



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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<http://www.epa.gov/region08>

**APR 20 2015**

Ref: 8P-R

Mr. Alan Bakeberg  
Director of Engineering  
South Dakota Department of Environment and Natural Resources  
Petroleum Release Compensation Fund Program  
Joe Foss Building  
523 East Capitol Avenue  
Pierre, South Dakota 57501

Re: The EPA's Annual Soundness Review of the South Dakota Petroleum Release  
Compensation Fund for Fiscal Year (FY) 2014

Dear Mr. Bakeberg:

Enclosed is the U.S. Environmental Protection Agency's annual soundness review of the South Dakota Petroleum Release Compensation Fund. Based upon the EPA's findings, we do not have any major concerns about the Fund at this time. As long as there are no substantial changes in the average cost of leaking underground storage tank cleanups or an increase in new claims, the Fund should remain sound for federally-regulated underground storage tanks in FY 2015.

The EPA Region 8 appreciates the positive working relationship and collaboration between your program and ours. We look forward to working with you during the FY 2015 review.

If you would like to discuss this with me I can be reached at (303) 312-6392. If you require more specific information, the most knowledgeable person on my staff is Theresa Martella, who can be reached at (303) 312-6329 or at [martella.theresa@epa.gov](mailto:martella.theresa@epa.gov).

Sincerely,

Darcy O'Connor  
Acting Assistant Regional Administrator  
Office of Partnerships and Regulatory Assistance

cc: Bill Markley, Ground Water Quality Program, SD DENR  
Doug Miller, Storage Tanks Section, SD DENR

**South Dakota Petroleum Release Compensation Fund  
Annual Soundness Review  
Fiscal Year 2014**

**March 30, 2015**

The U. S. Environmental Protection Agency annually reviews and assesses the soundness of state cleanup funds established to fulfill the federal financial responsibility requirement for owners and/or operators of federally-regulated underground storage tanks (USTs). The EPA's fiscal year (FY) 2014 annual review and assessment of the South Dakota Petroleum Release Compensation Fund (State Fund) follows below.

The Fund Soundness Workbook Charts displaying the data EPA has considered in this assessment are provided in Appendix 1. More detail about the operational setting of the South Dakota State Fund can be found in Appendix 2. The South Dakota certificate of Financial Assurance for petroleum underground storage tanks is in Appendix 3.

**Are there major or pending changes to the State Fund?**

On June 12, 2014, the EPA Region 8 requested the South Dakota Department of Environment and Natural Resources (SD DENR) to make a reasonable effort to recover LUST Trust Fund expenditures incurred under their past and present cooperative agreements from liable owners and operators. Since most tank owners within the state are covered under the South Dakota State Fund, the State Fund approved the direct transfer of \$1,990,000 from the State Fund to the LUST Cost Recovery subfund in 2014. The \$1,990,000 will remain in South Dakota for the purpose of LUST Trust Fund remediating releases.

In a memo signed by SD DENR Secretary Pirner to Alan Bakeberg, Director of Engineering for the South Dakota State Fund, and Bill Markley, Administrator for the Ground Water Quality Program, South Dakota agreed to a settlement of approximately \$2 million for reasonable and necessary expenditures incurred and paid by the SD DENR Ground Water Program (LUST Program) to remediate petroleum contaminated sites. These sites were documented in this memo.

**Next steps.**

The South Dakota State Fund had enough money to address the federally-regulated fund-eligible (FRFE) backlog in 2014. However, due to the transfer of \$1,990,000 from the South Dakota State Fund to the LUST Cost Recovery subfund, the South Dakota State Fund and EPA should monitor the amount available for spending in FY 2015 and FY 2016 to ensure there are adequate monies to pay all claims and ensure soundness. There is no evidence of unsoundness as a result of the \$1,990,000 transfer from the South Dakota State Fund to the LUST Cost Recovery subfund as of the date of this report. As long as there are no substantial changes in the average cleanup costs or number of new claims, the South Dakota State Fund should remain sound for federally-regulated USTs in 2015.

The SD DENR is continuing its database upgrade project to identify spill cases associated with federally-regulated releases. As noted in the EPA's FY 2012 and FY 2013 reports on the soundness of the South Dakota State Fund, South Dakota does not distinguish between state and FRFE releases. The universe of tanks and releases provided by SD DENR in the FY 2014 State Fund Workbook includes USTs as well as used oil tanks, heating oil tanks, aboveground tanks (ASTs), abandoned tanks and farm

tanks. Therefore, the number of FRFE underground storage tanks has not been accurately determined. Accuracy is expected to be greatly improved when the spills database is upgraded. The upgrade is in progress and the EPA and South Dakota expect to be able to produce more accurate numbers for the 2015 review.

The average cost of cleanup in South Dakota is \$18,199, while the national average is \$144,183<sup>1</sup>. The South Dakota State Fund uses a risk-based closure process which lowers the cost of closure and most likely accounts for most of the variance. South Dakota explained that the average cost of cleanup reported includes all cases they pay on, whether they are USTs or ASTs, regulated or non-regulated, because at this point in time South Dakota databases do not distinguish between them. South Dakota also reported that another factor in the low average cost of cleanup is the relatively low cost of performing corrective action for abandoned tanks. As of July 1, 2014, the South Dakota State Fund had paid \$9.6 million dollars to remove tanks and perform corrective action on approximately 2,990 sites, which translates to an average cost of about \$3,200 per site. All of the Abandoned Tank Program (ATP) cases are petroleum USTs, but the majority of the ATP cases are not federally regulated. Under the regular reimbursement program as of July 1, 2014, the South Dakota State Fund had reimbursed approximately \$77 million dollars to perform corrective action at about 1,500 release sites, for an average cost of about \$51,000 per site. This is a more realistic average cost of cleanup. The EPA will continue to monitor these costs in FY 2015 and FY 2016.

### **What share of the state's backlog does the State Fund cover?**

In FY 2014, the South Dakota State Fund covered 98% of all federally-regulated USTs. (See Appendix 1, Chart 1). The South Dakota State Fund share of open releases continues to decline from a high of 476 in FY 2011 to 184 in FY 2014. Although the South Dakota State Fund reports 184 open releases, the SD DENR reports only 79 open releases. This is a difference of 105 releases between the two offices. South Dakota explained that 90% of the 105 difference was a result of the South Dakota State Fund counting open releases under the ATP Program as FRFE releases. The ATP releases are not reported in the 79 open FRFE releases reported by the SD DENR. The EPA expects the updated database will resolve most of these discrepancies in 2015.

Of the 184 open FRFE cleanups, 111 (60%) received a payment from the fund during FY 2014 (See Appendix 1, Chart 2).

### **How quickly is the State Fund addressing its open FRFE UST releases?**

South Dakota continues to clean up releases quickly, with the average length of cleanup taking less than 29 months (2 ½ years) from the date the release is reported (Appendix 1, Chart 5).

FY 2014 data demonstrate that the South Dakota State Fund is making progress cleaning up open releases. The EPA noted a 56% increase in new releases from FY 2012 to FY 2014, but the South Dakota State Fund officials explained the increase is actually due to the program identifying abandoned tanks. Almost all of these “new” releases are old releases that are low risk but have not been previously identified. The EPA concurs with this conclusion and understands that there could continue to be an increase in “new” releases, a majority of which are old releases being reported for the first time, rather than new releases due to equipment failure, operator error, etc.

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<sup>1</sup> Average cost per site cleanup = \$144,183 as reported in the ASTWMO 2014 State Fund Survey

The number of open FRFE releases at the beginning of the fiscal year declined by 87 releases (32%) from FY 2012 to FY 2014, showing that sites are being closed and the pace of cleanup is steady. Although there were 100 new cleanups completed in FY 2014, there was a net reduction of only 32 releases closed due to the 56% increase in new releases.<sup>2</sup> South Dakota has demonstrated a 17% reduction in open cleanups from FY 2012-FY 2014. The total number of cleanups completed increased 16% in FY 2014, from 84 in FY 2012 to 100 in FY 2014 (See Appendix 1, Chart 3).

There were 77 cleanups completed in 2014 that were financed by the South Dakota State Fund. There were 23 cleanups completed that never received payment from the State Fund. This may be due to the fact that many of the open cleanups may not have met the \$10,000 deductible during the fiscal year. South Dakota has no time limits on claims against the State Fund, and a number of active cases chose not to access the State Fund or chose to submit costs in one request at the end of the project. Other ongoing cases may not have met the reimbursement requirements and have additional work to complete before reimbursement may begin. Also, some cases are opened with a prior approval request to protect a site owner's reimbursement eligibility but are later determined to not have a spill. Finally, cases may be on extended monitoring schedules, so no costs may be incurred during any given year although the case is progressing as planned. (See Appendix 1, Chart 4).

### **Has the State Fund had enough money to address its open FRFE release cleanups?**

The State Fund carried forward an unspent balance and adjusted end-of-year balance of \$4,122,756 in FY 2014. This is a 28% decrease from the adjusted end-of-year balance of \$5,751,488 in FY 2013, but this decrease in unspent balance is due to the transfer of \$1,990,000 from the South Dakota State Fund to the LUST Cost Recover subfund (Appendix 1, Chart 6).

### **Is the State Fund financed to further reduce its open FRFE release cleanups?**

Income and spending levels from FY 2012 - FY 2014 demonstrate that the South Dakota State Fund had sufficient financing available to reduce the number of open FRFE cleanups. According to the data provided by the SD DENR, approximately \$1,385,634 was needed to work on all open FRFE releases in FY 2014. The South Dakota State Fund had \$7,254,272 available to spend (Appendix 1, Chart 7). This indicates that the South Dakota State Fund should have enough funds in FY 2015.

The average cost of cleanup in South Dakota in FY 2014 is \$18,199, which is well below the national average of \$144,183. South Dakota uses risk-based closure for releases and this lowers the cost of the average cleanup. However, because of the large variance between the national average and the South Dakota average, the EPA will continue to closely monitor the cost of cleanup in FY 2015 and FY 2016 (Appendix 1, Chart 7a).

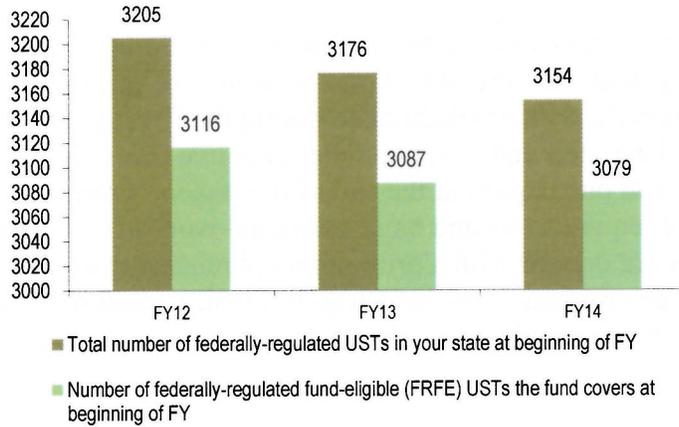
The SD DENR reported \$0 in unpaid cleanup claims at the end of FY 2014 (Appendix 1, Chart 8.)

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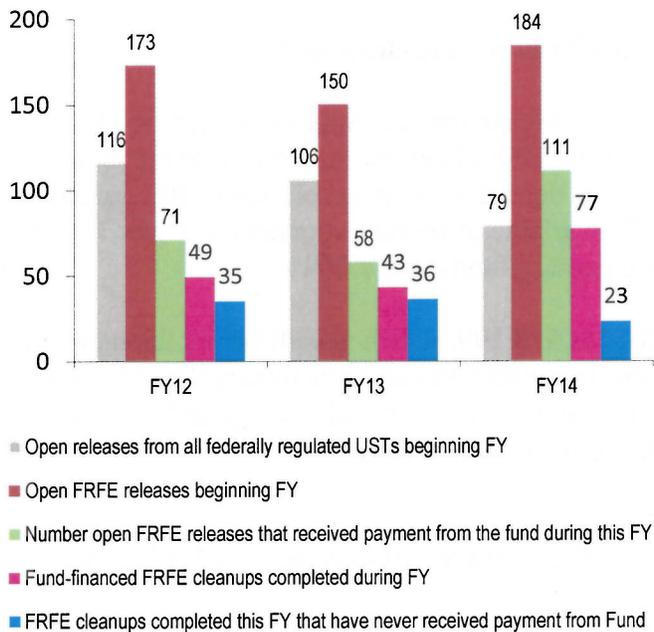
<sup>2</sup> Net change of open FRFE releases in FY 2014 = 132 – 100 cleanups completed = 32 cleanups completed overall

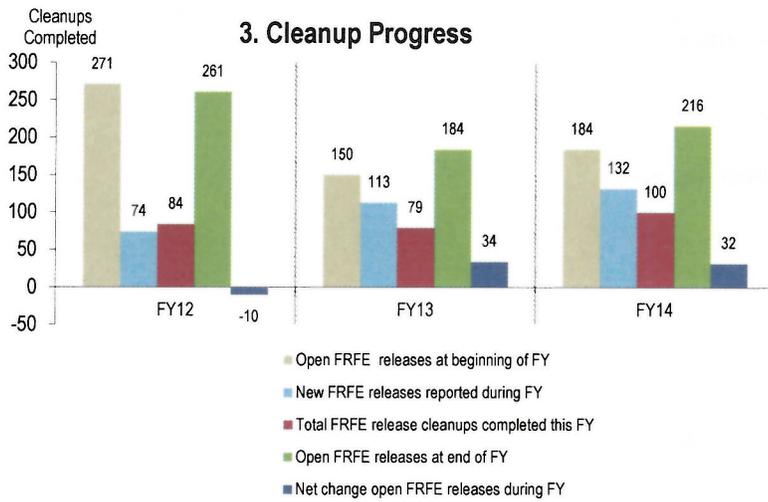
# Appendix 1: Data and Charts from South Dakota PRCF FY 2014 Soundness Workbook

## 1. USTs Covered By The Fund

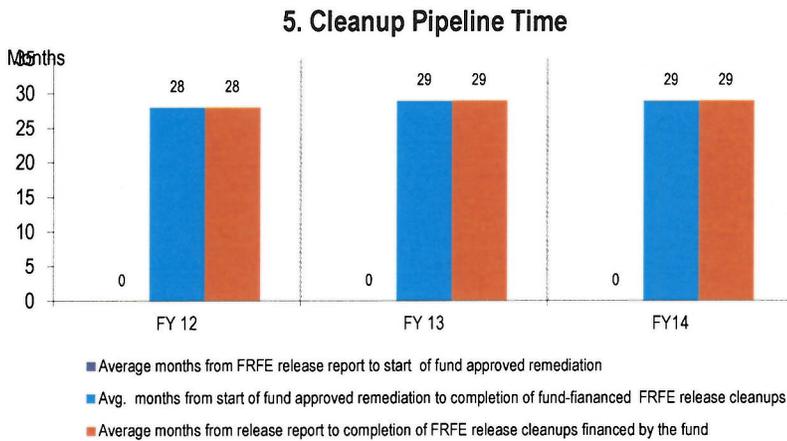
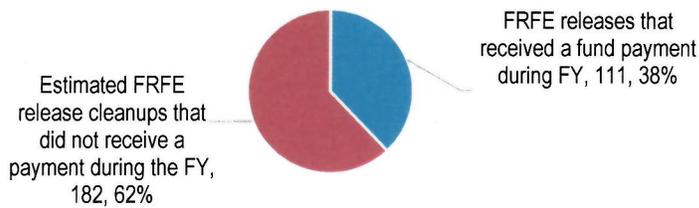


## 2. The Fund's Share Of Open UST Releases

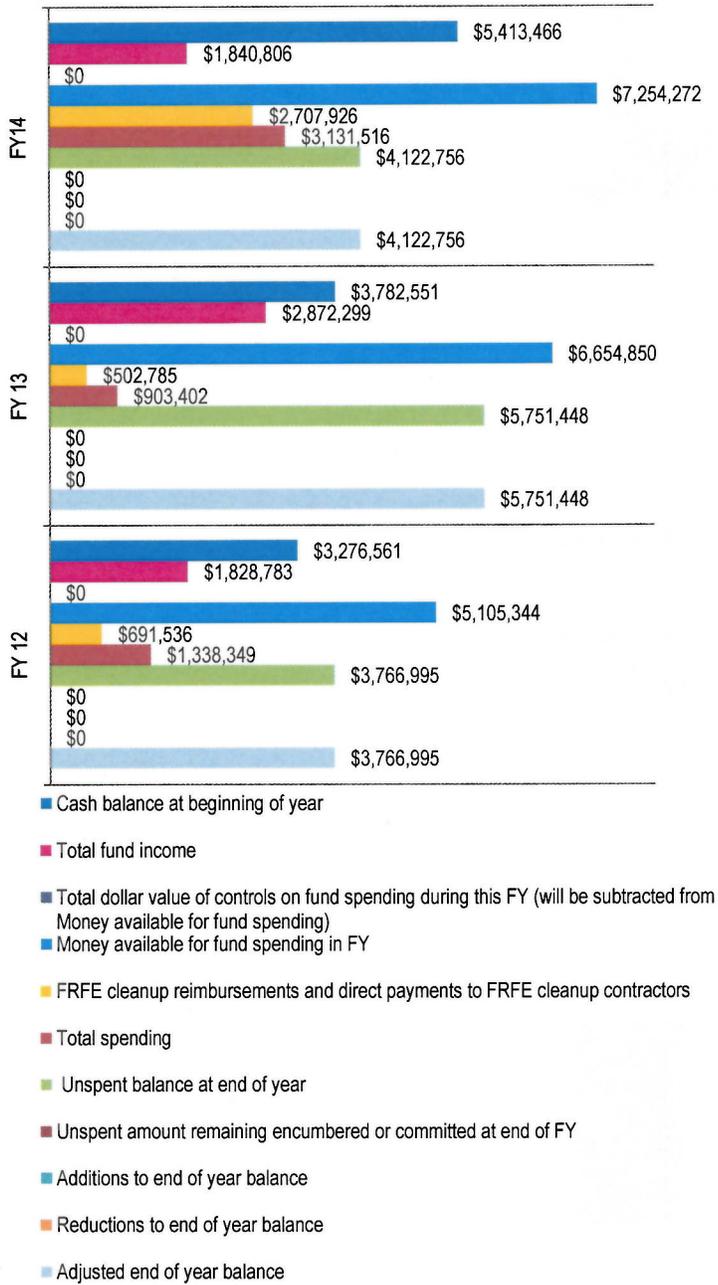




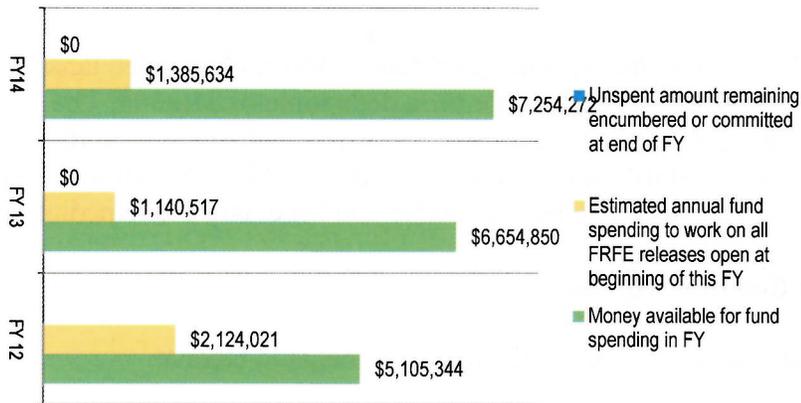
### 4. Paid and Estimated Unpaid FRFE Release Cleanups FY 14



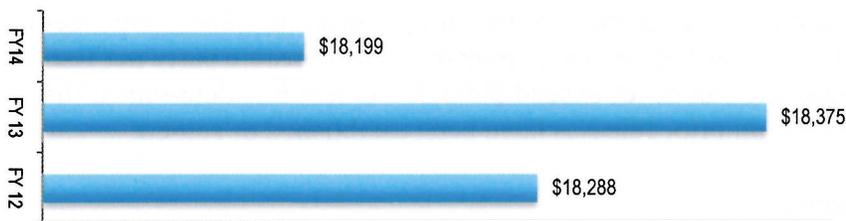
**Chart 6. Balance, Income and Spending**



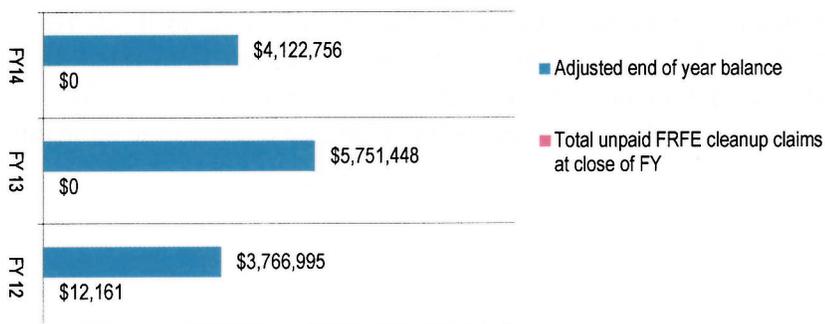
## 7. Available Funding And Estimated Annual Funding To Address All Open FRFE Sites Concurrently



## 7a. Average Cost of FRFE Release Cleanups



## 8. EOY Cash Balance And Unpaid Claims



## **Appendix 2: Background**

### **What the State Fund covers.**

The South Dakota State Fund covers USTs, used oil tanks, heating oil tanks, ASTs, abandoned tanks, and farm storage tanks. UST owners and operators are responsible for a deductible of \$10,000. The South Dakota State Fund covers: labor, testing and use of machinery; materials and supplies; authorized professional services; compensation damages for third-party claims; costs incurred by order of a federal, state, or local government; and any other expense found to be reasonable and necessary for remediation.

### **Eligibility requirements and determination of eligibility.**

An UST owner/operator must be in substantial compliance with all requirements to receive reimbursement from the State Fund.

### **Organizational setting and structure of the State Fund.**

SD DENR administers the South Dakota State Fund. The South Dakota State Fund was created to assist in the cleanup of certain petroleum releases, to investigate reported releases, to determine the amount of reimbursement due to responsible parties for corrective actions they have taken, to provide a financial assurance mechanism that will comply with the federal and state financial responsibility requirements for regulated petroleum tank owners, and to report to the Governor and Legislature. The reimbursement limit is \$1 million per occurrence and \$1.99 million annual aggregate per responsible party per fiscal year. Reimbursement for a single release site can never exceed \$990,000 unless it is determined that a new release has taken place and claims for all prior releases have been established or settled.

### **Sources and path of State Fund income.**

The South Dakota State Fund is financed with a 10.65% of a \$0.02 per gallon fee on petroleum products that is deposited into the State Fund. Additional sources of funding revenue include cost recovery and interest on the investment of money in the State Fund and money received as gifts to be used by the State Fund.

Payments are suspended except at high-risk sites when the State Fund balance falls to \$2 million. The use of risk-based corrective action criteria determines which sites are considered to be “high-risk.” In addition, if paying out claims would cause the cash balance in the State Fund to fall below \$100,000 for any week, all claims payable that week will be pro-rated (reduced by a percentage equal to the shortfall of \$100,000 in the State Fund).

**Appendix 3: Draft FR Certificate for Owner/Operator**



DEPARTMENT OF ENVIRONMENT  
and NATURAL RESOURCES

JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
denr.sd.gov



**SOUTH DAKOTA CERTIFICATE OF FINANCIAL ASSURANCE FOR  
PETROLEUM UNDERGROUND STORAGE TANKS**

Facility ID / Certificate # <<fac\_Id>>

Latitude: <<lat>>

Longitude: <<lon>>

Dear South Dakota Facility Owner/Operator,

The facility located at <<facility Address>>, <<City>> is afforded coverage by the South Dakota Petroleum Release Compensation Fund for reimbursement of reasonable and necessary costs to an eligible covered party for an approved corrective action and third-party claims in excess of ten thousand dollars and not to exceed one million dollars.

Code of federal regulations 40 CFR 280 requires owners or operators of regulated petroleum underground storage tanks to maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility at the underground storage tank site or the owner's or operator's place of business.

The SD PRCF has a \$10,000 deductible. Please indicate below how your facility will cover the deductible in the event of a release.

- |                                                |                                              |                                      |                                              |
|------------------------------------------------|----------------------------------------------|--------------------------------------|----------------------------------------------|
| <input type="checkbox"/> Insurance             | <input type="checkbox"/> Letter of Credit    | <input type="checkbox"/> Trust Fund  | <input type="checkbox"/> Stand-by Trust Fund |
| <input type="checkbox"/> Self-Insurance        | <input type="checkbox"/> Corporate Guarantee | <input type="checkbox"/> Surety Bond |                                              |
| <input type="checkbox"/> Other (specify) _____ |                                              |                                      |                                              |

\_\_\_\_\_  
Printed Name - Title

\_\_\_\_\_  
Signature / Date

**This document must be available during site inspections; please keep a copy on-site or at your place of business.**