

CLASS VI FINANCIAL ASSURANCE - SURETY & INSURANCE

To own and operate Carbon Capture & Sequestration (CCS) facilities in the United States requires compliance with many regulations with regards to financial assurance, all of which have been created in the last 10 years. Formally identified as Class VI wells and falling under the Safe Drinking Water Act and Underground Injection Control (UIC) Program, CCS operations are governed by the EPA in all states (except Wyoming and North Dakota, where they are governed by the state). The financial assurance requirement is crucial to the operators as the Class VI operator must conduct post-injection site care for a default period of 50 years. This default period will remain in place unless the CCS operator can demonstrate that the plume and pressure front no longer pose a risk of endangerment to drinking water and an alternative timeframe has been approved by the UIC Program Director.

FINANCIAL ASSURANCE

Financial assurance is a form of taxpayer protection. The EPA and other state agencies do not want to burden the American taxpayer with defunct company liabilities. Financial responsibility requirements are designed to ensure that owners or operators have the resources to carry out activities related to closing and remediating CCS sites if needed during injection or after wells are plugged, so that they do not endanger Underground Sources of Drinking Water (USDWs). The requirements will also help ensure that the costs of abandoned CCS projects are not borne by the general public.

Owners or operators of Class VI wells must demonstrate and maintain financial responsibility that consists of dollar values associated with for the following Four Categories:

- Corrective Action on Wells in the Area of Review (AoR)
- Injection Well Plugging
- Post-Injection Site Care and Site Closure
- Emergency and Remedial Response

These financial assurance dollar value estimates must be determined by a third-party engineering firm and then confirmed and approved by the governing Class VI body. In most instances, the Emergency and Remedial Response portion is the largest line item. At the submission of a permit, a general commitment can be given with the final policies to commence upon approval. The approval process can take 12-24 months and the ultimate financial assurance only needs to be in place at this future juncture.

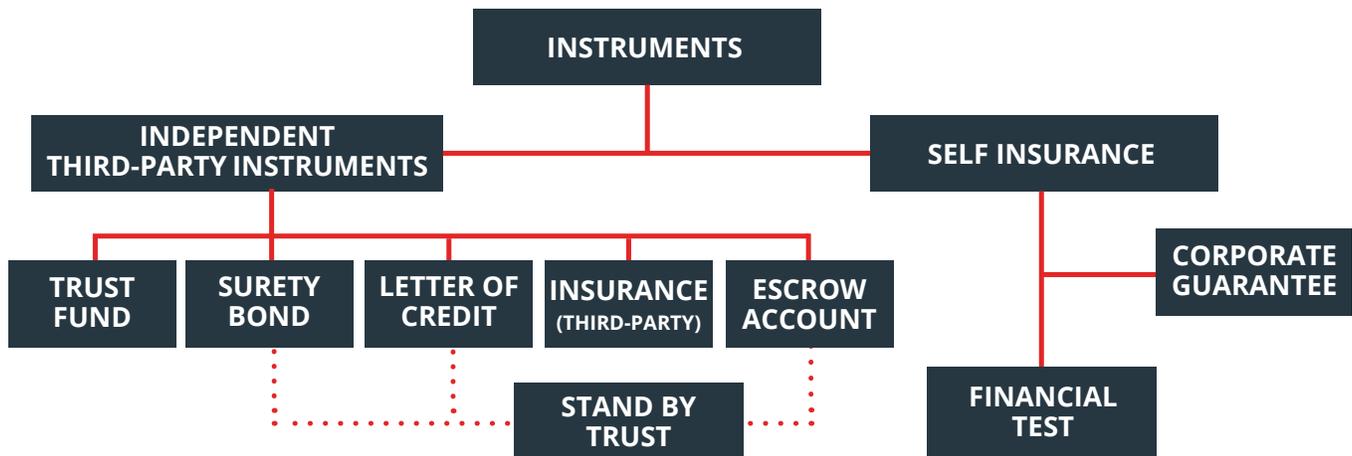
TWO POLICY APPROACH

The four categories that make up the sum of the financial responsibility requirement can be covered with different instruments. Corrective Action and Injection Well Plugging is best suited for a surety bond as that market routinely issues bonds for indefinite terms on long life plugging obligations and has a tenured history in this field of underwriting from the oil & gas space. It is the recommendation of CAC Specialty and the implied preference of the EPA that financial assurance responsibility occur in this manner.



TYPES OF FINANCIAL ASSURANCE

The EPA sets forth six instrument options for operators to obtain the necessary financial assurance.



TRUST FUND

The owner or operator is required to deposit the required amount of money into the trust prior to permitting or may have the option to exercise a “pay-in period” specified by the UIC Program Director trust falls below the cost estimate, the owner or operator will be required to deposit additional funds into the instrument or establish an additional instrument

SURETY BOND

This option is a guarantee by a surety company and comes in two varieties.

A Performance Bond – guarantees the performance of the financial responsibility activities. For example, a performance bond might give the surety three options to guarantee and finance the completion of a project: completing the project itself, hiring a contractor to complete the project, or paying the amount of funds guaranteed by the bond.

Financial Guarantee Bond – also commonly referred to as a payment bond, ensures that the surety company will pay the amount of funds guaranteed by the bond.

LETTER OF CREDIT

This is a bank instrument that guarantees the availability of funds for a payment. It is often time more expensive than a surety bond and has impacts to the overall credit facility. It also typically includes issuance fees and interest charged.

CORPORATE GUARANTEE

Involves several levels of financial test and is typically reserved for investment grade credit ratings.

THIRD PARTY INSURANCE

- Pollution Insurance policies appear to be the best solution for the liability damage requirement
- The pollution insurance would address the 3rd party damages section for bodily injury, property damage and off-site cleanup costs, including emergency response and remediation cost.
- With this being a non-cancelable obligation insurance companies may not be willing to underwrite policies for the entire life of a GS project that must be covered by a demonstration since this period will last for a minimum of 50 years. However, the pollution insurance will be available to be renewed every year, annual renewable policy. This is in a market segment which has been able to underwrite such policies continually for the last 40 plus years.
- In some cases, insurance companies underwrite policies with maximum terms of five to ten years that then can be renewed however for this type of risk, underwriters would not normally write the insurance for more than a 3 year term

ESCROW ACCOUNT

Although escrow accounts have not been used in the federal UIC program, they are functionally equivalent to a trust fund, and may be more accessible and have a lower overhead cost; however, they tend to yield lower interest as highly liquid instruments. They are equivalent to a full cash deposit.

Standby trust funds must be established when an owner or operator establishes a surety bond, letter of credit, or escrow account as part of a financial responsibility demonstration. A standby trust is different from a trust fund because the trust is unfunded (or in standby) until another financial instrument pays into it.

SURETY

CAC Specialty has a core practice in oil and gas plugging and abandonment bonds. Our team and the underwriters we work with have a tenured experience in long life, decommissioning-related financial assurance requirements, along with an understanding of injection wells, field operations and reservoir reports. This expertise lends itself to the carbon sequestration industry and the requirements that come with Class VI wells.

Surety is typically placed on an unsecured basis and pays a premium annually which is a percentage of the face value of the bond. Similar to letters of credit, surety bonds are off-balance sheet obligations according to US GAAP accounting. They offer a solution to the required financial assurance without the burden on one's liquidity or credit facility. In exchange for this surety credit, operators are required to execute indemnity agreements.

SPEED

Most operators in this field are concerned the EPA will become overwhelmed very quickly and a backlog of permits will accumulate, which will then be serviced on a first come first serve basis. Utilizing our two policy approach is proven and efficient method to get Class VI operators the financial assurance they need.

INSURANCE

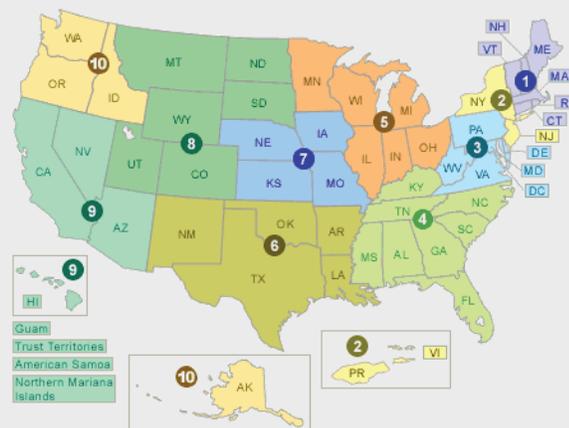
We combine our surety placement practice with the necessary pollution insurance lines to make this risk more palatable for the Operator. For Instance, one of the most significant lines items in a financial assurance request is the Emergency and Remedial Response. The pollution liability policy has provisions to pay for the costs required in the event of a sudden & accidentally pollution release and the emergency response required to mitigate. Coverage is provided up to the limits under the policy but that the insured has the discretion to engage in any emergency response without the normally required prior approval of the carrier.

WYOMING AND NORTH DAKOTA

Several states are in the process of applying for primacy over the EPA in establishing Class VI guidelines, but as of the date of publication only Wyoming and North Dakota have primacy. In Wyoming, responsibility for promulgation of rules and regulations governing Class VI wells rests with the Wyoming Department of Environmental Quality (WDEQ). In North Dakota, the Class VI regulations are governed by the North Dakota Industrial Commission (NDIC). In both instances, the states are required to mirror or exceed the regulations set forth by the EPA.

CLASS VI REGULATORY CONTACTS

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ABOUT CAC SPECIALTY

CAC Specialty is a risk solutions company of seasoned and proactive senior industry leaders, operating as a nimble and collaborative partner who puts you and your business first. With a knowledge-driven approach informed by data and decades of honed instinct, CAC Specialty brings an innovative vision to insurance broking and structured solutions to solve your risk challenges – from the simple to the previously unsolvable.

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