**Section 704.215 Surety Bond Guaranteeing Payment**

a) An owner or operator may satisfy the financial assurance requirement by obtaining a surety bond that conforms to the requirements of this Section and submitting the bond to the Agency with the application for a permit or for approval to operate under rule. The bond must be effective before the initial injection of hazardous waste. The surety company issuing the bond must, at a minimum, be among those 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 pursuant to 31 CFR 223.16. Circular 570 is available on the Internet from the following website: http://www.fms.treas.gov/c570/.

b) The wording of the surety bond must be as specified in Section 704.240.

c) The owner or operator who uses a surety bond to satisfy the financial assurance requirement must also establish a standby trust fund. All payments made under the terms of the bond must be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements specified in Section 704.214, except that the following limitations apply:

1) An original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and

2) Until the standby trust fund is funded pursuant to this Section, the following are not required:

A) Payments into the trust fund as specified in Section 704.214;

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

C) Annual valuations as required by the trust agreement; and

D) Notices of non-payment as required by the trust agreement.

d) The bond must guarantee that the owner or operator will fulfill the following requirements:

1) It will fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of plugging and abandonment of the injection well;

2) It will fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin plugging and abandonment is issued by the Board or a U.S. district court or other court of competent jurisdiction; or

3) It will provide alternate financial assurance, and obtain the Agency's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.

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

f) The penal sum of the bond must be in amount at least equal to the current cost estimate, except as provided in Section 704.220.

g) 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 such increase to the Agency, or obtain other financial assurance 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.

h) 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 120 days beginning on the date of the receipt of the notice of cancellation by both owner or operator and the Agency as evidenced by the returned receipts.

i) The owner or operator may cancel the bond if the Agency has given prior written consent based on receipt of evidence of alternate financial assurance.

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

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