

IC 13-23-4

Chapter 4. Financial Responsibility

IC 13-23-4-1

Permissible forms of evidence

Sec. 1. The rules adopted under IC 13-23-1-2(c)(6) may allow evidence of financial responsibility in one (1) or a combination of the following forms:

- (1) Insurance.
- (2) Guarantee.
- (3) Surety bond.
- (4) Letter of credit.
- (5) Qualification as a self-insurer.
- (6) Any other method satisfactory to the commissioner and the Administrator of the United States Environmental Protection Agency.

As added by P.L.1-1996, SEC.13.

IC 13-23-4-2

Required policy provisions or contract terms

Sec. 2. The rules adopted under IC 13-23-1-2(c)(6) may require the use of certain policy provisions or contract terms, including provisions or terms concerning the following:

- (1) The minimum amount of coverage required for various classes and categories of underground storage tanks established under section 4 of this chapter.
- (2) Conditions or defenses that are necessary or unacceptable in establishing evidence of financial responsibility.

As added by P.L.1-1996, SEC.13.

IC 13-23-4-3

Establishment of method to show evidence of financial responsibility

Sec. 3. (a) The commissioner may provide a method under which the owner or operator of an underground storage tank may establish evidence of financial responsibility as required under sections 1 and 2 of this chapter and 42 U.S.C. 6991b(c)(6) with respect to the part of the potential liability of the owner or operator that is not covered through the excess liability trust fund established by IC 13-23-7-1.

(b) A method provided by the commissioner under this section must be acceptable to the Administrator of the United States Environmental Protection Agency.

(c) A method provided by the commissioner under this section must establish requirements for the establishment of evidence of financial responsibility by a small business petroleum marketer that are less stringent than the requirements applying to a petroleum marketer that owns or operates more than twelve (12) underground storage tanks.

As added by P.L.1-1996, SEC.13. Amended by P.L.9-1996, SEC.4.

IC 13-23-4-4

Underground storage tanks containing petroleum; minimum coverage amounts; classes and categories

Sec. 4. (a) The rules adopted under IC 13-23-1-2(c)(6) may require a minimum amount of coverage for particular classes or categories of underground storage tanks containing petroleum. Minimum coverage amounts established under this subsection must be at least one million dollars (\$1,000,000) for each occurrence, with an appropriate aggregate amount.

(b) The board may by rule set minimum coverage amounts lower than the amount set forth in subsection (a) for underground storage tanks containing petroleum that are:

- (1) not located at facilities engaged in the production, refining, or marketing of petroleum; and
- (2) not used to handle substantial quantities of petroleum.

(c) In adopting rules establishing classes and categories of underground storage tanks containing petroleum for purposes of this section, the board may consider the following factors:

- (1) The:
 - (A) size, type, location, storage, and handling capacity of underground storage tanks in the class or category; and
 - (B) volume of petroleum handled by those tanks.
- (2) The:
 - (A) likelihood of release; and
 - (B) potential extent of damage from any release; from underground storage tanks in the class or category.
- (3) The economic impact of the limits on the owners and operators of each class or category, particularly relating to the small business segment of the petroleum marketing industry.
- (4) The availability of methods of financial responsibility in amounts greater than the amount established by this section.
- (5) Any other factors that the board considers pertinent.

As added by P.L.1-1996, SEC.13.

IC 13-23-4-5

Suspension of enforcement of financial responsibility requirements

Sec. 5. (a) The commissioner, upon the application of any affected person or in the absence of any application, may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks if the commissioner determines that the following conditions exist:

- (1) The methods of financial responsibility satisfying the requirements of this article are not generally available for underground storage tanks in that class or category.
- (2) Steps are being taken:
 - (A) to form a risk retention group for the class or category; or
 - (B) to establish a fund under Section 9004(c)(1) of the federal Solid Waste Disposal Act, as amended (42 U.S.C. 6991c(c)(1), as amended), to be submitted as evidence of

financial responsibility.

(b) A suspension of enforcement under this section may not exceed one hundred eighty (180) days. Following a suspension of enforcement under this section, the commissioner may suspend enforcement for additional successive periods of not more than one hundred eighty (180) days if:

(1) the commissioner determines that substantial progress has been made in establishing a risk retention group; or

(2) the owners or operators of underground storage tanks in the class or category demonstrate to the satisfaction of the commissioner that:

(A) the formation of a risk retention group is not possible; and

(B) the state is unable or unwilling to establish a fund as described in subsection (a)(2)(B).

(c) A determination to suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks under subsection (a) or (b) may not be effective until the Administrator of the United States Environmental Protection Agency has made the same determination under Section 9003(d)(5)(D) of the federal Solid Waste Disposal Act, as amended (42 U.S.C. 6991b(d)(5)(D), as amended), with respect to the same class or category of underground storage tanks.

As added by P.L.1-1996, SEC.13.

IC 13-23-4-6

Bankruptcy of owner or operator of underground storage tank; liability of guarantor

Sec. 6. (a) If:

(1) the owner or operator of an underground storage tank is in bankruptcy, reorganization, or arrangement under the federal bankruptcy law; or

(2) despite the exercise of reasonable diligence, no state or federal court could obtain jurisdiction over an owner or operator likely to be solvent at the time of judgment;

any claim arising from conduct for which evidence of financial responsibility is provided may be asserted directly against the guarantor.

(b) In an action based upon a claim under subsection (a), the guarantor may invoke:

(1) all rights and defenses that would have been available to the owner or operator if the action had been brought against the owner or operator by the claimant; and

(2) all rights and defenses that would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(c) The total liability of a guarantor under this section is limited to the aggregate amount in which the guarantor has provided evidence of financial responsibility for the owner or operator of an underground storage tank. This section does not do any of the

following:

(1) Limit any other liability of a guarantor to the owner or operator of an underground storage tank, such as liability for bad faith in:

(A) negotiating; or

(B) failing to negotiate;

the settlement of any claim.

(2) Diminish the liability of any person under the following:

(A) Section 107 or 111 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607 or 9611).

(B) Any other applicable law.

As added by P.L.1-1996, SEC.13.

IC 13-23-4-7

Concurrence of Administrator of United States Environmental Protection Agency with actions of board or commissioner

Sec. 7. The provisions of IC 13-11-2-241(b)(10) and sections 1(6) and 5(c) of this chapter requiring the concurrence of the Administrator of the United States Environmental Protection Agency for an action of the board or commissioner to be effective are nullified if the Administrator grants to the commissioner, under the program approved under Section 9004 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. 6991c, as amended), the authority to take the action without the Administrator's specific concurrence.

As added by P.L.1-1996, SEC.13.