

Request for Additional Information #15: Regarding Berexco's Letter of Credit January 13, 2017

EPA reviewed the sample Letter of Credit (LOC) submitted by Berexco on January 6, 2017. As Berexco notes, the example is for a Class II well, and the language is fairly similar to the recommended language for Class VI wells in the *UIC Program Class VI Financial Responsibility Guidance*. However, some modifications are needed to comply with 40 CFR 146.85 and the recommendations of the Guidance. Specifically, EPA notes the following:

- The LOC largely complies with the recommended wording in the Guidance, except:
 - EPA cannot be named the beneficiary of the LOC. A standby trust agreement is required to accompany this instrument. The LOC should name the owner/operator as the beneficiary and it should specify that funds will be deposited directly into the standby trust in accordance only with instructions from the UIC Program Director (see suggested language below). The standby trust should follow the language recommended for a Trust Agreement in the Guidance (Appendix B.I.).
 - The LOC must include language that indicates that funds will be paid to the standby Trust Fund. As per the Guidance, the recommended language for this is:
 - Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions for the fulfillment of [SELECT FROM: corrective action, injection well plugging, post injection site care and site closure, and/or emergency and remedial response] obligations described at 40 CFR 146.84, 146.92, 146.93, and/or 146.94, respectively.
 - When EPA is not the beneficiary (as is the case with Berexco), the language of the LOC must be modified to specify the UIC Program Director in place of references to “you” or “your.” The example language in the Guidance was drafted under the assumption that a state would be the beneficiary and must be revised to accurately refer to the EPA UIC Program Director for any instructions to draw on the instrument.
 - The LOC should specify the FR obligations it covers (as noted in the highlighted excerpt above). Please clarify which of the following it will cover (as indicated above): corrective action and phased corrective action, injection well plugging, and post-injection site care and site closure.
- It is recommended that the LOC be accompanied by a letter from Berexco referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, name and address of the facility, and the amount of funds assured for the well by the letter of credit. While not required by rule, the purpose of this letter would be to confirm for EPA's records the intended use of the LOC (exact well and FR obligations).
- Upon submitting the LOC and standby letter of credit, according to 40 CFR 146.85(a)(6)(ii), Berexco must also provide proof of the financial strength of the issuing institutions (of each instrument). Credit and bond ratings are the recommended measures. Also, please verify that the issuing institutions are monitored by the FDIC or another federal or state agency.
- Additionally, as noted in RAI #13, EPA recommends that Berexco consider alternative FR instruments to cover the \$10,000 deductible in the General Liability policy in the event Berexco

were to become financially insolvent. Berexco may want to consider using the LOC for this, and include those deductibles in addition to the other uses noted above.

EPA requests that Berexco submit (using the Financial Responsibility Module of the GSDT) a draft LOC for the Wellington Class VI project that addresses the items above. Upon receipt of the Class VI LOC, EPA will review the text, confirm that it is sufficiently funded to cover all anticipated activities, and evaluate it against EPA's checklist for financial responsibility instruments at <https://www.epa.gov/sites/production/files/2015-06/documents/epa816b13007.pdf>.