**Section 704.218 Plugging and Abandonment Insurance**

a) An owner or operator may satisfy the financial assurance requirement by obtaining insurance that conforms to this Section and submitting a certificate of such insurance to the Agency. An owner or operator of a new injection well must submit the certificate of insurance to the Agency with the permit application or for approval operate under rule. The insurance must be effective before injection starts. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

b) The wording of the certificate of insurance must be as specified in Section 704.240.

c) The policy must be issued for a face amount at least equal to the current cost estimate, except as provided in Section 704.220. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

d) The policy must guarantee that funds will be available whenever final plugging and abandonment occurs. The policy must also guarantee that once plugging and abandonment begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Agency to such party or parties as the Agency specifies.

e) After beginning plugging and abandonment, an owner or operator or any other person authorized to perform plugging and abandonment may request reimbursement for plugging and abandonment expenditures by submitting itemized bills to the Agency. Within 60 days after receiving bills for plugging and abandonment activities, the Agency must determine whether the plugging and abandonment expenditures are in accordance with the plan or otherwise justified, and if so, it must instruct the insurer to make reimbursement in such amounts as the Agency specifies in writing. If the Agency has reason to believe that the cost of plugging and abandonment will be significantly greater than the face amount of the policy, it may withhold reimbursement of such amounts as it deems prudent until it determines, in accordance with Section 704.222, that the owner or operator is no longer required to maintain financial assurance for plugging and abandonment of the injection well.

f) The owner or operator must maintain the policy in full force and effect until the Agency consents to termination of the policy by the owner or operator, as specified in subsection (j). Failure to pay the premium, without substitution of alternate financial assurance, will constitute a significant violation of these regulations, warranting such remedy as the Agency deems necessary. Such violation will be deemed to begin upon receipt by the Agency of a notice of future cancellation, termination or failure to renew due to non-payment of the premium, rather than upon the date of expiration.

g) Each policy must contain provisions allowing assignment to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

h) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Agency. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with the date of receipt of the notice by both the Agency and the owner or operator, as evidenced by the return of receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration any of the following occurs:

1) The Agency deems the injection well abandoned;

2) The permit is terminated or revoked or a new permit is denied;

3) Plugging and abandonment is ordered by the Board, a U.S. district court, or any other court of competent jurisdiction;

4) The owner or operator is named as debtor in a voluntary or involuntary proceeding under 11 USC (Bankruptcy); or

5) The premium due is paid.

i) Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate following written approval by the Agency.

j) The Agency must give written consent to the owner or operator that the owner or operator may terminate the insurance policy when either of the following occurs:

1) An owner or operator substitutes alternate financial assurance; or

2) The Agency releases the owner or operator in accordance with Section 704.222.

BOARD NOTE: Derived from 40 CFR 144.63(e) (2017).

(Source: Amended at 42 Ill. Reg. 21095, effective November 19, 2018)