



## ADMINISTRATIVE RULES OF MONTANA

### 17.56.807 FINANCIAL TEST OF SELF-INSURANCE

- (1) An owner or operator, and/or guarantor, may satisfy the requirements of ARM 17.56.805 by passing a financial test as specified in this rule. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of (2) through (7) of this rule based on year-end financial statements for the latest completed fiscal year.
- (2) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:
  - (a) the total of the applicable aggregate amount required by ARM 17.56.805, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department under this rule;
  - (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, 264.143, 264.145, 264.147, 265.143, 265.145, 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 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.
- (3) The owner or operator, and/or guarantor, must have a tangible net worth of at least \$10 million.
- (4) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in (8) of this rule.
- (5) The owner or operator, and/or guarantor, must either:
  - (a) file financial statements annually with the U.S. 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 must have assigned the firm a financial strength rating of 4A or 5A.
- (6) 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.
- (7) The owner or operator, and/or guarantor must meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in ARM 17.56.805(2)(a) and (b) for the "amount of liability coverage" each time specified in that section.

- (a) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.
  - (b) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
  - (c) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in (4) of this rule.
  - (d) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities Exchange Commission, the Energy Information Administration or the Rural Utilities Service, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:
    - (i) he 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, and/or guarantor, with the amounts in such financial statements; and
    - (ii) in connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.
- (8) To demonstrate that it meets the financial test under (2) through (7) of this rule, the chief financial officer of the owner or operator, or guarantor, must 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 instruction 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," and/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" and/or "nonsudden accidental releases"] in the amount of at least [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test or a financial test under 40 CFR 280.95 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 a financial test under 40 CFR 280.95. 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 or a financial test under 40 CFR 280.95 by the tank identification number provided in the notification number provided in the notification submitted pursuant to 40 CFR 280.22 or ARM 17.56.902.]

A [insert: "financial test" and/or "guarantee"] is also used by this [insert: "owner or operator," or "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 or 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 ARM [17.56.807](#) (2) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of ARM [17.56.807](#) (3) are being used to demonstrate compliance with the financial test requirements.]

#### Alternative I

1. Amount of annual UST aggregate coverage 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 million? \_\_\_\_\_

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 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 UST aggregate coverage being assured by a 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] \$
7. Total assets in the US [required only if less than 90% of assets are located in the US \$  
Yes No
8. Is line 6 at least \$10 million?
9. Is line 6 at least 6 times line 3?
10. Are at least 90% of assets located in the US [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

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 ARM 17.56.807(4) as such rule was constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

- (9) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.
- (10) The director may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of (5) through (7) and (8), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

- (11) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the yearend financial statements, or within 30 days of notification by the director that he or she no longer meets the requirements of the financial test, the owner or operator must notify the director of such failure within ten days.

**Authorizing statute(s):** 75-11-505, MCA

**Implementing statute(s):** 75-11-505, MCA

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**History:** NEW, 1989 MAR p. 1912, Eff. 11/23/89; TRANS, from DHES, 1995 MAR p. 2259; AMD, 2007 MAR p. 1189, Eff. 8/24/07; AMD, 2018 MAR p. 1954, Eff. 10/6/18.