From: McDonald, Jeffrey
To: "Gilmore, Tyler J"
Subject: RE: UIC Insurance Discussion
Date: Friday, February 07, 2014 4:27:00 PM

Tyler,

Would it be ok if I invited the two attorneys that are working with us on the FutureGen applications to this call? Both Mary, and especially Tom have been instrumental in helping us explore how we might be able to come up with solutions to our FR evaluation issues. I understand that sometimes lawyers participating can have a stifling effect, so no offense if you think it not best.

Jeff

Jeffrey R. McDonald, Geologist

Underground Injection Control Branch

U.S. EPA - Region 5

(312) 353-6288 [office]

(312) 408-2240 [direct fax]

mcdonald.jeffrey@epa.gov

-----Original Appointment-----
From: Gilmore, Tyler J [mailto:Tyler.Gilmore@pnnl.gov]
Sent: Friday, February 07, 2014 2:30 PM
To: Gilmore, Tyler J; McDonald, Jeffrey; Bayer, MaryRose; Paul Champagne; Lucinda Swartz; Penny Goodwyn; PMaguire@McGriff.com; Greenhagen, Andrew; Tiago, Joseph; Shari.Ring@cadmusgroup.com; Jaime Rooke
Subject: UIC Insurance Discussion
When: Monday, February 10, 2014 11:00 AM-12:00 PM (UTC-06:00) Central Time (US & Canada).
Where: Conference Call

When: Monday, February 10, 2014 9:00 AM-10:00 AM. (UTC-08:00) Pacific Time (US & Canada)
Where: Conference Call

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Conference Call in number 855.375.2121

Conference ID 2589450

Please forward to anyone I've missed that should be on the call.

Thanks

Tyler

Background

This conference call is a followup to a discussion that we had with EPA on the trust fund and insurance requirements for an Underground Injection Control permit. After the initial call the Alliance committed to gathering more information. Below is a summary of a phone conversation between the FutureGen Alliance and their insurance broker to gather that additional information.

Lucy Swartz and Paul Champaign talked with our insurance brokers, Penny Goodwin and Patrick McGuire of McGriff, Siebels & Williams. Below are notes from that call:

- With respect to cancellation and the requirements of 40 CFR 146.85(a)((4)(I)(A), a policy can be written to (1) provide 120 days notice prior to cancellation for non-payment of the premium; (2) address EPA's concern regarding cancellation in the event of material misrepresentation by the insured or upon the insured's failure to comply with the conditions of the policy; (3) explain the meaning of "change in use or change in operations" and its implications for continued coverage of emergency and remedial response costs; and (4) provide written notice of cancellation to the insured and UIC Program Director.
- With respect to renewal, insurers will not write a CCS policy that will auto-renew, although there could be a 90 to 120 notice of a decision not to renew, allowing the insured time to acquire new insurance. Insurers need to be able to tailor their coverage and re-underwrite exposures if those exposures have changed over the time the policy has been in place. Once an insurer is selected, it will be possible to provide proof of the insurer's financial strength and demonstrate that the insurer is an independent third party.
- A certificate of insurance is provide after a policy is in place and the premium has been paid. To obtain an insurance policy for activities that will not occur for a few years (i.e., CO2 injection) requires payment of fees to an insurance company to reserve the capacity for the future. In general, insurers can provide a quote approximately 21 days following submission of an application. Once the insurance company is selected, it would take 30 to 60 days for the binder and policy to be issued after the premium was paid.

The exclusions for noncompliance include intentional noncompliance. Although EPA raised the concern that many events requiring the need for an emergency response would technically be violations of the Class VI rule or a UIC permit, AIG noted that the exclusion relates to intentional noncompliance and that no insurer will write a policy to insure actions caused by the insured's willful violation of regulations. Also, the intentional noncompliance must be proved by the insurer. Minor changes to the exclusion provision can be made to make this point clear.

- With respect to bankruptcy, a claim against the policy can still be made as long as the premium is paid regardless of whether the insured is in bankruptcy. There is no cancellation for bankruptcy and the policy includes an assignments provision.
- There would be a minimum $250K deductible, although the insurer would pay for the emergency or remedial response action (pay on first dollar) and then go back to the insured for the deductible amount.

In a previous paper, the Alliance proposed that a UIC permit be conditioned on a certificate of insurance obtained prior to the start of CO2 injection. Prior to issuance of a draft permit decision, the Alliance could provide EPA with information regarding the steps the Alliance has taken to identify insurers, information about the financial strength and independence of those insurers, and the steps the Alliance will take prior to injection to obtain a certificate of insurance that meets EPA's Class VI UIC permit requirements.