**Section 704.217 Letter of Credit**

a) An owner or operator may satisfy the financial assurance requirement by obtaining an irrevocable standby letter of credit that conforms to this Section and submitting the letter to the Agency. An owner or operator of an injection well must submit the letter of credit to the Agency during submission of the permit application or for approval to operate under rule. The letter of credit must be effective before initial injection of hazardous waste. The issuing institution must be 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.

b) The wording of the letter of credit must be as specified in Section 704.240.

c) An owner or operator who uses a letter of credit to satisfy the financial assurance requirement must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Agency must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements of the trust fund 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 letter of credit; and

2) Unless 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 letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution and date, and providing the following information: the USEPA identification number, name and address of the facility, and the amount of funds assured for plugging and abandonment of the well by the letter of credit.

e) The letter of credit must be irrevocable and 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.

f) The letter of credit must be issued in an 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 amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the letter of credit to be increased so that it at least equals 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 amount of the letter of credit may be reduced to the amount of the current cost estimate following written approval by the Agency.

h) Following a determination that the owner or operator has failed to perform final plugging and abandonment in accordance with the plan and other permit requirements when required to do so, the Agency may draw on the letter of credit.

i) If the owner or operator does not establish alternate financial assurance and obtain written approval of such 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 must draw on the letter of credit. The Agency may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Agency must draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance and obtain written approval of such assurance from the Agency.

j) The Agency must return the letter of credit to the issuing institution for termination when:

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(d) (2005).

(Source: Amended at 31 Ill. Reg. 605, effective December 20, 2006)