**Section 721.243 Financial Assurance Condition**

As required by Section 721.104(a)(24)(F)(vi), an owner or operator of a reclamation facility or an intermediate facility must have financial assurance as a condition of the exclusion. The owner or operator must choose from the options specified in subsections (a) through (e).

a) Trust Fund

1) An owner or operator may meet the requirements of this Section by establishing a trust fund that complies with this subsection (a) and submitting an originally signed duplicate of the trust agreement to the Agency. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

2) The wording of the trust agreement must be identical to the wording specified by the Agency under Section 721.251, and the trust agreement must be accompanied by a formal certification of acknowledgment, as specified by the Agency under Section 721.251. Schedule A of the trust agreement must be updated within 60 days after any change in the amount of the current cost estimate covered by the agreement.

3) The trust fund must be funded for the full amount of the current cost estimate before it may be relied upon to comply with this Section.

4) Whenever the current cost estimate changes, the owner or operator must compare the new cost estimate with the trustee's most recent annual valuation of the trust fund. Within 60 days after the change in the cost estimate, if the value of the fund is less than the amount of the new cost estimate, the owner or operator must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current cost estimate, or the owner or operator must obtain other financial assurance that complies with this Section to cover the difference.

5) If the value of the trust fund is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the Agency for release of the amount more than the current cost estimate.

6) If an owner or operator substitutes other financial assurance that complies with this Section for all or part of the trust fund, it may submit a written request to the Agency for release of the amount in excess of the current cost estimate covered by the trust fund.

7) Within 60 days after receiving a request from the owner or operator for a release of funds, as specified in subsection (a)(5) or (a)(6), the Agency will instruct the trustee to release to the owner or operator those funds that the Agency specifies in writing. If the owner or operator begins final closure under Subpart G of 35 Ill. Adm. Code 724 or 725, it may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, if the Agency determines that the partial or final closure expenditures conforms to the approved closure plan, or otherwise justified, the Agency will instruct the trustee to make reimbursements in those amounts as the Agency specifies in writing. If the Agency has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, the Agency may withhold reimbursements of those amounts that the Agency deems prudent until the Agency determines, in under 35 Ill. Adm. Code 725.243(i), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Agency does not instruct the trustee to make these reimbursements, the Agency must provide to the owner or operator a detailed written statement of reasons.

8) The Agency must agree to terminating the trust fund when either of the following has occurred:

A) The Agency determines that the owner or operator has substituted alternative financial assurance that complies with this Section; or

B) The Agency releases the owner or operator from obligation under this Section in compliance with subsection (i).

b) Surety Bond Guaranteeing Payment into a Trust Fund

1) An owner or operator may comply with this Section by obtaining a surety bond that complies with this subsection (b) and submitting the bond to the Agency. The surety company issuing the bond must, at a minimum, be listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

BOARD NOTE: The U.S. Department of the Treasury updates Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies", on an annual basis under 31 CFR 223.16. Circular 570 is available on the Internet from the following website: https://www.fiscal.treasury.gov/surety-bonds/circular-570.html.

2) The wording of the surety bond must be identical to the wording specified by the Agency under Section 721.251.

3) The owner or operator that uses a surety bond to comply with this Section must also establish a standby trust fund. Under the terms of the bond, all payments made under the bond will be deposited by the surety directly into the standby trust fund according to the Agency's instructions. This standby trust fund must comply with subsection (a), except that the following also apply:

A) The owner or operator must submit an originally signed duplicate of the trust agreement to the Agency with the surety bond; and

B) Until the standby trust fund is funded under this Section, the following are not required:

i) Payments into the trust fund, as specified in subsection (a);

ii) Updating Schedule A of the trust agreement to show current cost estimates;

iii) Annual valuations, as required by the trust agreement; and

iv) Notices of nonpayment, as required by the trust agreement.

4) The bond must guarantee that the owner or operator will undertake one of the following actions:

A) That the owner or operator will fund the standby trust fund in an amount equal to the penal sum of the bond before loss of the exclusion under Section 721.104(a)(24);

B) That the owner or operator will fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin closure issued by the Agency becomes final, or within 15 days after an order to begin closure is issued by the Board or a court of competent jurisdiction; or

C) Within 90 days after receipt by both the owner or operator and the Agency of a notice cancelling the bond from the surety, that the owner or operator will provide alternate financial assurance that complies with this Section and obtain the Agency's written approval of the assurance provided.

5) Under the terms of the bond, the surety must become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6) The penal sum of the bond must be in an amount at least equal to the current cost estimate, except as provided in subsection (f).

7) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of this increase to the Agency, or obtain other financial assurance that complies with this Section to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Agency.

8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

9) The owner or operator may cancel the bond if the Agency has given prior written consent based on the Agency's receipt of evidence of alternate financial assurance that complies with this Section.

c) Letter of Credit

1) An owner or operator may comply with this Section by obtaining an irrevocable standby letter of credit that complies with this subsection (c) and submitting the letter to the Agency. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

2) The wording of the letter of credit must be identical to the wording specified by the Agency under Section 721.251.

3) An owner or operator that uses a letter of credit to comply with this Section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid under a draft by the Agency will be deposited by the issuing institution directly into the standby trust fund according to the Agency's instructions. This standby trust fund must comply with subsection (a), except that the following also apply:

A) The owner or operator must submit an originally signed duplicate of the trust agreement to the Agency with the letter of credit; and

B) Unless the standby trust fund is funded under this Section, the following are not required:

i) Payments into the trust fund, as specified in subsection (a);

ii) Updating Schedule A of the trust agreement to show current cost estimates;

iii) Annual valuations, as required by the trust agreement; and

iv) Notices of nonpayment, as required by the trust agreement.

4) The letter of credit must be accompanied by a letter from the owner or operator that refers to the letter of credit by number, issuing institution, and date, and that provides the following information: The USEPA identification number (if any issued), name, and address of the facility, and the amount of funds assured for the facility by the letter of credit.

5) The letter of credit must be irrevocable, and the letter must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Agency by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts.

6) The letter of credit must be issued in an amount at least equal to the current cost estimate, except as provided in subsection (f).

7) Whenever the current cost estimate increases to an amount greater than the amount of the credit, within 60 days after the increase, the owner or operator must either cause the amount of the credit to be increased, so that it at least equals the current cost estimate, and submit evidence of this increase to the Agency, or it must obtain other financial assurance that complies with this Section to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current cost estimate following written approval by the Agency.

8) Following a determination by the Agency that the hazardous secondary materials do not meet the conditions of the exclusion set forth in Section 721.104(a)(24), the Agency may draw on the letter of credit.

9) If the owner or operator does not establish alternative financial assurance that complies with this Section and obtain written approval of the alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Agency may draw on the letter of credit. The Agency may delay the drawing if the issuing institution extends the term of the credit. During the last 30 days after any extension, the Agency may draw on the letter of credit if the owner or operator has failed to provide alternative financial assurance that complies with this Section and obtain written approval of this assurance from the Agency.

10) The Agency must return the letter of credit to the issuing institution for termination when either of the following occurs:

A) The owner or operator substitutes alternative financial assurance that complies with this Section; or

B) The Agency releases the owner or operator from the requirements of this Section under subsection (i).

d) Insurance

1) An owner or operator may comply with this Section by obtaining insurance that complies with this subsection (d) and submitting a certificate of that insurance to the Agency. 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.

2) The wording of the certificate of insurance must be identical to the wording specified by the Agency under Section 721.251.

3) The insurance policy must be issued for a face amount at least equal to the current cost estimate, except as provided in subsection (f). 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.

4) The insurance policy must guarantee that funds will be available whenever needed to pay the cost of removal of all hazardous secondary materials from the unit, to pay the cost of decontaminating the unit, and to pay the costs of performing activities required under Subpart G of 35 Ill. Adm. Code 724 or 725, as applicable, for the facilities covered by the policy. The policy must also guarantee that once funds are needed, 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 the party or parties as the Agency specifies.

5) After beginning partial or final closure under 35 Ill. Adm. Code 724 or 725, as applicable, an owner or operator or any other authorized person may request reimbursements for closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursements only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. If the Agency determines that the expenditures are according to the approved plan or are otherwise justified, the Agency must, within 60 days after receiving bills for closure activities, instruct the insurer in writing to make reimbursements in the amounts that the Agency specifies . If the Agency has reason to believe that the maximum cost over the remaining life of the facility will be significantly greater than the face amount of the policy, the Agency may withhold reimbursement of the amounts that the Agency deems prudent until the Agency determines, under subsection (h), that the owner or operator is no longer required to maintain financial assurance for the particular facility. If the Agency does not instruct the insurer to make the reimbursements under this subsection (d)(5), the Agency must provide to the owner or operator a detailed written statement of reasons.

BOARD NOTE: The owner or operator may appeal any Agency determination made under this subsection (d)(5), as provided by Section 40 of the Act.

6) The owner or operator must maintain the policy in full force and effect until the Agency consents to the owner or operator terminating the policy, as specified in subsection (d)(10). Failure to pay the premium, without substituting alternate financial assurance as specified in this Section, will constitute a significant violation of these regulations warranting the remedy that is deemed necessary under Sections 31, 39, and 40 of the Act. This violation will be deemed to begin upon receipt by the Agency of a notice of future cancellation, termination, or failure to renew the policy due to nonpayment of the premium, rather than upon the date of policy expiration.

7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. The assignment may be conditioned on consent of the insurer, so long as the policy provides that the insurer may not unreasonably refuse this consent.

8) 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 renewing at the face amount of the expiring policy. If the owner or operator fails 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 the 120 days that begin on the date that both the Agency and the owner or operator have received the notice, as evidenced by the return receipts. Cancellation, termination, or failure to renew the policy may not occur, and the policy will remain in full force and effect if on or before the expiration date, one of the following events occurs:

A) The Agency deems the facility abandoned;

B) Conditional exclusion or interim status is lost, terminated, or revoked;

C) Closure is ordered by the Board or a court of competent jurisdiction;

D) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 of the U.S. Code (Bankruptcy); or

E) The premium due has been paid.

9) Whenever the owner or operator learns that the current cost estimate has increased to an amount greater than the face amount of the policy, the owner or operator must, within 60 days after learning of the increase, either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of this increase to the Agency, or the owner or operator must obtain other financial assurance that complies with this Section to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate after the owner or operator has obtained the written approval of the Agency.

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

A) The Agency has determined that the owner or operator has substituted alternative financial assurance that complies with this Section; or

B) The Agency has released the owner or operator from obligation under this Section under subsection (i).

e) Financial Test and Corporate Guarantee

1) An owner or operator may comply with this Section by demonstrating that the owner or operator passes one of the financial tests specified in this subsection (e). To pass a financial test, the owner or operator must meet the criteria of either subsection (e)(1)(A) or (e)(1)(B):

A) Test 1. The owner or operator must have each of the following:

i) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

ii) Net working capital and tangible net worth each at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates;

iii) Tangible net worth of at least $10 million; and

iv) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

B) Test 2. The owner or operator must have each of the following:

i) A current rating for its most recent bond issuance of AAA, AA, A, or BBB, as issued by Standard and Poor's, or Aaa, Aa, A, or Baa, as issued by Moody's;

ii) Tangible net worth at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates;

iii) Tangible net worth of at least $10 million; and

iv) Assets located in the United States amounting to either at least 90 percent of total assets or at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

2) Definitions as used in subsection (e)(1).

"Current cost estimates" means the following four cost estimates required in the standard letter from the owner's or operator's chief financial officer:

The cost estimate for each facility for which the owner or operator has demonstrated financial assurance through the financial test specified in subsections (e)(1) through (e)(9);

The cost estimate for each facility for which the owner or operator has demonstrated financial assurance through the corporate guarantee specified in subsection (e)(10);

For facilities in a state outside of Illinois, the cost estimate for each facility for which the owner or operator has demonstrated financial assurance through the financial test specified in Subpart H of 40 CFR 261 or through a financial test deemed by USEPA as equivalent to that in Subpart H of 40 CFR 261; and

The cost estimate for each facility for which the owner or operator has not demonstrated financial assurance to the Agency, USEPA, or a sister state in which the facility is located by any mechanism that complies with the applicable of this Subpart H, Subpart H of 40 CFR 261, or regulations deemed by USEPA as equivalent to Subpart H of 40 CFR 261.

"Current plugging and abandonment cost estimates" means the following four cost estimates required in the standard form of a letter from the owner's or operator's chief financial officer (see 35 Ill. Adm. Code 704.240):

The cost estimate for each facility for which the owner or operator has demonstrated financial assurance through the financial test specified in 35 Ill. Adm. Code 704.219(a) through (i);

The cost estimate for each facility for which the owner or operator has demonstrated financial assurance through the financial test specified in 35 Ill. Adm. Code 704.219(j);

For facilities in a state outside of Illinois, the cost estimate for each facility for which the owner or operator has demonstrated financial assurance through the financial test specified in Subpart F of 40 CFR 144 or through a financial test deemed by USEPA as equivalent to that in Subpart F of 40 CFR 144; and

The cost estimate for each facility for which the owner or operator has not demonstrated financial assurance to the Agency, USEPA, or a sister state in which the facility is located by any mechanism that complies with the applicable requirements of Subpart G of 35 Ill. Adm. Code 704, Subpart F of 40 CFR 144, or regulations deemed by USEPA as equivalent to Subpart F of 40 CFR 144.

BOARD NOTE: Corresponding 40 CFR 261.143(e)(2) defines "current cost estimate" as "the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (Section 261.151(e))" and "current plugging and abandonment cost estimates" as "the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (Section 144.70(f) of this chapter)". The Board has substituted the descriptions of these estimates, using those specified by USEPA in 40 CFR 261.151(e) and 144.70(f), as appropriate. Since the letter of the chief financial officer must include the cost estimates for any facilities that the owner or operator manages outside of Illinois, the Board has referred to the corresponding regulations of those sister states as "regulations deemed by USEPA as equivalent to Subpart F of 40 CFR 144 and Subpart H of 40 CFR 261".

3) To demonstrate that it meets the financial test in subsection (e)(1), the owner or operator must submit the following items to the Agency:

A) A letter signed by the owner's or operator's chief financial officer and worded as specified by the Agency under Section 721.251 that is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts of the pertinent environmental liabilities included in these financial statements;

B) A copy of an independent certified public accountant's report on examining the owner's or operator's financial statements for the latest completed fiscal year; and

C) If the chief financial officer's letter prepared under subsection (e)(3)(A) includes financial data that shows that the owner or operator meets the test in subsection (e)(1)(A) (Test 1), and either the data in the chief financial officer's letter are different from the data in the audited financial statements required by subsection (e)(3)(B) of this Section, or the data are different from any other audited financial statement or data filed with the federal Securities and Exchange Commission, then the owner or operator must submit a special report from its independent certified public accountant. The special report must be based on an agreed-upon procedures engagement, in compliance with professional auditing standards. The report must describe the procedures used to compare the data in the chief financial officer's letter (prepared under subsection (e)(3)(A)), the findings of the comparison, and the reasons for any differences.

4) This subsection (e)(3)(4) corresponds with 40 CFR 261.143(e)(3)(iv), a provision relating to extending the deadline for filing the financial documents required by 40 CFR 261.143(e)(3) until 90 days after the effective date of the federal rule. Thus, the latest date for filing the documents was March 29, 2009, which is now past. See 40 CFR 261.143(e)(3) and 73 Fed. Reg. 64668 (Oct. 30, 2008). This statement maintains structural consistency with the corresponding federal provision.

5) After initially submitting items specified in subsection (e)(3), the owner or operator must send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must comprise all three items specified in subsection (e)(3).

6) If the owner or operator no longer complies with subsection (e)(1), it must send notice to the Agency of intent to establish alternative financial assurance that complies with this Section. The owner or operator must send the notice by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternative financial assurance within 120 days after the end of the fiscal year.

7) The Agency may, based on a reasonable belief that the owner or operator may no longer be complying with subsection (e)(1), require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (e)(3). If the Agency finds, on the basis of these reports or other information, that the owner or operator no longer complies with subsection (e)(1), the owner or operator must provide alternative financial assurance that meets the requirements of this Section within 30 days after receiving notice of the finding.

8) The Agency must disallow use of the financial tests in this subsection (e) on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examining the owner's or operator's financial statements (see subsection (e)(3)(B)) if the Agency determines that those qualifications significantly, adversely affect the owner's or operator's ability to provide its own financial assurance by this mechanism. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency must evaluate all other kinds of qualifications on an individual basis. The owner or operator must provide alternative financial assurance that complies with this Section within 30 days after receiving notice of Agency disallowance under this subsection (e)(8).

9) The owner or operator is no longer required to submit the items specified in subsection (e)(3) when either of the following events occur:

A) An owner or operator has substituted alternative financial assurance that complies with this Section; or

B) The Agency releases the owner or operator from obligation under this Section under subsection (i).

10) Corporate guarantee for financial responsibility. An owner or operator may comply with this Section by obtaining a written corporate guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a sister firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements applicable to an owner or operator in subsections (e)(1) through (e)(8), and it must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified by the Agency under Section 721.251. A certified copy of the guarantee must accompany the items sent to the Agency that are required by subsection (e)(3). One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide as follows:

A) Following a determination by the Agency that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under Section 721.104(a)(24), the guarantor must dispose of any hazardous secondary material as hazardous waste and close the facility in compliance with the applicable closure requirements in 35 Ill. Adm. Code 724 or 725, or the guarantor must establish a trust fund in the name of the owner or operator and in the amount of the current cost estimate that complies with subsection (a).

B) The corporate guarantee must remain in force unless the guarantor has sent notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date on which both the owner or operator and the Agency have received the notice of cancellation, as evidenced by the return receipts.

C) If the owner or operator fails to provide alternative financial assurance that complies with this Section and obtain the written approval of the alternate assurance from the Agency within 90 days after the date on which both the owner or operator and the Agency have received the notice of cancellation of the corporate guarantee from the guarantor, the guarantor must provide the alternative financial assurance in the name of the owner or operator.

f) Use of Multiple Financial Mechanisms. An owner or operator may comply with this Section by establishing more than one financial mechanism per facility. The mechanisms that an owner or operator may use for this purpose are limited to a trust fund that complies with subsection (a), a surety bond that complies with subsection (b), a letter of credit that complies with subsection (c), and insurance that complies with subsection (d). The mechanisms must individually satisfy the indicated requirements of this Section, except that it is the combination of all mechanisms used by the owner or operator, rather than any individual mechanism, that must provide financial assurance for an aggregated amount at least equal to the current cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. The owner or operator may establish a single standby trust fund for two or more mechanisms. The Agency may use any of the mechanisms to provide care for the facility.

g) Use of a Single Financial Mechanism for Multiple Facilities. An owner or operator may use a single financial assurance mechanism that complies with this Section to comply with this Section for more than one facility. Evidence of financial assurance submitted to the Agency must include a list showing, for each facility, the USEPA identification number (if any), name, address, and the amount of funds assured by the mechanism. If the facilities covered by the mechanism are in more than one Region, USEPA requires the owner of operator to submit and maintain identical evidence of financial assurance with each USEPA Region in which a covered facility is located. The amount of funds available through the mechanism must not be less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through a mechanism for any of the facilities covered by that mechanism, the Agency may direct only that amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

h) Removal and Decontamination Plan for Release from Financial Assurance Obligations

1) An owner or operator of a reclamation facility or an intermediate facility that wishes to be released from its financial assurance obligations under Section 721.104(a)(24)(F)(vi) must submit a plan for removing all hazardous secondary material residues from the facility. The owner or operator must submit the plan to the Agency at least 180 days prior to the date on which the owner or operator expects to cease to operate under the exclusion.

2) The plan must, at a minimum, include the following information:

A) For each hazardous secondary materials storage unit subject to financial assurance requirements under Section 721.104(a)(24)(F)(vi), the plan must describe how all excluded hazardous secondary materials will be recycled or sent for recycling, and how all residues, contaminated containment systems (liners, etc.), contaminated soils, subsoils, structures, and equipment will be removed or decontaminated as necessary to protect human health and the environment;

B) The plan must describe the steps necessary to remove or decontaminate all hazardous secondary material residues and contaminated containment system components, equipment, structures, and soils, including procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to protect human health and the environment;

C) The plan must describe any other activities necessary to protect human health and the environment during this timeframe, including leachate collection, run-on and run-off control, etc.; and

D) The plan must include a schedule for conducting the activities described that, at a minimum, includes the total time required to remove all excluded hazardous secondary materials for recycling and decontaminate all units subject to financial assurance under Section 721.104(a)(24)(F)(vi) and the time required for intervening activities that will allow tracking of the progress of decontamination.

3) The Agency must provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on and request modifications to the plan. The Agency must accept any comments or requests to modify the plan that it receives within 30 days after the date when the notice is published. The Agency must also, in response to a request or in its discretion, hold a public hearing whenever it determines that a hearing might clarify one or more issues concerning the plan. The Agency must give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the Agency may combine the two notices.) The Agency must approve, modify, or disapprove the plan within 90 days after its receipt. If the Agency does not approve the plan, the Agency must provide the owner or operator with a detailed written statement of reasons for its refusal, and the owner or operator must modify the plan or submit a new plan for approval within 30 days after the owner or operator receives a written statement from the Agency. The Agency must approve or modify this owner- or operator-modified plan in writing within 60 days. If the Agency modifies the owner- or operator-modified plan, this modified plan becomes the approved plan. The Agency must assure that the approved plan is consistent with this subsection (h). A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

4) Within 60 days after completing the activities described for each hazardous secondary materials management unit, the owner or operator must submit to the Agency, by registered mail, a certification that all hazardous secondary materials have been removed from the unit and that the unit has been decontaminated in compliance with the specifications in the approved plan. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Upon request, the owner or operator must furnish the Agency with documentation that supports the Professional Engineer's certification, until the Agency releases the owner or operator from the financial assurance requirements of Section 721.104(a)(24)(F)(vi).

i) Releasing the Owner or Operator from Obligation Under This Section. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or from a unit at the facility and the facility or unit has been decontaminated according to the approved plan in compliance with subsection (h), the Agency must determine whether or not the owner or operator has accomplished the objectives of removing all hazardous secondary materials from the facility or from a unit at the facility and decontaminating the facility in compliance with the approved plan. If the Agency determines that the owner or operator has accomplished both objectives, the Agency must notify the owner or operator in writing, within the 60 days, that the owner and operator are no longer required under Section 721.104(a)(24)(F)(vi) to maintain financial assurance for that facility or unit at the facility. If the Agency determines that the owner or operator has not accomplished both objectives, it must provide the owner or operator with a detailed written statement of the basis for its determination.

(Source: Amended at 48 Ill. Reg. 16813, effective November 7, 2024)