC.

C. The secretary will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the secretary 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.

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

[20.5.117.1713 NMAC - N, 07/24/2018]

20.5.117.1714 LOCAL GOVERNMENT BOND RATING TEST:

A. A general purpose local government owner or operator or local government serving as a guarantor, or a local government owner or operator or guarantor which is not a general purpose local government but which has the legal authority to issue general obligation bonds, may satisfy the requirements of 20.5.117.1703 NMAC by having a currently outstanding issue or issues of general obligation bonds of \$1,000,000 or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating shall be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

B. A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and also does not have the legal authority to issue general obligation bonds may satisfy the requirements of 20.5.117.1703 NMAC by having both a currently outstanding issue or issues of revenue bonds of \$1,000,000 or more, excluding refunded issues, and a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard and Poor's, the lower rating for each bond shall be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

C. The local government owner or operator or guarantor shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

D. To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator or guarantor described in Subsection A of this section shall sign a letter worded exactly as specified in Subsection A of 20.5.117.1764 NMAC.

E. To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator or guarantor described in Subsection B of this section shall sign a letter worded exactly as specified in Subsection B of 20.5.117.1764 NMAC.

F. The secretary may require reports of financial condition at any time from the local government owner or operator, or local government guarantor. If the secretary finds, on the basis of such reports or other information, that the local government owner or operator, or guarantor, no longer meets the local government bond rating test requirements of this section, the local government owner or operator shall obtain alternative coverage within 30 days after notification of such a finding.

G. If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator shall obtain alternative coverage within 150 days of the change in status.

H. If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the bond rating test or within 30 days of notification by the director of the implementing agency that it no longer meets the requirements of the bond rating test, the owner or operator must notify the director of such failure within 10 days.

[20.5.117.1714 NMAC - N, 07/24/2018]

20.5.117.1715 LOCAL GOVERNMENT FINANCIAL TEST:

A. A local government owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator shall have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local government financial test, the owner or operator shall meet the criteria of Paragraphs (2) and (3) of Subsection B of this section based on year-end financial statements for the latest completed fiscal year.

B. The criteria for local government financial test.

(1) The local government owner or operator shall have the following information available, as shown in the year-end financial statements for the latest completed fiscal year.

(a) Total revenues. "Total revenues" is the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

(b) Total expenditures. "Total expenditures" is the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

(c) Local revenues. "Local revenues" is total revenues as defined in Subparagraph (a) of Paragraph (1) of Subsection B of this section minus the sum of all transfers from other governmental entities, including all monies received from federal, state, or local government sources.

(d) Debt service. "Debt service" is the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. It includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest-bearing warrants. It excludes payments on non-interest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

(e) Total funds. "Total funds" is the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. It includes federal securities, federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

(f) Population is the number of people in the area served by the local government.

(2) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

(3) The local government owner or operator shall have a letter signed by the chief financial officer worded as specified in Subsection C of this section and 20.5.117.1765 NMAC.

C. To demonstrate that it meets the financial test under Subsection B of this section, the chief financial officer of the local government owner or operator, 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 specified in 20.5.117.1765 NMAC.

D. If a local government owner or operator using the test to provide financial assurance finds that it 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 150 days of the end of the year for which financial statements have been prepared.

E. The secretary may require reports of financial condition at any time from the local government owner or operator. If the secretary finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of Subsections B and C of this section, the owner or operator shall obtain alternate coverage within 30 days after notification of such a finding.

F. If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within 30 days of notification by the secretary that it no longer meets the requirements of the financial test, the owner or operator shall notify the secretary of such failure within 10 days.

[20.5.117.1715 NMAC - N, 07/24/2018]

20.5.117.1716 LOCAL GOVERNMENT GUARANTEE:

A. A local government owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be either the state or a local government having a "substantial governmental relationship" with the owner and operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor shall do one of the following:

(1) demonstrate that it meets the bond rating test requirement of 20.5.117.1714 NMAC and deliver a copy of the chief financial officer's letter as contained in 20.5.117.1764 NMAC to the local government owner or operator;

(2) demonstrate that it meets the worksheet test requirements of 20.5.117.1715 and 20.5.117.1765 NMAC and deliver a copy of the chief financial officer's letter as contained in 20.5.117.1765 NMAC to the local government owner or operator; or

(3) demonstrate that it meets the local government fund requirements of Subsection A, B or C of 20.5.117.1717 NMAC and deliver a copy of the chief financial officer's letter as contained in 20.5.117.1767 NMAC to the local government owner or operator.

B. If the local government guarantor is unable to demonstrate financial assurance under any provision of 20.5.117.1714 or 20.5.117.1715 NMAC or Subsection A, B, or C of 20.5.117.1717 NMAC at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternative coverage as specified in Subsection E of 20.5.117.1724 NMAC.

C. The guarantee agreement shall be worded as specified in Subsection A or B of 20.5.117.1766 NMAC, depending on which of the following alternative guarantee arrangements is selected.

(1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the secretary, the guarantee shall be worded as specified in Subsection A of 20.5.117.1766 NMAC.

(2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the secretary for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in Subsection B of 20.5.117.1766 NMAC.

D. If the guarantor is the state, the local government guarantee with standby trust shall be worded as specified in Paragraph (1) of Subsection A of 20.5.117.1766 NMAC except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, the local government guarantee with standby trust shall be worded as specified in Paragraph (2) of Subsection A of

20.5.117.1766 NMAC except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

E. If the guarantor is the state, the local government guarantee without standby trust shall be worded as specified in Paragraph (1) of Subsection B of 20.5.117.1766 NMAC except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, the local government guarantee without standby trust shall be worded as specified in Paragraph (2) of Subsection B of 20.5.117.1766 NMAC, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

[20.5.117.1716 NMAC - N, 07/24/2018]

20.5.117.1717 LOCAL GOVERNMENT FUND: A local government owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in Subsection B of this section, a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets the requirements in either Subsection A, B or C of this section.

A. The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay 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, petroleum above ground storage tanks, or both and is funded for the full amount of coverage required under 20.5.117.1703 NMAC, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage.

B. The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, petroleum above ground storage tanks, or both and is funded for five times the full amount of coverage required under 20.5.117.1703 NMAC, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under 20.5.117.1703 NMAC, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund.

C. The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay 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. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven-year period is hereafter referred to as the “pay-in-period.” The amount of each payment shall be determined by this formula: $(TF - CF)/Y$, where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and

(1) the local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available 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, petroleum above ground storage tanks, or both; or

(2) the local government owner or operator has a letter signed by the state attorney general stating that the use of the bonding authority will not increase the local government’s debt beyond the legal debt ceilings established by the relevant state laws. The letter shall also state that prior voter approval is not necessary before use of the bonding authority.

D. To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator or guarantor shall sign a letter worded exactly as specified in 20.5.117.1767 NMAC.

[20.5.117.1717 NMAC - N, 07/24/2018]

20.5.117.1718 SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS BY OWNER OR OPERATOR:

A. Owners and operators may substitute any alternate financial assurance mechanisms as specified in this part, provided that at all times they maintain an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of 20.5.117.1703 NMAC.

B. After obtaining alternate financial assurance as specified in this part, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.
[20.5.117.1718 NMAC - N, 07/24/2018]

20.5.117.1719 CANCELLATION OR NON-RENEWAL BY A PROVIDER OF FINANCIAL ASSURANCE:

A. 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.

(1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) Termination of insurance or risk retention group coverage, except for non-payment or misrepresentation by the insured, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in 20.5.117.1724 NMAC, the owner or operator shall obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator shall notify the secretary of such failure and submit:

(1) the name and address of the provider of financial assurance;
(2) the effective date of termination; and
(3) the evidence of the financial assurance mechanism subject to the termination maintained in accordance with Subsection B of 20.5.117.1721 NMAC.

[20.5.117.1719 NMAC - N, 07/24/2018]

20.5.117.1720 REPORTING BY OWNER OR OPERATOR:

A. Owners and operators shall submit the appropriate forms listed in Subsection B of 20.5.117.1721 NMAC documenting current evidence of financial responsibility to the secretary:

(1) within 30 days after the owner or operator identifies a release from a storage tank required to be reported under 20.5.102.204 NMAC or 20.5.118 NMAC;

(2) if the owner or operator fails to obtain alternate coverage as required by this part, within 30 days after the owner or operator receives notice of:

(a) commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming a provider of financial assurance as a debtor,

(b) suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(c) failure of a guarantor to meet the requirements of the financial test, or

(d) other incapacity of a provider of financial assurance, except as provided in Paragraph (3) of this subsection;

(3) if the owner or operator fails to obtain alternate coverage as required by this part, within 60 days after the owner or operator receives notice that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs; or

(4) as required by Subsection G of 20.5.117.1705 NMAC and Subsection B of 20.5.117.1719 NMAC.

B. Owners and operators shall certify compliance with the financial responsibility requirements of this part as specified in the new tank registration form when registering a new storage tank under 20.5.102.202 NMAC.

C. The secretary may require an owner or operator to submit evidence of financial assurance as described in Subsection B of 20.5.117.1721 NMAC or other information relevant to compliance with this part at any time.

[20.5.117.1720 NMAC - N, 07/24/2018]

20.5.117.1721 RECORD KEEPING:

A. Owners and operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this part for a storage tank until released from the requirements of this part under 20.5.117.1723 NMAC. An owner or operator shall maintain such evidence at the storage tank site or the owner's or operator's place of business. Records maintained off-site shall be made available upon request of the department.

B. Owners and operators shall maintain the following types of evidence of financial responsibility:

(1) An owner or operator using an assurance mechanism specified in 20.5.117.1705 NMAC through 20.5.117.1710 NMAC or 20.5.117.1712 NMAC or 20.5.117.1714 through 20.5.117.1717 NMAC shall maintain a copy of the instrument worded as specified in this part.

(2) An owner or operator using a financial test or guarantee, a local government financial test or a local government guarantee supported by the local government financial test 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 120 days after the close of the financial reporting year.

(3) 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.

(4) A local government owner or operator using a local government guarantee under Subsection D of 20.5.117.1716 NMAC shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(5) A local government owner or operator using the local government bond rating test under 20.5.117.1714 NMAC shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

(6) A local government owner or operator using the local government guarantee under 20.5.117.1716 NMAC, where the guarantor's demonstration of financial responsibility relies on the bond rating test under 20.5.117.1714 NMAC shall maintain a copy of the guarantor's bond rating published within the last 12 months by Moody's or Standard & Poor's.

(7) 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.

(8) An owner or operator covered by a state fund or other state assurance shall maintain on file a copy of any evidence of coverage supplied by or required by the state under Subsection D of 20.5.117.1711 NMAC.

(9) An owner or operator using a local government fund under 20.5.117.1717 NMAC shall maintain the following documents:

(a) a copy of the state constitutional provision or local government statute charter, ordinance, or order dedicating the fund, and

(b) year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under Subsection A of 20.5.117.1717 NMAC using incremental funding backed by bonding authority, the financial statements shall show the previous year's balance the amount of funding during the year, and the closing balance in the fund.

(c) If the fund is established under Subsection A of 20.5.117.1717 NMAC using incremental funding backed by bonding authority, the owner or operator shall also maintain documentation of the required bonding authority, including either the results of a voter referendum under Paragraph (1) of Subsection C of 20.5.117.1717 NMAC or attestation by the state attorney general as specified under Paragraph (2) of Subsection C of 20.5.117.1717 NMAC.

(10) A local government owner or operator using the local government guarantee supported by the local government fund shall maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

(11) Owners and operators using an assurance mechanism specified in 20.5.117.1705 through 20.5.117.1717 NMAC shall maintain an updated copy of a certification of financial responsibility worded as specified in 20.5.117.1771 NMAC. The owner or operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).
[20.5.117.1721 NMAC - N, 07/24/2018]

20.5.117.1722 DRAWING ON FINANCIAL ASSURANCE MECHANISMS:

A. The secretary shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the secretary, up to the limit of funds provided by the financial assurance mechanism, into the standby trust under certain conditions:

(1) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and the secretary determines or suspects that a release from a storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the secretary pursuant to 20.5.102 or 20.5.118 NMAC of a release from a storage tank covered by the mechanism; or

(2) The conditions of Paragraph (1) or Paragraph (2) of Subsection B of this section are satisfied.

B. The secretary may draw on a standby trust fund when:

(1) the secretary 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 20.5.119 NMAC; or

(2) the secretary has received one of the following:

(a) 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, worded as specified in 20.5.117.1772 NMAC; or

(b) 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 a storage tank covered by financial assurance under this part and the secretary determines that the owner or operator has not satisfied the judgment.

C. If the secretary determines that the amount of corrective action costs and third-party liability claims eligible for payment under Subsection B 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 secretary shall pay third-party liability claims in the order in which the secretary receives certifications under Subparagraph (a) of Paragraph (2) and valid court orders under Subparagraph (b) of Paragraph (2) of Subsection B of this section.

D. A governmental entity acting as guarantor under Subsection E of 20.5.117.1716 NMAC shall make payments as directed by the secretary under the circumstances described in Subsections A, B and C of this section.

[20.5.117.1722 NMAC - N, 07/24/2018]

20.5.117.1723 RELEASE FROM THE REQUIREMENTS: An owner or operator is no longer required to maintain financial responsibility under this part for a storage tank after the tank has been permanently closed or undergoes a change in service or, if corrective action is required, after corrective action has been completed and the tank has been permanently closed or undergoes a change in service as required by 20.5.115 NMAC.

[20.5.117.1723 NMAC - N, 07/24/2018]

20.5.117.1724 BANKRUPTCY OR OTHER INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF FINANCIAL ASSURANCE:

A. Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming an owner or operator as debtor, the owner or operator shall notify the secretary by certified mail of such commencement and submit the appropriate forms listed in Subsection B of 20.5.117.1721 NMAC documenting current financial responsibility.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., 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 20.5.117.1706 NMAC.

C. Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming a local government owner or operator as debtor, the local government owner or operator shall notify the secretary by certified mail of such commencement and submit the appropriate forms listed in Subsection B of 20.5.117.1721 NMAC documenting current financial responsibility.

D. Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming a guarantor providing a local government financial assurance as debtor, such guarantor shall notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in 20.5.117.1716 NMAC.

E. 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, letter of credit, or state-required mechanism. The owner or operator shall obtain alternate financial assurance as specified in this part within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he shall notify the secretary.

F. Within 60 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.

[20.5.117.1724 NMAC - N, 07/24/2018]

20.5.117.1725 REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS:

A. If at any time after a standby trust is funded upon the instruction of the secretary with funds drawn from a guarantee, local government guarantee with standby trust, 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:

(1) replenish the value of financial assurance to equal the full amount of coverage required;
or

(2) acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 20.5.117.1703 NMAC. 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.

[20.5.117.1725 NMAC - N, 07/24/2018]

20.5.117.1726 to 20.5.117.1754 [RESERVED]

20.5.117.1755 FORM DOCUMENTS FOR FINANCIAL TEST OF SELF INSURANCE: To demonstrate that it meets the financial test under Subsection B or C of 20.5.117.1705 NMAC, the chief financial officer of the owner or 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 follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

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," 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" or "non-sudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC. If this financial test is used to assure both underground and above ground storage tanks, identify each tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC.]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or aggregate arising from operating (an) underground storage tank(s) and at least [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

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 or another financial test under 20.5.117 New Mexico Administrative Code (NMAC). If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulations

Amount

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)	\$ _____
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 Subsection B of 20.5.117.1705 NMAC are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of Subsection C of 20.5.117.1705 NMAC are being used to demonstrate compliance with the financial test requirements.]

Alternative I

1. Amount of annual aggregate coverage for storage tanks 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 \$10,000,000?	_____
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 Utilities Service?	_____
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 aggregate coverage for storage tanks being assured by a financial test, and/or guarantee	\$ _____
2. Amount of corrective action, closure and post-closure care costs, liability cover-age, 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 \$10,000,000?	_____	_____
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	_____	
	Yes	No
19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Utilities Service?	_____	_____
[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 20.5.117.1755 NMAC as such regulations were constituted on the date shown immediately below.
 [Signature]
 [Name]
 [Title]
 [Date]

[20.5.117.1755 NMAC - N, 07/24/2018]

20.5.117.1756 FORM DOCUMENT FOR GUARANTEE: The guarantee shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to the New Mexico Environment Department 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 Subsection B, C or D of 20.5.117.1705 New Mexico Administrative Code (NMAC) and agrees to comply with the requirements for guarantors as specified in Subsection B of 20.5.117.1706 NMAC.

(2) [Owner or operator] owns or operates the following 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 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies 20.5.117.1703 NMAC 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 "non-sudden 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 and at least [insert dollar amount] per occurrence and [insert: dollar amount] annual

aggregate arising from operating the above-identified above ground storage tank(s).

(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 department 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 secretary has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the guarantor, upon instructions from the secretary of the Environment Department, shall fund a standby trust fund in accordance with the provisions of 20.5.117.1713 NMAC, in an amount not to exceed the coverage limits specified above.

In the event that the secretary 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 20.5.119 NMAC, the guarantor upon written instructions from the secretary shall fund a standby trust in accordance with the provisions of 20.5.117.1713 NMAC 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 “non-sudden”] 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 secretary, shall fund a standby trust in accordance with the provisions of 20.5.117.1713 NMAC 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 Subsections B, C and D of 20.5.117.1705 NMAC, 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 the Bankruptcy Code, 11 U.S.C., 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 20.5 NMAC, the New Mexico Petroleum Storage Tank Regulations.

(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 20.5.119 NMAC 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 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 20.5.117.1703 NMAC.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], 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 20.5.117.1756 NMAC, 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:

[20.5.117.1756 NMAC - N, 07/24/2018]

20.5.117.1757 FORM DOCUMENTS FOR INSURANCE AND RISK RETENTION GROUP

COVERAGE: To use insurance to satisfy requirements of 20.5.117.1703 NMAC, as described in 20.5.117.1707 NMAC, each insurance policy shall be amended by an endorsement worded as specified in Subsection A of this section or evidenced by a certificate of insurance worded as specified in Subsection B of this section, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted:

A. Required wording for 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 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 this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). 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 20.5.102.202 NMAC 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 “non-sudden 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 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 storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each 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 20.5.117.1705 through 20.5.117.1712 NMAC and 20.5.117.1714 NMAC through 20.5.117.1717 NMAC.

c. Whenever requested by the Secretary of the Environment Department, [“Insurer” or “Group”] agrees to furnish to the Secretary a signed duplicate original of the policy and endorsements.

d. Cancellation or any other termination of the insurance by the [“Insurer” or “Group”], except for non-payment 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 non-payment 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 non-renewal 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 Paragraph (1) of Subsection A of 20.5.117.1757 NMAC 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]

B. Required wording for certificate of insurance.

CERTIFICATION

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 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 this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as above ground or underground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). 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 20.5.102.202 NMAC 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 "non-sudden 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 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 storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each 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 20.5.117.1705 through 20.5.117.1712 NMAC and 20.5.117.1714 NMAC through 20.5.117.1717 NMAC.

c. Whenever requested by the Secretary of the Environment Department, the ["Insurer" or "Group"] agrees to furnish to the Secretary 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 non-payment 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 non-payment 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 non-renewal 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 Subsection B of 20.5.117.1757 NMAC 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]

[Type name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

[20.5.117.1757 NMAC - N, 07/24/2018]

20.5.117.1758 FORM DOCUMENT FOR SURETY BOND: To satisfy the requirements of 20.5.117.1708 NMAC, the surety bond shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted:

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 this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). 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 20.5.102.202 NMAC, 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 "non-sudden accidental releases" or "accidental releases" "arising from operating the 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 New Mexico Environment Department, 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 federal Solid Waste Disposal Act, as amended, and the New Mexico Hazardous Waste Act, 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 “non-sudden 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 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 20.5.119 NMAC and the instructions of the Secretary of the New Mexico Environment Department for,” and/or “compensate injured third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “non-sudden accidental releases” or “accidental releases”] arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 20.5.117 NMAC, 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:

(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 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 20.5.117.1703 NMAC.

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 Secretary that the Principal has failed to [“take corrective action, in accordance with 20.5.119 NMAC and the Secretary's instructions,” and/or “compensate injured third parties”] as guaranteed by this bond, the Surety(ies) shall either perform [“corrective action in accordance with 20.5.119 NMAC and the Secretary'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 Secretary under 20.5.117.1713 NMAC.

Upon notification by the Secretary 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 Secretary 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 Secretary under 20.5.117.1713 NMAC.

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 Whereof, 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 20.5.117.1758 NMAC, 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: \$ _____

[20.5.117.1758 NMAC - N, 07/24/2018]

20.5.117.1759 FORM DOCUMENT FOR LETTER OF CREDIT: To satisfy the requirements of 20.5.117.1709 NMAC, the letter of credit shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

[Name and address of the Secretary of the New Mexico Environment Department]

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 federal Solid Waste Disposal Act, as amended, and the New Mexico Hazardous Waste Act, 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 "non-sudden 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 and the above ground 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 this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground and above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). 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 20.5.102.202 NMAC 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 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 20.5.117.1703 NMAC.

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 20.5.117.1759 NMAC, 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”].

[20.5.117.1759 NMAC - N, 07/24/2018]

20.5.117.1760 to 20.5.117.1762 [RESERVED]

20.5.117.1763 FORM DOCUMENTS FOR STANDBY TRUST FUND: To satisfy the requirements of 20.5.117.1712 NMAC, the standby trust agreement shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust agreement, the “Agreement,” entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert “corporation,” “partnership,” “association,” or “proprietorship”], the “Grantor,” and [name of corporate trustee], [insert “Incorporated in the state of ____” or “a national bank”], the “Trustee.”

Whereas, the New Mexico Environmental Improvement Board, “EIB,” has established certain regulations applicable to the Grantor, requiring that an owner or operator of a 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 non-sudden accidental releases arising from the operation of the storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) 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 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:

(a) The term “Grantor” means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) 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 [implementing agency]. 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 Secretary of the New Mexico Environment Department's instructions 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 hereinafter 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 Environment Department.

Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"]

The Trustee shall make payments from the Fund as the Secretary 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 "non-sudden 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 20.5.117.1703 New Mexico Administrative Code (NMAC).

The Trustee shall reimburse the Grantor, or other persons as specified by the Secretary, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the Secretary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Secretary 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(a), 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 20.5.117 NMAC.

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 Secretary to the Trustee shall be in writing, signed by the Secretary, 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 Secretary 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 Secretary, 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 Secretary 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 Secretary, 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 Secretary 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 New Mexico, 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 20.5.117.1763 NMAC and Paragraph (1) of Subsection B of 20.5.117.1713 NMAC 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]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

B. The standby trust agreement, or trust agreement, shall be accompanied by a formal certification of acknowledgment similar to the following:

State of
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]

[20.5.117.1763 NMAC - N, 07/24/2018]

20.5.117.1764 FORM DOCUMENTS FOR LOCAL GOVERNMENT BOND RATING TEST:

A. To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator and/or guarantor described in Subsection A of 20.5.117.1714 NMAC shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test 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” or “non-sudden accidental releases” or “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) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency
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[Moody’s or Standard & Poor’s]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1,000,000. All outstanding general obligation bonds issued by this government that have been rated by Moody’s or Standard & Poor’s are rated as at least investment grade (Moody’s Baa or Standard & Poor’s BBB) based on the most recent ratings published within the last 12 months. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in Subsection A of 20.5.117.1764 New Mexico Administrative Code (NMAC) as such regulations were constituted on the date shown immediately below.

[Signature]

Name]

[Title]

[Date]

B. To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator and/or guarantor described in Subsection B of 20.5.117.1714 NMAC shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test 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” or “non-sudden accidental releases” or “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) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency
---------------	------------------	-----------------------	----------------	------------------

[Moody’s or Standard & Poor’s]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1,000,000. All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. The revenue bonds listed are not backed by third-party credit enhancement or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in Subsection B of 20.5.117.1764 New Mexico Administrative Code (NMAC) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

Date]

[20.5.117.1764 NMAC - N, 07/24/2018]

20.5.117.1765 FORM DOCUMENT FOR LOCAL GOVERNMENT FINANCIAL TEST: To demonstrate that it meets the financial test under Subsection B of 20.5.117.1714 NMAC, the chief financial officer of the local government owner or operator, 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 follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test 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" or "non-sudden accidental releases" or "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) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). 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 20.5.102.202 NMAC.]

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A, or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

WORKSHEET FOR MUNICIPAL FINANCIAL TEST

PART I: BASIC INFORMATION

1. Total Revenues

a. Revenues (dollars)

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

b. Subtract interfund transfers (dollars)

c. Total Revenues (dollars)

2. Total Expenditures

a. Expenditures (dollars)

Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.

b. Subtract interfund transfers (dollars)

c. Total Expenditures (dollars)

3. Local Revenues

a. Total Revenues (from 1c) (dollars)

b. Subtract total intergovernmental transfers (dollars)

c. Local Revenues (dollars)

4. Debt Service

a. Interest and fiscal charges (dollars)

b. Add debt retirement (dollars)

c. Total Debt Service (dollars)

5. Total Funds (dollars)

(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds)

6. Population (persons)

PART II: APPLICATION OF TEST

7. Total Revenues to Population

a. Total Revenues (from 1c)

b. Population (from 6)

c. Divide 7a by 7b

d. Subtract 417

e. Divide by 5,212

f. Multiply by 4.095

8. Total Expenses to Population

a. Total Expenses (from 2c)

b. Population (from 6)

c. Divide 8a by 8b

d. Subtract 524

e. Divide by 5,401

f. Multiply by 4.095

9. Local Revenues to Total Revenues

a. Local Revenues (from 3c)

b. Total Revenues (from 1c)

c. Divide 9a by 9b

d. Subtract .695

e. Divide by .205

f. Multiply by 2.840

10. Debt Service to Population

a. Debt Service (from 4c)

b. Population (from 6)

c. Divide 10a by 10b

d. Subtract 51

e. Divide by 1,038

f. Multiply by -1.866

11. Debt Service to Total Revenues

a. Debt Service (from 4c)

b. Total Revenues (from 1c)

c. Divide 11a by 11b

d. Subtract .068

e. Divide by .259

f. Multiply by -3.533

12. Total Revenues to Total Expenses

a. Total Revenues (from 1c)

b. Total Expenses (from 2c)

- c. Divide 12a by 12b
- d. Subtract .910
- e. Divide by .899
- f. Multiply by 3.458
- 13. Funds Balance to Total Revenues
 - a. Total Funds (from 5)
 - b. Total Revenues (from 1c)
 - c. Divide 13a by 13b
 - d. Subtract .891
 - e. Divide by 9.156
 - f. Multiply by 3.270
- 14. Funds Balance to Total Expenses
 - a. Total Funds (from 5)
 - b. Total Expenses (from 2c)
 - c. Divide 14a by 14b
 - d. Subtract .866
 - e. Divide by 6.409
 - f. Multiply by 3.270
- 15. Total Funds to Population
 - a. Total Funds (from 5)
 - b. Population (from 6)
 - c. Divide 15a by 15b
 - d. Subtract 270
 - e. Divide by 4,548
 - f. Multiply by 1.866
- 16. Add $7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937$

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in 20.5.117.1765 NMAC, as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

[20.5.117.1765 NMAC - N, 07/24/2018]

20.5.117.1766 FORM DOCUMENTS FOR LOCAL GOVERNMENT GUARANTEE:

A. Required form documents for guarantees with standby trusts.

(1) Local government guarantee with standby trust made by the state. The guarantee agreement shall be worded as follows:

GUARANTEE

Guarantee made this [date] by the State of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following 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 this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). 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 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies the requirements of 20.5.117 NMAC 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 "non-sudden 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 and the above-identified above ground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.117.1722 NMAC; in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government 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 20.5.119 NMAC, the Guarantor upon written instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.117.1722 NMAC, 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 “non-sudden”] 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 Secretary, shall fund a standby trust in accordance with the provisions of 20.5.117.1722 NMAC to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

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

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5 NMAC.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.117 NMAC 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.

(7) The Guarantor’s obligation does not apply to any of the following:

(a) Any obligation of [local government 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: local government owner or operator] arising from, and in the course of, employment by [insert: local government 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: local government owner or operator] that is not the direct result of a release from a petroleum 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 20.5.117.1703 NMAC.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator],

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (1) of Subsection A of 20.5.117.1766 NMAC, 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:

(2) Local government guarantee with standby trust made by a local government. The guarantee agreement shall be worded as follows:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 20.5.117.1714 New Mexico Administrative Code (NMAC), the local government financial test requirements of 20.5.117.1715 NMAC, or the local government fund under Subsection A, B or C of 20.5.117.1717 NMAC.]

(2) [Local government owner or operator] owns or operates the following 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 this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC. 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 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies requirements of 20.5.117 NMAC 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 “non-sudden 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 and the above-identified above ground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department (Secretary) has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.117.1722 NMAC, in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government 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 20.5.119 NMAC, the Guarantor upon written instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.117.1722 NMAC, 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 “non-sudden”] 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 Secretary, shall fund a standby trust in accordance with the provisions of 20.5.117.1722 NMAC 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 or exceed the requirements of the financial responsibility mechanism specified in Paragraph (1), Guarantor shall send within 120 days of such failure, by certified mail, notice to [local government 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 the Bankruptcy Code, 11 U.S.C., 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 the New Mexico Petroleum Storage Tank Regulations (20.5 NMAC).

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.117 NMAC 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 [local government 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: local government owner or operator] arising from, and in the course of, employment by [insert: local government 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: local government owner or operator] that is not the direct result of a release from a petroleum 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 20.5.117.1703 NMAC.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (2) of Subsection A of 20.5.117.1766 NMAC, 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:

B. Required form documents for guarantees without standby trusts.

(1) Local government guarantee without standby trust made by the state. The guarantee agreement shall be worded as follows:

GUARANTEE

Guarantee made this [date] by the State of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following 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 this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). 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 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies requirements of 20.5.117 NMAC 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 "non-sudden 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 and the above-identified above ground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department (Secretary) has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon written instructions from the Secretary shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government 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 20.5.119 NMAC, the Guarantor upon written instructions from the Secretary shall make funds available to pay for corrective actions 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 “non-sudden”] 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 Secretary, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

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

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5 NMAC.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.117 NMAC 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. If notified of a probable release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(7) The Guarantor’s obligation does not apply to any of the following:

(a) Any obligation of [local government 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 local government owner or operator] arising from, and in the course of, employment by [insert: local government 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: local government owner or operator] that is not the direct result of a release from a petroleum 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 20.5.117.1703 NMAC.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (1) of Subsection B of 20.5.117.1766 NMAC, 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:

(2) Local government guarantee without standby trust made by a local government. The guarantee agreement shall be worded as follows:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 20.5.117.1714 New Mexico Administrative Code (NMAC), the local government financial test requirements of 20.5.117.1715 NMAC, the local government fund under of Subsections A, B and C of 20.5.117.1717 NMAC.]

(2) [Local government owner or operator] owns or operates the following 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 this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC. 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 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies requirements of 20.5.117 NMAC 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 "non-sudden 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 and the above-identified above ground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department (Secretary) has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon written instructions from the Secretary shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government 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 20.5.119 NMAC, the Guarantor upon written instructions from the Secretary shall make funds available to pay for corrective actions 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 "non-sudden"] 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 Secretary, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the Guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in Paragraph (1), Guarantor shall send within 120 days of such failure, by certified mail, notice to [local government 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 the Bankruptcy Code, 11 U.S.C., 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 20.5.117 NMAC.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.117 NMAC 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].

operator], as evidenced by the return receipt. If notified of a probable release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The Guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government 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: local government owner or operator] arising from, and in the course of, employment by [insert: local government 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: local government owner or operator] that is not the direct result of a release from a petroleum 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 20.5.117.1703 NMAC.

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (2) of Subsection B of 20.5.117.1766 NMAC 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:

[20.5.117.1766 NMAC - N, 07/24/2018]

20.5.117.1767 FORM DOCUMENT FOR LOCAL GOVERNMENT FUND: To demonstrate that it meets the requirements of the local government fund, as specified in 20.5.117.1717 NMAC, the chief financial officer of the local government owner or operator and/or guarantor shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the local government fund mechanism 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" or "non-sudden accidental releases" or "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) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this local government fund mechanism: [List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: "The local government fund is funded for the full amount of coverage required under 20.5.117.1703 New Mexico Administrative Code (NMAC) or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The local government fund is funded for five times the full amount of coverage required under 20.5.117.1703 New Mexico Administrative Code (NMAC) or funded for part of the required amount of coverage and used in combination with other mechanisms(s) that provide the remaining coverage," or "A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority"].

The details of the local government fund are as follows:

Amount in Fund (market value of fund of close of last fiscal year): _____ [If fund balance is incrementally funded as specified in Subsection C of 20.5.117.1717 NMAC, insert: Amount added to fund in the most recently completed fiscal year: Number of years remaining in the pay-in period: A copy of the state constitutional provision, or local government statute, charter, ordinance or order dedicating the fund is attached. I hereby certify that the wording of this letter is identical to the wording specified in 20.5.117.1767 NMAC, as such regulations were constituted on the date shown immediately below. [Signature] [Name] [Title] [Date]

[20.5.117.1767 NMAC - N, 07/24/2018]

20.5.117.1768 to 20.5.117.1770 [RESERVED]

20.5.117.1771 FORM DOCUMENT FOR RECORD KEEPING:

A. An owner or operator using an assurance mechanism specified in 20.5.117.1705 through 20.5.117.1717 NMAC shall maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF FINANCIAL RESPONSIBILITY [Owner or operator] hereby certifies that it is in compliance with the requirements of 20.5.117 New Mexico Administrative Code (NMAC). The financial assurance mechanism[s] used to demonstrate financial responsibility under 20.5.117 NMAC 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 “non-sudden 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]

B. The owner or operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

[20.5.117.1771 NMAC - N, 07/24/2018]

20.5.117.1772 FORM DOCUMENT FOR DRAWING ON FINANCIAL ASSURANCE MECHANISMS:

The 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 shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

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] storage tank should be paid in the amount of \$[insert: dollar amount].	
[Signatures]	[Signatures]
Owner or Operator	Claimant(s)
Attorney for	Attorney(s) for
Owner or Operator	Claimant(s)

(Notary) Date

(Notary) Date]

[20.5.117.1772 NMAC - N, 07/24/2018]

HISTORY OF 20.5.117 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB/USTR-9, Underground Storage Tank Regulations - Part IX - Financial Responsibility, filed 9/12/88.

EIB/USTR-9, Underground Storage Tank Regulations - Part IX - Financial Responsibility, filed 8/4/89.

EIB/USTR-9, Underground Storage Tank Regulations - Part IX - Financial Responsibility, filed 6/12/90.

History of Repealed Material: 20 NMAC 5.9, Underground Storage Tanks, Financial Responsibility (filed 2/27/97) repealed 8/15/03.

20.5.9 NMAC, Underground Storage Tanks, Financial Responsibility (filed 8/15/03) repealed 7/24/18.

Other History:

EIB/USTR - 9, Underground Storage Tank Regulations - Part IX - Financial Responsibility, filed 6/12/90, renumbered, reformatted and replaced by 20 NMAC 5.9, Underground Storage Tanks, Financial Responsibility, effective 11/5/95;

20 NMAC 5.9, Underground Storage Tanks, Financial Responsibility, filed 10/06/95 replaced by 20 NMAC 5.9, Underground Storage Tanks, Financial Responsibility, effective 4/1/97;

20 NMAC 5.9, Underground Storage Tanks, Financial Responsibility, filed 2/27/97, was renumbered reformatted and replaced by 20.5.9 NMAC, Petroleum Storage Tanks, Financial Responsibility, effective 8/15/03.

20.5.9, Underground Storage Tanks, Financial Responsibility, filed 8/15/03, was renumbered, reformatted, and replaced by 20.5.117 NMAC, Petroleum Storage Tanks, Financial Responsibility, effective 7/24/18.