



Financial Responsibility for Underground Storage Tanks: Insurance and Risk Retention Group Coverage

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RESOURCES

Wis. Admin. Code ATCP 93
http://docs.legis.wisconsin.gov/code/admin_code/atcp/090/93

Financial Responsibility—What is Required

Wisconsin Administrative Code section ATCP 93.705 requires owners/operators of petroleum storage tank systems to prove they are capable of covering any financial expenses or liability incurred as a result of accidental releases from the operation of their tank(s).

Per-Occurrence Coverage Required (Wis. Admin. Code § ATCP 93.705(1))

- Petroleum underground storage tank systems located at petroleum marketing facilities, or that throughput an average of more than 10,000 gallons of petroleum per month (based on annual throughput for the previous calendar year): \$1 million
- All other petroleum storage tank systems: \$500,000

Total Annual Coverage Required (Wis. Admin. Code § ATCP 93.705(2))

- 1 to 100 petroleum underground storage tanks: \$1 million
- 101 or more: \$2 million

Options for Establishing Financial Responsibility

- Financial test of self-insurance
- Guarantee
- Surety bond
- Letter of credit
- Trust fund
- Standby trust fund
- Local government bond rating test
- Local government financial test
- Local government guarantee
- Local government fund
- Insurance and risk retention group coverage

Insurance and Risk Retention Group Coverage

To use insurance and risk retention group coverage, an owner or operator must obtain liability insurance from a qualified insurer or risk retention group. This may be in the form of a separate insurance policy or an endorsement to a current insurance policy. Each insurance policy must be issued by an insurer or a risk retention group that 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.

Federal law requires the following special provisions to be included in the insurance policy.

- The amended endorsement or certificate of insurance must contain the exact language provided in 40 CFR 280.97(b)(1) or 40 CFR 280.97(b)(2). This provides “First Dollar” coverage that ensures disputes between the insurer and the insured over who is responsible for paying the amounts within the deductible limits will not interfere with prompt corrective actions or with third-party compensation.

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Insurance and Risk Retention Group Coverage (cont.)

- The legal defense costs must be excluded from the required amount of liability coverage.
- An extended reporting period must be provided for claims made to the policy.

Examples of a certificate of insurance and site schedule are provided below. The language in this document reflects the language required in 40 CFR 280.97 and cannot be altered or revised.

Certificate of Insurance			
Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Premium

Named Insured and Mailing Address: _____ **Name of Insurer:** _____

CERTIFICATE:

1. _____ Insurance Company, the 'Insurer', as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

Per Attached Scheduled Locations and Scheduled Storage Tank(s) Systems

for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy, arising from operating the underground storage tank(s) identified above.

The limits of liability are: \$ _____ Each Occurrence and: \$ _____ Annual Aggregate Policy Limit, 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: _____

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

- Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy to which this certificate applies.
- The Insurer 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. 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 40 CFR 280.95-280.102.
- Whenever requested by a Director of an implementing agency, the Insurer agrees to furnish to the Director a signed duplicate original of the Policy and all endorsements.
- Cancellation or any other termination of the insurance by the Insurer, 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.
- The insurance covers claims otherwise covered by the Policy that are reported to the Insurer within six (6) 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 an 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 40 CFR 280.97 (b) (2) and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess lines insurer, in one or more states.

BY _____

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██████████ Storage Tank Application
Declarations
Schedule of Locations and Storage Tanks
Effective as of
Attached to and forming part of Policy #

<u>Tank#</u>	<u>Cap. Gal.</u>	<u>Contents</u>	<u>Position</u>	<u>Instal Date</u>	<u>Lined Date</u>
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Total Number of Tanks:
Total Number of Facilities:

██████████ Storage Tank Certificate & Schedule Page 2 of 2