UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
MAY 29 1985

OFFICE OF WATER

MEMORANDUM

SUBJECT: Guidance for Financial Assurance for Federally-Administered UIC Programs
Underground Injection Control Branch Guidance #39

FROM: Victor J. Kimm, Director
Office of Drinking Water

TO: Water Division Directors
Water Supply Branch Chiefs
Regions I-X

On May 11, 1984, the Office of Drinking Water (ODW) promulgated regulations for the Federally-Administered Underground Injection Control (UIC) programs in 22 jurisdictions and amended Part 144 of the regulations. Included in the amendments to Part 144 were the new Subpart F Financial Responsibility regulations for the plugging and abandonment of existing and new Class I hazardous waste injection wells. However, EPA decided not to promulgate specific financial responsibility criteria in the May 11, 1984 promulgation for other classes of facilities. Instead, as stated in the Preamble, the Agency decided to use guidance ". . . setting forth those criteria EPA believes . . . are appropriate to evaluate the major types of possible financial responsibility demonstrations" for Class I (non-hazardous), II and III wells. 49 Fed. Reg. 20149 (May 11, 1984).[1]

In June of 1984, ODW distributed a guidance manual entitled "Financial Assurance for Federally-Administered Underground Injection Control Programs". Unlike the financial responsibility regulations for Class I hazardous waste injection wells, contained in 40 CFR Part 144 Subpart F, which are specific and comprehensive regulations, the financial assurance guidance

---

[1] The financial responsibility regulations for Class I (non-hazardous), II, and III wells, contained in 40 CFR §144.28(d) and §144.52(a)(7), require that the owners or operators of these wells ". . . maintain financial responsibility and resources to close, plug and abandon the underground injection operation in a manner prescribed by the Director" (emphasis added).

manual provides flexible criteria to be used by the Regions to determine the adequacy of financial responsibility mechanisms provided by the owners and operators to cover the plugging and abandonment costs of Class I (non-hazardous), II and III wells, as required in 40 CFR §144.28(d) and §144.52(a)(7).[2]

This manual is a guidance piece to be used on a case-by-case basis, taking into consideration all relevant factors including other reasonable criteria and methods not explicitly delineated in the manual. Adherence to the guidance manual assures that the owners and operators will receive an expeditious approval of their financial responsibility mechanisms, but other criteria and methods may be acceptable on a case-by-case basis.

Since the June 1984 issuance of the financial assurance guidance manual, various questions have been asked concerning specific criteria and procedures contained in the manual. Most of the questions concerned the flexibility of the criteria used for assessing the likelihood that Class II wells may not be properly plugged and abandoned by the owner or operator. Therefore, the questions are addressed here in the same format as the criteria presented in Chapter IV, pages 2-4, of the financial assurance guidance manual.

Criteria Questions

1) History of Plugging Compliance

Question: Who is responsible for providing the information on plugging compliance history?

Answer: The Regions should seek information from an oil and gas commission or other state regulatory body on the practices of the operator, or the Regions may ask the operator for plugging and abandonment records. The UIC program will eventually have its own plugging records for different fields and operators, which may simplify this problem. Currently, if no records exist, then it is assumed that the operator has a good history.

---

2 The financial responsibility regulations for Class I hazardous waste injection wells, contained in 40 CFR Part 144 Subpart F, are similar to those prescribed under RCRA for all hazardous waste management facilities.

2) Number of Fields and 4) Number of Wells

Question: Should the Regions consider the number of fields and wells of owners and operators in other states or regions when assessing the likelihood that the wells may not be properly plugged and abandoned?

Answer: The Guidance suggests that in the general case the number of fields and wells should be determined by the number of producing fields and wells within the State (Region) in which the operator is seeking review. However, the Regions may, at their own discretion, take into consideration wells and fields of the operator outside the particular State (Region) and other relevant factors such as overall financial health.

3) Remaining Economic Life of the Fields

Question: What evidence must be provided to assure that at least one field has a remaining life exceeding five years?

Answer: A certified statement noting the remaining life of the field should be provided. In general, this statement can be certified by a petroleum engineer within the company or by an independent consultant. However, the certifying engineer should be a registered professional engineer. In addition, the certified statement of field life should be co-signed by a company's operations manager (the company official with first hand knowledge of the remaining economic life of the field).

5) Number of Years in Business

No questions

6) Financial Performance

Question: When a financial statement is the financial mechanism under evaluation and the operator is using a bond rating to satisfy the financial performance test, what must be submitted?

Answer: The operator should submit a letter from a person of sufficient authority in the corporation to legally bind the corporation whose bond is rated (not a subsidiary) containing the following information:

1) Current bond rating of most recent issuance of the firm and name of bond rating service;

2) Date of issuance of bond rating;

3) Duration of the bond rating; and

4) Copy of the notification of bond rating from the bond rating service.

Question: When a financial statement is the financial mechanism under evaluation must the letter containing the company's financial information be signed by the Chief Financial Officer of the company?

Answer: The letter should be signed by the Chief Financial Officer. In the alternative, it should be signed by a person of sufficient authority in the company to legally bind the company. The financial statement must represent the assets of the company that the Chief Financial Officer or other person of sufficient authority is seeking to legally bind.

Question: When a financial statement is the financial mechanism under evaluation must it be an audited financial statement?

Answer: It may be an audited financial statement. In the alternative, it should at least contain the required financial data examined by an independent certified public accounting firm.

In summary, two general principles should be considered in the application of the financial assurance guidance for Class I (non-hazardous), II and III injection wells.

1. The goal of the guidance is to ensure that adequate financial resources are available to properly plug and abandon injection wells as necessary.

2. ODW considers the guidance a flexible set of criteria that should be applied with appropriate judgment to ensure this goal. When the likelihood of non performance is great, the owner or operator is required to obtain financial coverage adequate to plug and abandon each well covered by the demonstration. Correspondingly, when the likelihood of non performance is small, less financial coverage is required, and the Regions may exercise more discretion in the use of specific elements of the criteria.

A booklet entitled "Federal Financial Responsibility Demonstrations for Owners and Operators of Class II Injection Wells: A Summary" has been written and will be sent to you within the next month. This booklet is designed to explain the UIC financial responsibility requirements to owners and operators of Class II wells and should be distributed to them as appropriate. Sample forms for the various financial responsibility mechanisms are also available and will be sent to the Regions along with the booklet. These forms are available to the owners and operators upon request. However, other means of obtaining the required data may be acceptable.

We are also developing additional Regional training on evaluating financial assurance applications. In the interim, this guidance should be used to supplement the materials already available to you.

If you have questions about the guidance and/or this memo, please contact Roger Anzzolin at FTS-382-5559, George Denning at FTS 382-5540 or Susan Desrosiers at FTS-382-5545.