**Section 730.185 Financial Responsibility**

a) The owner or operator of an injection well to which this Subpart H applies must demonstrate and maintain financial responsibility that the Agency has determined fulfills the following conditions:

1) The financial responsibility instruments used must be from the following list of qualifying instruments:

A) A trust fund;

B) A surety bond;

C) A letter of credit;

D) Insurance;

E) Self insurance (i.e., the financial test and corporate guarantee);

F) An escrow account; or

G) Any other instruments that the Agency determines are satisfactory.

2) The qualifying instruments must be sufficient to cover the following costs:

A) The costs of corrective action (that meets the requirements of Section 730.184);

B) The costs of injection well plugging (that meets the requirements of Section 730.192);

C) The costs of post-injection site care and site closure (that meets the requirements of Section 730.193); and

D) The costs of emergency and remedial response (that meets the requirements of Section 730.194).

3) The financial responsibility instruments must be sufficient to address endangerment of underground sources of drinking water.

4) The qualifying financial responsibility instruments must comprise protective conditions of coverage.

A) Protective conditions of coverage must include, at a minimum, cancellation, renewal, and continuation provisions; specifications on when the provider becomes liable following a notice of cancellation if there is a failure to renew with a new qualifying financial instrument, and requirements for the provider to meet a minimum rating, minimum capitalization, and have the ability to pass the bond rating when applicable.

i) Cancellation. For purposes of this Subpart H, the owner or operator must provide that its financial mechanism may not cancel, terminate, or fail to renew, except for failure to pay that financial instrument. If there is a failure to pay the financial instrument, the financial institution may elect to cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the owner or operator and the Agency. The cancellation must not be final for 120 days after receipt of cancellation notice by the owner or operator and the Agency. The owner or operator must provide an alternative financial responsibility demonstration within 60 days after notice of cancellation, and if an alternate financial responsibility demonstration is not acceptable (or possible), any funds from the instrument being cancelled must be released within 60 days of notification by the Agency.

ii) Renewal. For purposes of this Subpart H, an owner or operator must renew all financial instruments, if an instrument expires, for the entire term of the geologic sequestration project. The instrument may be automatically renewed, as long as the owner or operator has the option of renewal at the face amount of the expiring instrument. The automatic renewal of an instrument must, at a minimum, provide the holder with the option of renewal at the face amount of the expiring financial instrument.

iii) Cancellation, termination, or failure to renew may not occur and the financial instrument will remain in full force and effect in the event that any of the following occurs on or before the date of expiration: the Agency deems the facility abandoned; or the permit is revoked or a new permit is denied; closure is ordered by the Agency or a court of competent jurisdiction; the owner or operator is named as debtor in a voluntary or involuntary bankruptcy proceeding under Title 11 of the United States Code; or the amount due on the instrument is fully paid.

B) This subsection (a)(4)(B) would correspond with 40 CFR 706.85(a)(4)(ii) if such existed. USEPA codified a paragraph (a)(4)(i) without a paragraph (a)(4)(ii). Illinois codification requirements do not allow codification of a subsection level unless multiple subsections exist at that level. This statement maintains structural consistency with the corresponding federal rules.

5) The qualifying financial responsibility instruments must be approved by the Agency.

A) The Agency must consider and approve the financial responsibility demonstration for all the phases of the geologic sequestration project prior to issuing a Class VI injection well permit (Section 730.182).

B) The owner or operator must provide any updated information related to their financial responsibility instruments on an annual basis and if there are any changes, the Agency must evaluate, within a reasonable time, the financial responsibility demonstration to confirm that the instruments used remain adequate for use. The owner or operator must maintain financial responsibility requirements regardless of the status of the Agency's review of the financial responsibility demonstration.

C) The Agency must disapprove the use of a financial instrument if the Agency determines that it is not sufficient to meet the requirements of this Section.

6) The owner or operator may demonstrate financial responsibility by using one or multiple qualifying financial instruments for specific phases of the geologic sequestration project.

A) In the event that the owner or operator combines more than one instrument for a specific geologic sequestration phase (e.g., well plugging), such combination must be limited to instruments that are not based on financial strength or performance (i.e., self insurance or performance bond), for example trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, escrow account, and insurance. In this case, it is the combination of mechanisms, rather than the single mechanism, that must provide financial responsibility for an amount at least equal to the current cost estimate.

B) When using a third-party instrument to demonstrate financial responsibility, the owner or operator must provide a proof that the third-party provider fulfills either of the following:

i) The provider must have passed financial strength requirements of subsection (b)(6)(E) based on credit ratings; or

ii) The provider must have met a minimum rating, minimum capitalization, and have the ability to pass the bond rating set forth in subsection (b)(6)(E), when applicable.

C) An owner or operator using certain types of third-party instruments must establish a standby trust fund to enable the Agency to be party to the financial responsibility agreement without the Agency being the beneficiary of any funds. The standby trust fund must be used along with other financial responsibility instruments (e.g., surety bonds, letters of credit, or escrow accounts) to provide a location to place funds if needed.

D) An owner or operator may deposit money to an escrow account to cover financial responsibility requirements. This account must segregate funds sufficient to cover estimated costs for Class VI (geologic sequestration) financial responsibility from other accounts and uses.

E) An owner or operator or its guarantor may use self insurance to demonstrate financial responsibility for geologic sequestration projects if the owner or operator or its guarantor fulfill the following requirements:

i) The owner or operator or its guarantor must meet a tangible net worth of an amount approved by the Agency;

ii) The owner or operator or its guarantor must have a net working capital and tangible net worth each at least six times the sum of the current well plugging, post-injection site care, and site closure cost;

iii) The owner or operator or its guarantor must have 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 well plugging, post injection site care, and site closure cost;

iv) The owner or operator or its guarantor must submit a report of its bond rating and financial information annually; and

v) The owner or operator or its guarantor must either have a bond rating test of AAA, AA, A, or BBB, as issued by Standard & Poor's, or Aaa, Aa, A, or Baa, as issued by Moody's, or meet all of the following five financial ratio thresholds: a ratio of total liabilities to net worth less than 2.0; a ratio of current assets to current liabilities greater than 1.5; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; a ratio of current assets minus current liabilities to total assets greater than ‑0.1; and a net profit (revenues minus expenses) greater than 0.

F) An owner or operator that is not able to meet the corporate financial test criteria of subsection (a)(6)(E) may arrange a corporate guarantee by demonstrating that its corporate parent meets the financial test requirements on its behalf. The corporate parent's demonstration that it meets the financial test requirement is insufficient if it has not also guaranteed to fulfill the obligations for the owner or operator.

G) An owner or operator may obtain an insurance policy to cover the estimated costs of geologic sequestration activities that require financial responsibility. This insurance policy must be obtained from a third-party provider.

b) The requirement to maintain adequate financial responsibility and resources is directly enforceable regardless of whether the requirement is a condition of the permit.

1) The owner or operator must maintain financial responsibility and resources until both of the following events have occurred:

A) The Agency has received and approved the completed post-injection site care and site closure plan; and

B) The Agency has approved site closure.

2) The owner or operator may be released from a financial instrument in the following circumstances:

A) The owner or operator has completed the phase of the geologic sequestration project for which the financial instrument was required, and the owner or operator has fulfilled all of its financial obligations, as determined by the Agency, including obtaining financial responsibility for the next phase of the geologic sequestration project, if required; or

B) The owner or operator has submitted a replacement financial instrument, and the owner or operator has received written approval from the Agency that accepts the new financial instrument and which releases the owner or operator from the previous financial assurance instrument.

c) The owner or operator must have a detailed written estimate, in current dollars, of the cost of performing corrective action on wells in the area of review, plugging the injection wells, post-injection site care, site closure, and emergency and remedial response.

1) The cost estimate must be performed for each phase separately, and the cost estimate must be based on the costs to the Agency of hiring a third party to perform the required activities. A third party is a party who is not within the corporate structure of the owner or operator.

2) During the active life of the geologic sequestration project, the owner or operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with subsection (a), and the owner or operator must provide this adjustment to the Agency. The owner or operator must also provide to the Agency written updates of adjustments to the cost estimate within 60 days after any amendments to the area of review and corrective action plan (Section 730.184), the injection well plugging plan (Section 730.192), the post-injection site care and site closure plan (Section 730.193), and the emergency and remedial response plan (Section 730.194).

3) The Agency must approve any decrease or increase to the initial cost estimate. During the active life of the geologic sequestration project, the owner or operator must revise the cost estimate no later than 60 days after any of the following events has occurred: the Agency has approved the request to modify the area of review and corrective action plan (Section 730.184), the Agency has approved the injection well plugging plan (Section 730.192), the Agency has approved the post-injection site care and site closure plan (Section 730.193), or the Agency has approved the emergency and response plan (Section 730.194), if the change in the plan increases the cost. If the change to the plan decreases the cost, any withdrawal of funds must be approved by the Agency. Any decrease to the value of the financial assurance instrument must first be approved by the Agency. The revised cost estimate must be adjusted for inflation as specified at subsection (c)(2).

4) Within 60 days after an increase in the current cost estimate to an amount greater than the face amount of a financial instrument currently in use, the owner or operator must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of that increase to the Agency, or obtain other financial responsibility instruments to cover the increase. Whenever the current cost estimate decreases, the owner or operator may reduce the face amount of the financial assurance instrument to the amount of the current cost estimate only in accordance with a written approval from the Agency.

d) The owner or operator must notify the Agency by certified mail of adverse financial conditions, such as bankruptcy, that may affect the ability to carry out injection well plugging and post-injection site care and site closure.

1) In the event that the owner or operator or the third-party provider of a financial responsibility instrument is going through a bankruptcy, the owner or operator must notify the Agency of the proceeding by certified mail within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 of the United States Code that names the owner or operator as debtor.

2) The guarantor of a corporate guarantee must make the notification to the Agency required by this subsection (d)(2) if the guarantor is named as debtor, as required under the terms of the corporate guarantee.

3) An owner or operator who fulfills the requirements of subsection (a) by obtaining a trust fund, surety bond, letter of credit, escrow account, or insurance policy will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution or a suspension or revocation of the authority of the trustee institution to act as trustee of the institution issuing the pertinent financial assurance instrument. The owner or operator must establish other financial assurance within 60 days after such an event.

e) The owner or operator must provide an adjustment of the cost estimate to the Agency within 60 days after notification of an Agency determination during the annual evaluation of the qualifying financial responsibility instruments that the most recent demonstration is no longer adequate to cover the cost of corrective action (as required by Section 730.184), injection well plugging (as required by Section 730.192), post-injection site care and site closure (as required by Section 730.193), and emergency and remedial response (as required by Section 730.194).

f) The Agency must approve the use and length of pay-in-periods for trust funds or escrow accounts.

BOARD NOTE: This Section corresponds with 40 CFR 146.85 (2017).

(Source: Amended at 42 Ill. Reg. 24145, effective November 19, 2018)