



Underground Injection Control Program Financial Responsibility – Instrument Review Checklist Guide

November, 2013

I. Introduction

Financial responsibility (FR) file review electronic checklists are designed to assist state and direct implementation (DI) underground injection control (UIC) programs' review of FR demonstrations. The checklists help ensure consistency and completeness of each file review as well as help program staff track information necessary to determine the adequacy of the FR demonstration. The checklists are fillable PDF forms. They are also flexible to allow use with different well classes and are adaptable to accommodate program-specific requirements.

EPA developed checklists for the financial instruments listed in Table 1. The checklists are divided into five or six sections (depending on the instrument type):

-
- Facility / Instrument Information
- Coverage
- Issuing Institution Qualifications / Financial Criteria: Financial Ratio or Bond Rating Test
- Instrument Provisions
- Standby Trust
- Accompanying Documentation

The content of each section will differ slightly depending on the requirements and recommendations for the specific financial instrument. This guide uses two completed checklists, one for a surety bond and the other for Class I Hazardous self insurance, as examples of how to use the checklists during file review. (Examples are not actual FR demonstrations.) It is important to note that this guide does not substitute for regulations or recommendations provided by FR rules or guidance documents. Reviewers should refer to the applicable state and federal rules and guidance documents for each well class.

Table 1: Instrument Checklists Available

| Third-Party Instruments | Self Insurance |
|--|---|
| <ul style="list-style-type: none">• Certificate of Deposit (CD)• Letter of Credit (LOC)• Insurance• Other Cash-Based Account• Surety Bond• Trust Fund | <ul style="list-style-type: none">• Class I Hazardous Waste• Class II• Class VI |

II. Facility / Instrument Information

Fields in the **Facility / Instrument Information** section record identifying information for the FR demonstration and associated permit. By referencing information in this section, reviewers should be able to identify the owner or operator of the well(s) covered by the demonstration, the facility where the covered UIC well is located, the specific instrument used (e.g., through the account or policy number of the instrument assigned by the issuing institution), and, if applicable, the UIC permit. See the examples below.

Surety Bond (Third Party)

| SURETY BOND CHECKLIST | |
|-----------------------------------|--|
| Facility / Instrument Information | |
| Operator Name: | Springfield Oil and Gas |
| Facility Name: | Jackson Road and US 3 Storage |
| Facility #: | IL55555 |
| Bond Type: | <input checked="" type="checkbox"/> Performance Bond <input type="checkbox"/> Financial Guarantee Bond |
| Surety Company: | Fidelity and Deposit Company of Maryland (NAIC #39306) |
| Bond Number: | BO555555 |
| Permit Type: | <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Area |
| Permit ID: | MI-555-2D-0555 |

For third-party demonstrations, this section records the issuing institution for the instrument. Surety bond checklists include a box for the type of bond: performance or financial guarantee. Trust fund checklists include the name of the trustee.

Class I Hazardous Self Insurance

| CLASS I HAZARDOUS SELF-INSURANCE CHECKLIST (Financial Test & Corporate Guarantee) | |
|--|--|
| Facility / Instrument Information | |
| Operator Name: | Martin Marietta Magnesia Specialties LL |
| Facility Name: | Clinton County |
| Facility #: | IL5555 |
| Corporate Guarantee: | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Demonstrating Company: | Martin Marietta Materials |
| Type of Company: | <input checked="" type="checkbox"/> Public <input type="checkbox"/> Private |
| Instrument Number: | SI5555 |
| Permit Type: | <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Area |
| Permit ID: | MI-555-1I-555 |

For self insurance demonstrations, this section records whether the self insurance financial criteria are met by a corporate guarantee of a parent company or by the owner or operator of the well.

This section also indicates whether the company demonstrating self insurance is public or private. The ownership status may affect the availability of supporting documentation, like audited financial statements.

III. Coverage

The **Coverage** section records information on the type and adequacy of coverage used. This section provides reviewers with quick access to information to identify potential deficiencies in FR coverage. A single instrument may cover wells of multiple well classes as long as the demonstration meets the requirements for each well class. The type of well(s) being covered by the instrument will dictate the requirements for many of the sections in this checklist. See the examples below.

Surety Bond (Third Party)

| Coverage | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|-------------------------------------|---|---|---|----------|-----------------|-----------------|-----------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------|-----------|-----------|-----------|-----------------|------------|------------|------------|------------------|--|--|--|-------------------------------------|---|---|---|
| Coverage Type: | <input type="checkbox"/> Single <input checked="" type="checkbox"/> Multiple | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Cost Estimate: | <input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Well Class(es): | <input type="checkbox"/> I Non-Hazardous <input type="checkbox"/> I Hazardous <input checked="" type="checkbox"/> II <input type="checkbox"/> III <input type="checkbox"/> IV <input type="checkbox"/> V <input type="checkbox"/> VI | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Number of Wells (# Date): | <table border="1"> <thead> <tr> <th>Original</th> <th>Revision</th> <th>Revision</th> </tr> </thead> <tbody> <tr> <td>3 05/10/2011</td> <td>2 05/15/2012</td> <td>5 05/24/2013</td> </tr> <tr> <td>Cost Est. (Value Date):</td> <td>\$214,000 05/10/2011</td> <td>\$165,000 05/15/2012</td> <td>\$336,000 05/24/2013</td> </tr> <tr> <td>Bond Value:</td> <td>\$250,000</td> <td>\$250,000</td> <td>\$330,000</td> </tr> <tr> <td>Effective Date:</td> <td>05/22/2011</td> <td>05/19/2012</td> <td>05/19/2013</td> </tr> <tr> <td>Expiration Date:</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Bond Value ≥ Current Cost Estimate:</td> <td><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </tbody> </table> | Original | Revision | Revision | 3 05/10/2011 | 2 05/15/2012 | 5 05/24/2013 | Cost Est. (Value Date): | \$214,000 05/10/2011 | \$165,000 05/15/2012 | \$336,000 05/24/2013 | Bond Value: | \$250,000 | \$250,000 | \$330,000 | Effective Date: | 05/22/2011 | 05/19/2012 | 05/19/2013 | Expiration Date: | | | | Bond Value ≥ Current Cost Estimate: | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Original | Revision | Revision | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3 05/10/2011 | 2 05/15/2012 | 5 05/24/2013 | | | | | | | | | | | | | | | | | | | | | | | | | |
| Cost Est. (Value Date): | \$214,000 05/10/2011 | \$165,000 05/15/2012 | \$336,000 05/24/2013 | | | | | | | | | | | | | | | | | | | | | | | | |
| Bond Value: | \$250,000 | \$250,000 | \$330,000 | | | | | | | | | | | | | | | | | | | | | | | | |
| Effective Date: | 05/22/2011 | 05/19/2012 | 05/19/2013 | | | | | | | | | | | | | | | | | | | | | | | | |
| Expiration Date: | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Bond Value ≥ Current Cost Estimate: | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | | | | | | | | | | | | | | | | | | | | | | | |

The cost estimate will change as the number of wells changes. Cost may also change due to inflation or industry shifts (e.g., technological advancements). These fields allow up to three revisions to the original demonstration to accommodate changes to the cost estimate.

Every instrument should specify effective date and expiration date. Reviewers can use these fields to quickly identify whether the instrument is current or in need of renewal. The dates may also affect when an issuing institution may cancel an instrument.

Instruments must meet the condition of having financial assurance greater than or equal the current cost estimate depending on the covered well class and requirements set by the state, tribal, or DI UIC program.

Class I Hazardous Self Insurance

| Coverage | | | | | | | |
|-----------------------------|--|---|------------------------------|-----------------------------|----------------------------|--|--------|
| Coverage Type: | <input checked="" type="checkbox"/> Single | <input type="checkbox"/> Multiple | | | | | |
| Cost Estimate: | <input checked="" type="checkbox"/> Required | <input type="checkbox"/> Not Required | | | | | |
| Well Class(es): | <input type="checkbox"/> I Non-Hazardous | <input checked="" type="checkbox"/> I Hazardous | <input type="checkbox"/> III | <input type="checkbox"/> IV | <input type="checkbox"/> V | | |
| | Year 0 | | Year 1 | | Year 2 | | Year 3 |
| Number of Wells (# Date): | 1 09/03/2011 | 1 09/10/2012 | 1 09/01/2013 | | | | |
| Cost Est. (Value Date): | \$74,813 09/03/2011 | \$77,700 09/10/2012 | \$80,000 09/01/2013 | | | | |
| Total Liability: | \$2,460,000 | | \$2,850,000 | | \$3,000,000 | | |

Number of wells and cost estimate should reflect the UIC wells and associate plugging costs guaranteed by this demonstration. Whereas total liabilities should equal the sum of the cost estimate and all other liabilities, including CERCLA and RCRA, currently met using self insurance nationwide

Total liability for self insurance demonstrations includes not only the UIC wells and associated plugging costs guaranteed by a demonstration, but also all other liabilities met by the guaranteeing company nationwide, including those under CERCLA and RCRA.

IV. Issuing Institution Qualifications / Financial Criteria: Financial Ratio or Bond Rating Test

This section provides reviewers with guidance on information that should be verified for each instrument. For third-party instruments, it helps reviewers verify the financial stability of issuing institutions. For self insurance demonstrations, it helps identify whether guaranteeing companies meet specified financial criteria. Fields in this section accommodate applicable information (e.g., AM Best ratings) and notes relevant to this portion of the review.

Surety Bond (Third Party)

| Surety Company Qualifications | | | |
|---|---|--|---|
| Licensed in the State According to Circular 570: | | | <input checked="" type="checkbox"/> Yes |
| Penal Sum Less than the Underwriting Limit Stipulated on Circular 570: | | | <input checked="" type="checkbox"/> Yes |
| AM Best Rating (Value Date): | Original (Value Date) | Revision | Revision |
| | A+ 03/09/2009 | A+ 03/09/2009 | A 07/ |
| <i>Minimum AM Best rating standards - A++, A+, A, A-, B++, B+</i> | | | |
| Notes: | Underwriting limit on Circular 570: \$500,000,000 | | |
| Circular 570: http://www.fms.treas.gov/c570/c570_a-z.html | | AM Best: http://w | |

AM Best ratings along with credit and bond ratings may change over time. A link to this site is provided in the checklist.

Institutions should be regulated by a state or federal agency and licensed to transact business in the state where the wells are located. The Department of Treasury Circular 570 provides a list of approved sureties and their respective underwriting limits, which should be greater than the penal sum (i.e., value) of the surety bond. A link to this site is provided in the checklist. The Federal Deposit Insurance Corporation (FDIC) is another federal organization that examines and supervises financial institutions.

Class I Hazardous Self Insurance

The **Financial Criteria: Financial Ratio or Bond Rating Test** section for the self insurance checklist identifies the requirements the demonstrating company must meet to qualify for self insurance. These criteria vary for different well classes. For example, federal coverage criteria are more stringent for Class VI than for Class I Hazardous, and the recommended Class II coverage criteria are significantly different than those required for Class I Hazardous and Class VI. In addition, the financial ratios in the financial ratio test differ among Class I Hazardous, Class II, and Class VI.

The demonstrating company must pass the coverage criteria (part A), and it must pass either the financial ratio test (part B) or the bond rating test (part C).

| Financial Criteria: Financial Ratio or Bond Rating Test | | | | | | |
|---|---|--------------------------|---|--------------------------|-------------------------------------|--------------------------|
| To qualify for self-insurance, the demonstrating company must pass part (A) AND part (B) or (C) below. | Year 0 | | Year 1 | | Year 2 | |
| | Pass | Fail | Pass | Fail | Pass | Fail |
| Annual Submissions - Required for both tests | | | | | | |
| Letter from CFO: | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Audited Financial Statements: | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Auditor's Special Report: | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| A) Coverage Criteria - Specified for both tests | | | | | | |
| Tangible Net Worth ≥ \$10M <i>and</i> 6X total liability (see Coverage section): | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Domestic Assets ≥ 90% of total assets <i>or</i> 6X total liability: | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B) Financial Ratio Test - Must pass Net Working Capital criterion and meet two of the following three ratios. | | | | | | |
| Net Working Capital = 6X total liability: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Debt-Equity Ratio < 2.0: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Cash Return on Liabilities Ratio > 0.1: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Asset-Liabilities Ratio > 1.5: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| C) Bond Rating Test - Must meet minimum bond ratings (Moody's: Aaa, Aa, A, Baa or S&P: AAA, AA, A, BBB) | | | | | | |
| Bond Rating: | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Auditor Date of Submission: | PWC 08/30/2011 | | PWC 09/04/2012 | | PWC 08/24/2013 | |
| Bond Rating (Value Date): | Baa3 10/24/2008 | | BBB 08/01/2012 | | | |
| | S&P: www.standardandpoors.com | | Moody's: www.moodys.com/ | | | |
| Notes: Switched from bond rating test to financial ratio in 2013 | | | | | | |

To prove it meets the coverage criteria and passes the financial ratio test, the demonstrating company must annually submit supporting documentation, including audited financial statements.

Coverage criteria and financial ratios will likely change over time. Reviewers should calculate coverage criteria and financial ratio values annually, using the audited financial statements, to confirm that the demonstrating company meets relevant criteria.

Reviewers may record the auditor of the financial statements and the date the audited financial files were submitted. Bond rating values may also change on an annual basis. Links to sites of bond rating companies are provided in the checklist.

V. Instrument Provisions

This section tracks whether instrument language meets specific requirements or recommendations.

Surety Bond (Third Party)

Table 2 on the following page briefly describes provisions that may be included for third-party instruments. Applicable provisions will vary according to well class and requirements specific to the UIC program.

| Instrument Provisions (Does the bond meet the following provisions?) | | Yes | No |
|--|---|---|-------------------------------------|
| Specifies conditions for drawing on the instrument (e.g., failure to properly close and plug wells): | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Language consistent with Federal requirements/recommendations: | | | |
| Class I Hazardous 40 CFR 144.70(b) or (c): | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Class VI Appendix B of Class VI FR Guidance: | | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Language consistent with form provided by regulatory agency: | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Additional Provisions or Further Description (Customize to regulatory agency and well type): | | | |
| Renewal/ Cancellation: | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Ex. Provide alternate FR within 90 days after receipt of cancellation. Cancellation may not occur during 120 days beginning at date of receipt of notice of cancellation. | |
| Release of Instrument: | <input type="checkbox"/> Yes <input type="checkbox"/> No | Ex. The owner or operator plugs and abandons the well, converts the well, or provides alternate financial assurance. | |
| Value Increase: | <input type="checkbox"/> Yes <input type="checkbox"/> No | Ex. Penal sum must increase within 60 days after increase in plugging and abandonment cost estimate | |
| Bankruptcy: | <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| Other: | <input type="checkbox"/> Yes <input type="checkbox"/> No | | |

This section references instrument language requirements for applicable well classes. A check box is included for any forms that may be required by the regulatory agency.

Reviewers should consult applicable regulations as instrument provisions will vary according to well class and UIC program. Checklists contain provisions that likely apply to the specific instrument, but provision titles may be modified depending on specific UIC program requirements.

Class I Hazardous Self Insurance

| Instrument Provisions (Does the demonstration meet the following provisions?) | |
|--|---|
| CFO Letter consistent with Federal requirements (Class I Hazardous 40 CFR 144.70(f)): | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Corporate guarantee consistent with Federal requirements (Class I Hazardous 40 CFR 144.70(g)): | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| The owner or operator must follow the Federal requirements specified under 40 CFR 144.63(f): | |
| Annual submissions of financial information and auditor's report - 90 days after close of fiscal year; Notice by demonstrating company of failure to meet financial criteria - 90 days after close of fiscal year; Failure to meet financial criteria, alternative demonstration - 120 days after close of fiscal year; Notice of disallowance by Program Director, alternative demonstration - 30 days after notification; Cancellation by corporate guarantee - 120 days after receipt of cancellation notice; Alternative demonstration - 90 days after receipt of cancellation from corporate guarantee. | |

This example provides language requirements for self insurance demonstrations for Class I Hazardous wells. However, note that recommended and required self insurance provisions differ for Class I Hazardous, Class II, and Class VI wells.

Table 2: Provisions for Third-Party Instruments

| | Definition of Provisions and Examples |
|------------------------------|---|
| Release of Instrument | Defines conditions under which the UIC Program Director may approve the release of the instrument. Typically, this is upon successfully plugging and abandoning covered wells, providing substitute demonstration, or converting well(s) out of UIC program. |
| Withdrawals | Defines conditions under which a withdrawal may be made from the instrument (or reduction in value). Typically, this is upon the Director's approval for a release of funds in excess of the cost estimate. |
| Interest | Defines how interest will be handled for interest-bearing accounts. It is typically recommended that interest be added to the instrument. The owner or operator may request the Director's approval for release of funds in excess of the cost estimate (see Withdrawals). |
| Value Increase | Defines conditions under which an increase in value (i.e., the penal sum) of the instrument is required. Typically, this is required to reflect higher plugging and abandonment costs, the addition of new wells, or an increase requested by the Director. |
| Bankruptcy | Defines steps required in the event that the institution issuing the instrument, or the owner or operator, declares bankruptcy. Typically, the owner or operator must notify the Director of bankruptcy within 10 days of proceedings and establish alternative financial assurance within 60 days of the bankruptcy of the issuing institution. |
| Renewal/ Cancellation | Defines conditions of renewal and actions required in the event that the instrument is cancelled by the issuing institution. Typically, the automatic renewal of the instrument must provide financial assurance equal to the face amount of the expiring instrument. Further, provisions usually indicate that the issuing institution may not cancel, terminate, or fail to renew the instrument except for failure to pay instrument overhead costs. Depending on the instrument, the institution must provide notice of cancellation a certain number of days prior to cancellation. Upon notice of cancellation, the owner or operator must provide alternative financial assurance within a certain number of days (exact number of days varies according to well class). |
| Fund Investment | Defines the acceptable ways that a trustee can invest a fund. Investment restrictions may include floors or caps on cash or the purchase of bonds or certain categories of stocks. |
| Fund Segregation | Specifies that the owner or operator must segregate funds in a cash-based account designated for FR. |

VI. Standby Trust

A **standby trust** is required for certain third-party instruments held by DI UIC programs, but may not be required if a state or tribe acts as the UIC Program Director and is named as the beneficiary of the financial instrument. The ability of a state or tribe to be named as the beneficiary may differ according to specific state regulations. Instruments that may require a standby trust include: CDs, surety bonds, LOCs, and other cash-based instruments.

| Standby Trust | |
|----------------------|---|
| Standby Trust: | <input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required |
| | Signed Copy of Trust Agreement: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Issuing Institution: | JP Morgan Chase Bank |
| Trustee: | JP Morgan Chase Bank |
| Notes: | Standby Trust modified on 5/25/2011 to accommodate increase in cost estimate |

VII. Accompanying Documentation

The **Accompanying Documentation** section identifies the required or recommended accompanying documentation for the financial instrument. The accompanying documentation helps reviewers verify that owners or operators meet FR criteria, and, in some cases, helps the UIC program draw on the instrument. This field appears in every checklist and lists documentation that is likely to apply to that specific financial instrument. However, UIC programs should customize this section based on the covered well class and their specific programmatic requirements.

Surety Bond (Third Party)

| Accompanying Documentation (Does the file contain...?) | |
|---|--|
| <input checked="" type="checkbox"/> Signed Copy of the Surety Bond | <input checked="" type="checkbox"/> Schedule of Covered Wells (names/locations/depths) |
| <input checked="" type="checkbox"/> Copy of Independent Cost Estimate | <input type="checkbox"/> Other |
| <input checked="" type="checkbox"/> Signed Copy of the Power of Attorney | <input type="checkbox"/> Other |
| <input checked="" type="checkbox"/> Certificate of Acknowledgment (for standby trust) | <input type="checkbox"/> Other |

The schedule of covered wells is especially important if coverage criteria are based on the number of wells and/or well depth.

Class I Hazardous Self Insurance

| Accompanying Documentation (Does the file contain...?) | |
|--|--------------------------------|
| <input checked="" type="checkbox"/> Copy of Independent Cost Estimate | <input type="checkbox"/> Other |
| <input checked="" type="checkbox"/> Corporate Guarantee | <input type="checkbox"/> Other |
| <input checked="" type="checkbox"/> Schedule of Covered Wells (names/locations/depths) | <input type="checkbox"/> Other |