

## **AST FR – 5 Guidance**

### **Tank Insurance for Performing Corrective Action**

An owner or operator may satisfy the requirements of WV Code §22-30-7 and 47 CSR §63-12 by obtaining insurance for performing corrective action from a qualified insurer or risk retention group. Insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

Each insurance policy shall be evidenced by a certificate of insurance worded as specified in AST FR-5 or amended by an endorsement worded as specified in AST FR-6 except that instructions in brackets shall be replaced with the relevant information and brackets deleted.

Each insurance policy shall be issued by an insurer or 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 the State of West Virginia and has a current Standard & Poor's rating of AAA, AA, A or BBB, or a current Moody's rating of Aaa, Aa, A or Baa.

The below template can be used to assist in filling out the AST FR-5 form. The brackets throughout this form contain instructions in red text. If you need to fill out the form you must download the AST FR-5 fillable PDF.

AST FR-5 (template)  
Certificate of Insurance

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 the Insurer or Risk Retention Group]*, the “insurer” or “Group,” as identified above, hereby certifies that it has issued liability insurance covering the following aboveground storage tanks (ASTs);

*[Attach tank schedule:*

*List for each facility: the name and address of the facility where tanks assured by this financial test are located, the tank registration number and the individual WVDEP issued Tank identification number.]*

For taking corrective action for releases from the presence, use, or operation of the ASTs identified in the attached tank schedule 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 ASTs 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 ASTs or locations, indicate the amount of coverage for each type of coverage and/or for each AST or location)*], exclusive of legal defense costs which are subject to a separate limits 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 subsection 12.2 of the AST rule.
  - c. Whenever requested by the West Virginia Department of Environmental Protection (WVDEP), the [*“Insurer” or “Group”*] agrees to furnish to the WVDEP 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.

e. [Insert for claims-made policies:

f. 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 the 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 [“*Insurer*” or “*Group*”] is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of West Virginia”].

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*Signature of authorized representative of Insurer or Risk Retention Group*

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*Name of person signing*

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*Title of person signing*

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*Authorized Representative of Insurer or Risk Retention Group*

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*Address of Representative*