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(1) Reevaluate the area of review in the same manner specified in paragraph (c)(1) of this section;

(2) Identify all wells in the reevaluated area of review that require corrective action in the same manner specified in paragraph (c) of this section;

(3) Perform corrective action on wells requiring corrective action in the reevaluated area of review in the same manner specified in paragraph (d) of this section; and

(4) Submit an amended area of review and corrective action plan or demonstrate to the Director through monitoring data and modeling results that no amendment to the area of review and corrective action plan is needed. Any amendments to the area of review and corrective action plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements at §144.39 or §144.41 of this chapter, as appropriate.

(f) The emergency and remedial response plan (as required by §146.94) and the demonstration of financial responsibility (as described by §146.85) must account for the area of review delineated as specified in paragraph (c)(1) of this section or the most recently evaluated area of review delineated under paragraph (e) of this section, regardless of whether or not corrective action in the area of review is phased.

(g) All modeling inputs and data used to support area of review reevaluations under paragraph (e) of this section shall be retained for 10 years.

§ 146.85 Financial responsibility.

(a) The owner or operator must demonstrate and maintain financial responsibility as determined by the Director that meets the following conditions:

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

(i) Trust Funds.

(ii) Surety Bonds.

(iii) Letter of Credit.

(iv) Insurance.

(v) Self Insurance (i.e., Financial Test and Corporate Guarantee).

(vi) Escrow Account.

(vii) Any other instrument(s) satisfactory to the Director.

(2) The qualifying instrument(s) must be sufficient to cover the cost of:

(i) Corrective action (that meets the requirements of §146.84);

(ii) Injection well plugging (that meets the requirements of §146.92);

(iii) Post injection site care and site closure (that meets the requirements of §146.93); and

(iv) Emergency and remedial response (that meets the requirements of §146.94).

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

(4) The qualifying financial responsibility instrument(s) must comprise protective conditions of coverage. (i) 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 ability to pass the bond rating when applicable.

(A) Cancellation—for purposes of this part, an owner or operator must provide that their financial mechanism may not be cancelled, terminate, or fail to renew except for failure to pay such 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 Director. The cancellation must not be final for 120 days after receipt of cancellation notice. The owner or operator must provide an alternate financial responsibility demonstration within 60 days of notification by the Director.

(B) Renewal—for purposes of this part, owners or operators must renew all financial instruments, if an instrument expires, for the entire term of the
geologic sequestration project. The instrument may be automatically re-
newed as long as the owner or operator has the option of renewal at the face
amount of the expiring instrument. The automatic renewal of the instru-
ment must, at a minimum, provide the holder with the option of renewal at
the face amount of the expiring financial instrument.

(C) Cancellation, termination, or fail-
ure to renew may not occur and the fi-
nancial instrument will remain in full
force and effect in the event that on or
before the date of expiration: The Di-
rector deems the facility abandoned; or
the permit is terminated or revoked or
a new permit is denied; or closure is or-
dered by the Director or a U.S. district
court or other court of competent ju-
risdiction; or the owner or operator is
named as debtor in a voluntary or in-
voluntary proceeding under Title 11
(Bankruptcy), U.S. Code; or the
amount due is paid.

(5) The qualifying financial responsi-
bility instrument(s) must be approved
by the Director.

(i) The Director shall consider and
approve the financial responsibility
demonstration for all the phases of the
geologic sequestration project prior to
issue a Class VI permit (§146.82).

(ii) The owner or operator must pro-
vide any updated information related
to their financial responsibility instru-
ment(s) on an annual basis and if there
are any changes, the Director must
evaluate, within a reasonable time, the
financial responsibility demonstration
to confirm that the instrument(s) used
remain adequate for use. The owner or
operator must maintain financial re-
sponsibility requirements regardless of
the status of the Director’s review of
the financial responsibility demonstra-
tion.

(iii) The Director may disapprove the
use of a financial instrument if he de-
termines that it is not sufficient to
meet the requirements of this section.

(6) The owner or operator may dem-
onstrate financial responsibility by
using one or multiple qualifying finan-
cial instruments for specific phases of
the geologic sequestration project.

(i) In the event that the owner or op-
erator combines more than one instru-
ment for a specific geologic sequestra-
tion phase (e.g., well plugging), such
combination must be limited to instru-
ments that are not based on financial
strength or performance (i.e., self in-
urance or performance bond), for ex-
ample trust funds, surety bonds guar-
anteeing payment into a trust fund,
letters of credit, escrow account, and
insurance. In this case, it is the com-
bination of mechanisms, rather than
the single mechanism, which must pro-
vide financial responsibility for an
amount at least equal to the current
cost estimate.

(ii) When using a third-party instru-
ment to demonstrate financial respon-
sibility, the owner or operator must
provide a proof that the third-party
providers either have passed financial
strength requirements based on credit
ratings; or has met a minimum rating,
minimum capitalization, and ability to
pass the bond rating when applicable.

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

(iv) An owner or operator may de-
posit money to an escrow account to
cover financial responsibility require-
ments; this account must segregate
funds sufficient to cover estimated
costs for Class VI (geologic sequestra-
tion) financial responsibility from
other accounts and uses.

(v) An owner or operator or its guar-
antor may use self insurance to dem-
onstrate financial responsibility for
geologic sequestration projects. In
order to satisfy this requirement the
owner or operator must meet a Tan-
gible Net Worth of an amount approved
by the Director, 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, have assets lo-
cated in the United States amounting
to at least 90 percent of total assets or
at least six times the sum of the cur-
rent well plugging, post injection site
care and site closure cost, and must
submit a report of its bond rating and financial information annually. In addition the owner or operator 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.

(vi) An owner or operator who is not able to meet corporate financial test criteria may arrange a corporate guarantee by demonstrating that its corporate parent meets the financial test requirements on its behalf. The 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.

(vii) An owner or operator may obtain an insurance policy to cover the estimated costs of geologic sequestration activities requiring 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:

(i) The Director receives and approves the completed post-injection site care and site closure plan; and

(ii) The Director approves site closure.

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

(i) The Director has approved the request to modify the area of review and corrective action plan (§146.84), the injection well plugging plan (§146.92), the post-injection site care and site closure plan (§146.93), and the emergency and remedial response plan (§146.94).

(3) The Director 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 the Director has approved the request to modify the area of review and corrective action plan (§146.84), the injection well plugging plan (§146.92), the post-injection site care and site closure plan (§146.93), and the emergency and remedial response plan (§146.94), if the change in the plan increases the cost. If the change to the plans decreases the cost,
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any withdrawal of funds must be approved by the Director. Any decrease to the value of the financial assurance instrument must first be approved by the Director. The revised cost estimate must be adjusted for inflation as specified at paragraph (c)(2) of this section.

(4) Whenever the current cost estimate increases to an amount greater than the face amount of a financial instrument currently in use, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Director, or obtain other financial responsibility instruments to cover the increase. Whenever the current cost estimate decreases, the face amount of the financial assurance instrument may be reduced to the amount of the current cost estimate only after the owner or operator has received written approval from the Director.

(d) The owner or operator must notify the Director 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 Director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding.

(2) A guarantor of a corporate guarantee must make such a notification to the Director if he/she is named as debtor, as required under the terms of the corporate guarantee.

(3) An owner or operator who fulfills the requirements of paragraph (a) of this section 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 trust fund, surety bond, letter of credit, escrow account, or insurance policy. 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 Director within 60 days of notification by the Director, if the Director determines during the annual evaluation of the qualifying financial responsibility instrument(s) that the most recent demonstration is no longer adequate to cover the cost of corrective action (as required by §146.84), injection well plugging (as required by §146.92), post-injection site care and site closure (as required by §146.93), and emergency and remedial response (as required by §146.94).

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

§ 146.86 Injection well construction requirements.

(a) General. The owner or operator must ensure that all Class VI wells are constructed and completed to:

(1) Prevent the movement of fluids into or between USDWs or into any unauthorized zones;

(2) Permit the use of appropriate testing devices and workover tools; and

(3) Permit continuous monitoring of the annulus space between the injection tubing and long string casing.

(b) Casing and cementing of Class VI wells. (1) Casing and cement or other materials used in the construction of each Class VI well must have sufficient structural strength and be designed for the life of the geologic sequestration project. All well materials must be compatible with fluids with which the materials may be expected to come into contact and must meet or exceed standards developed for such materials by the American Petroleum Institute, ASTM International, or comparable standards acceptable to the Director. The casing and cementing program must be designed to prevent the movement of fluids into or between USDWs. In order to allow the Director to determine and specify casing and cementing requirements, the owner or operator