**Section 704.216 Surety Bond Guaranteeing Performance**

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. An owner or operator of a new facility must submit the bond to the Agency with the permit application or for approval to operate under rule. The bond must be effective before injection of hazardous waste is started. 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 perform plugging and abandonment in accordance with the plan and other requirements of the permit for the injection well whenever required to do so; or

2) 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. Following a determination that the owner or operator has failed to perform plugging and abandonment in accordance with the plan and other permit requirements when required to do so, under terms of the bond the surety must perform plugging and abandonment as guaranteed by the bond or must deposit the amount of the penal sum into the standby trust fund.

f) The penal sum of the bond must be in an amount at least equal to the current cost estimate.

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. 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. The Agency must provide such written content when either of the following occurs:

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

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

j) The surety will not be liable for deficiencies in the performance of plugging and abandonment by the owner or operator after the Agency releases the owner or operator in accordance with Section 704.222.

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

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