**R644. Natural Resources, Oil, Gas and Mining; Carbon Sequestration.**

**R644-5. Legal Permit Conditions.**

**R644-5-1. Applicability.**

This rule sets forth legal conditions for a CO2 Sequestration facility permit and any associated Class VI well permits. A permit for a Class VI well shall meet the applicable requirements in this rule and Rules R644-8 through R644-16. Any condition applicable to a permit shall be explicitly incorporated. If incorporated by reference, a specific citation to this rule must be given in the permit.

**R644-5-2. Signatories.**

Reports required by permits and other information requested by the division shall be signed by the person described in Section R644-3-1.

**R644-5-3. Financial Responsibility.**

(1) The operator must demonstrate and maintain financial responsibility as determined by the division that meets the following conditions:

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

(i) Surety Bonds in a form prescribed by the division;

(ii) Cash Accounts in a form prescribed by the division;

(iii) Negotiable Certificates of Deposit in a form prescribed by the division;

(iv) Letter of Credit in a form prescribed by the division; or

(v) Any other instruments of financial assurance satisfactory to the division.

(b) The qualifying financial responsibility instruments must be sufficient to cover the cost of:

(i) Corrective action that meets the requirements of Section R644-8-3;

(ii) Injection well plugging that meets the requirements of Rule R644-16;

(iii) Post-injection site care and site closure that meets the requirements of Rule R644-17; and

(iv) Emergency and remedial response that meets the requirements of Rule R644-12.

(c) The qualifying financial responsibility instruments must be sufficient to address endangerment of underground sources of drinking water.

(d) The qualifying financial responsibility instruments must comprise protective conditions of coverage. 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 responsibility instrument; and requirements for the provider to meet a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.

(i) Cancellation. An operator must provide that their financial mechanism may not cancel, 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 operator and the division. The cancellation must not be final for 120 days after receipt of cancellation notice. The operator must provide an alternate qualifying financial responsibility demonstration within 60 days of notice of cancellation, and if an alternate financial responsibility demonstration is not acceptable or possible, any funds from the instrument being canceled must be released to the division within 60 days of notification by the division.

(ii) Renewal. The operator shall renew all qualifying financial responsibility instruments, if an instrument expires, for the entire term of the geologic sequestration project. The instrument must be automatically renewed as long as the operator has the option of renewal at the face amount of the expiring instrument. The automatic renewal must, at a minimum, provide the operator with the option of renewal at the face amount of the expiring financial instrument.

(iii) Cancellation, termination, or failure to renew may not occur, and the financial instrument will remain in full force and effect, in the event that on or before the date of expiration:

(A) The division deems the CO2 Sequestration facility abandoned;

(B) The permit is terminated or revoked or a new permit is denied;

(C) Closure is ordered by the division, board, or a United States district court or other court of competent jurisdiction;

(D) The operator is named as debtor in a voluntary or involuntary proceeding under U.S. Bankruptcy Act, Title 11 U.S.C.; or

(E) The amount due is paid.

(e) The qualifying financial responsibility instruments must be approved by the division.

(i) The division shall consider and approve the qualifying financial responsibility demonstration for all the phases of the geologic sequestration project prior to issuing a CO2 Sequestration facility permit and any associated Class VI well permits.

(ii) The operator shall provide any updated information related to its qualifying financial responsibility instruments on an annual basis and, if there are any changes, the division must evaluate, within a reasonable time, the qualifying financial responsibility demonstration to confirm that the instruments used remain adequate for use. The operator shall maintain financial responsibility requirements regardless of the status of the division's review of the financial responsibility demonstration.

(iii) The division may disapprove the use of a financial instrument if it determines that it is not sufficient to meet the requirements of this section.

(f) Upon the division's approval, the operator may demonstrate financial responsibility by using one or multiple qualifying financial instruments for specific phases of the geologic sequestration project. If the operator combines more than one instrument for a specific geologic sequestration phase, such as well plugging, the combination must be limited to instruments that are not based on financial strength or performance. In this case, it is the combination of mechanisms, rather than the single mechanism, which must provide financial responsibility for an amount at least equal to the current cost estimate.

(g) When using a third-party instrument to demonstrate financial responsibility, the operator shall provide proof that the third-party providers either have passed financial strength requirements based on credit ratings; or have met a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.

(h) If the operator uses a surety bond to satisfy its financial responsibility requirements, the operator shall be the principal on the bond and each surety bond shall be executed by the operator and a surety company licensed to do business in Utah that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better. All surety companies will also be listed in the current issue of the U.S. Department of the Treasury Circular 570.

(2) The requirement to maintain division-approved qualifying financial responsibility and resources is directly enforceable regardless of whether the requirement is a condition of the permit.

(a) The operator shall maintain qualifying financial responsibility and resources until the board issues a certificate of project completion subsequent to the division approving site closure.

(b) The operator may be released from a financial instrument before approved site closure in the following circumstances:

(i) The operator has completed the phase of the geologic sequestration project for which the financial instrument was required and has fulfilled all its financial obligations as determined by the division, including obtaining financial responsibility for the next phase of the geologic sequestration project, if required;

(ii) The operator has submitted a replacement financial instrument and received written approval from the division accepting the new financial instrument and releasing the operator from the previous financial instrument.

(3) The operator shall have a detailed written estimate, in current dollars, of the cost of performing corrective action on wells in the area of review, plugging the injection well, post-injection site care and site closure, and emergency and remedial response.

(a) The cost estimate must be performed for each phase separately and must be based on the costs to the division of hiring a third party to perform the required activities. A third party is a party who is not within the corporate structure of the operator;

(b) During the active life of the geologic sequestration project, the operator shall adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with this section and provide this adjustment to the division. The operator shall also provide to the division written updates of adjustments to the cost estimate within 60 days of any amendments to the area of review and corrective action plan, the injection well plugging plan, the post-injection site care and site closure plan, and the emergency and remedial response plan;

(c) Any decrease or increase to the initial cost estimate is subject to the division's approval. During the active life of the geologic sequestration project, the operator shall revise the cost estimate no later than 60 days after the division has approved the request to modify the area of review and corrective action plan, the injection well plugging plan, the post-injection site care and site closure plan, and the emergency and remedial response plan, if the change in the plan increases the cost. If the change to the plans decreases the cost, any withdrawal of funds is subject to the division's approval. Any decrease to the value of the financial responsibility instruments must first be approved by the division. The revised cost estimate must be adjusted for inflation as specified in Subsection (3)(b); and

(d) When the current cost estimate increases to an amount greater than the face amount of a financial instrument currently in use, the operator, within 60 days after the increase, shall 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 division, or obtain other qualifying financial responsibility instruments to cover the increase. When the current cost estimate decreases, the face amount of the financial assurance instruments may be reduced to the amount of the current cost estimate only after the operator has received written approval from the division.

(4) The operator must notify the division by certified mail of adverse financial conditions such as bankruptcy that may affect its obligations, such as the ability to carry out injection well plugging, post-injection site care, and site closure.

(a) If the operator or the third-party provider of a qualifying financial responsibility instrument is named as the debtor in a bankruptcy proceeding, the operator must notify the division by certified mail of the commencement of a voluntary or involuntary proceeding under U.S. Bankruptcy Act, Title 11 U.S.C., naming the operator as debtor, within 10 days after commencement of the proceeding;

(b) A guarantor of a corporate guarantee must make such a notification to the division if they are named as debtor, as required under the terms of the corporate guarantee; and

(c) An operator who fulfills the financial responsibility requirements by obtaining an approved instrument of financial assurance 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 financial assurance instrument. The operator must establish other financial assurance within 60 days after such an event.

(5) The operator shall provide an adjustment of the cost estimate to the division within 60 days of notification by the division, if the division determines during the annual evaluation of the qualifying financial responsibility instruments that the most recent demonstration is no longer adequate to cover the cost of corrective action, injection well plugging, post-injection site care and site closure, and emergency and remedial response. An operator may request the use of pay-in-periods for cash-based accounts adjustments. Pay-in periods will only be allowed upon division approval.

**R644-5-4. Duty to Comply.**

(1) The operator must comply with each condition of a permit. Any permit noncompliance constitutes a violation of Title R644 and is grounds for enforcement action allowed under Title 40, Chapter 11, Part 3, Board authority -- Rulemaking authority, or permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application if the division determines that such noncompliance endangers USDWs.

(2) In an enforcement action, the operator may not use as a defense the reasoning that compliance could only be achieved by halting or reducing the permitted activity.

(3) The operator shall take every reasonable step to minimize or correct any adverse impact on the environment such as the contamination of USDW resulting from noncompliance with the permit.

(4) The operator shall maintain and properly operate any systems of treatment and control that are used at their facilities to achieve compliance within the conditions of their permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operation staffing and training, and adequate laboratory process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(5) The operator shall allow the director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the operator's premises where a regulated CO2 Sequestration facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment including monitoring and control equipment, practices, or operations regulated or required under the permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Safe Drinking Water Act, any substances or parameters at any location.

(6) Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Part C of the Safe Drinking Water Act.

(7) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

**R644-5-5. Property Rights.**

(1) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege or servitude.

(2) An operator shall file a record of the permit for the CO2 Sequestration facility and a description of the impacted land with the recorder's office in each county where the CO2 Sequestration facility is located.

**R644-5-6. Notification Requirements.**

(1) Planned Changes: The operator shall give notice to the division as soon as possible of any planned physical alterations or additions to the permitted CO2 Sequestration facility.

(2) Notice of Well Completion: An injection well may not commence injection until construction is complete, a notice of completion has been submitted to the division, the division has inspected or otherwise reviewed the injection well and finds it is in compliance with the conditions of the permit, and the division has given approval to begin injection.

(3) Anticipated Noncompliance: The operator shall give advance notice to the division of any planned changes in the permitted CO2 Sequestration facility or activity that may result in noncompliance with permit requirements.

(4) Transfers: A permit is not transferable to any person except after notice to the division and approval by the board. The division may require modification or revocation and reissuance of the permit to change the name of the owner or operator and incorporate such other requirements as may be necessary under the Safe Drinking Water Act and Section R644-7-5.

(5) Compliance Schedules: Report of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule in this rule shall be submitted to the division no later than 14 days following each compliance schedule date.

(6) The operator shall notify the division at such times as the permit requires before conversion or abandonment of the well or before closure of the project.

(7) Other Noncompliance: The operator shall report any instance of noncompliance not reported under Subsection (5) and Subsection R644-15-1(1)(d) when quarterly reports are submitted. The reports shall contain the information listed in Subsection R644-15-1(d)(i).

(8) Other Information: Where the operator becomes aware that they failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the division, they shall promptly submit such facts or information.

**R644-5-7. Duration of Permits.**

(1) A CO2 Sequestration facility permit, and any Class VI well permits associated with the CO2 Sequestration facility, shall be issued for the operating life of the CO2 Sequestration facility and the post-injection site care period. The division shall review each issued CO2 Sequestration facility and Class VI well permit at least once every five years to determine whether it should be modified, revoked, and reissued, terminated, or a minor modification made.

(2) If the operator wishes to continue an activity regulated by a permit after the expiration date of the permit, the operator must apply for and obtain a new permit.

**R644-5-8. Schedules of Compliance.**

(1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Title R644.

(a) Time for Compliance. Any schedules of compliance under this section shall require compliance as soon as possible but not later than three years after the effective date of the permit.

(b) Interim Dates. Except as provided in Subsection (1)(b)(ii), if a permit establishes a schedule of compliance that exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates may not exceed one year.

(ii) If the time necessary for completion of any interim requirements is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(c) Reporting. The permit shall be written to require that progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

**R644-5-9. Additional Conditions.**

The division shall impose on a case-by-case basis such additional conditions as are necessary to protect USDWs .

**R644-5-10. Duty to Establish and Maintain Mechanical Integrity of a Class VI Well.**

The operator of a Class VI well shall establish mechanical integrity prior to commencing injection and on a schedule determined by this rule or the division. Thereafter, the operator of a Class VI well must maintain mechanical integrity as defined in Rule R644-14. The Class VI well operator shall immediately give notice to the division and cease injection into the well when it is determined the injection well is lacking mechanical integrity. The well shall be shut-in until mechanical integrity is restored, pursuant to Rule R644-14, and the operator receives written approval from the division to resume injection.

**R644-5-11. Establishing Permit Conditions.**

In addition to conditions required in each permit, the division shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with each applicable requirements of the Safe Drinking Water Act and Title R644.

**R644-5-12. New Permits, Modified or Revoked and Reissued Permits.**

New permits, and to the extent allowed under Rule R644-7 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section. An applicable requirement is a state statutory or regulatory requirement that takes effect prior to final administrative disposition of the permit. An applicable requirement is also any requirement that takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in Rule R644-7.

**R644-5-13. Incorporation.**

All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

**KEY: oil and gas law**

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