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VIII. Escrow Account

An escrow agreement, as specified in this chapter, may be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Escrow Agreement

This Escrow Agreement is entered into by and between: The "Grantor," [name of owner or operator] a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"]; the "Agency," [Director (EPA or name of state agency)]; and the "Escrow Agent," [name of Escrow Agent].

The Grantor, Agency, and the Escrow Agent are hereinafter collectively referred to as the "Parties."

Recitals

Whereas, on [date] the Agency issued to the Grantor an individual [Class VI Well Permit];

Whereas, the Permit authorizes the Grantor to operate a Class VI Well located at [insert city, state] and to operate an injection well in accordance with the terms and conditions set forth therein;

Whereas, the Agency has established certain regulations applicable to the Grantor, requiring that an owner or operator of an injection well shall provide assurance that funds will be available when needed for [corrective action, injection well plugging, post injection site care and site closure, and/or emergency and remedial response];

Whereas, this Escrow Agreement is the Agency approved form of a financial assurance instrument that provides for [corrective action, injection well plugging, post injection site care and site closure, and/or emergency and remedial response], as required by the Permit. This Escrow Agreement defines the terms and conditions under which the account will be held and disbursed;

Whereas, the "Required Escrow Amount" to be placed in the Escrow Account is [can insert statement on the amount to be held in the Escrow Account];

Whereas, the Escrow Agent agrees to accept, hold, and disburse the Escrow Account funds and the earnings thereon in accordance with the terms of this Escrow Agreement; and

Whereas said Agency shall establish a standby trust fund as is required when an Escrow Account is used to provide such financial assurance.

Now, therefore, in consideration of the recitals above, the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Escrow Account

1. The Grantor shall deliver to the Escrow Agent the Required Escrow Amount of $[insert dollars] at least [insert number (#)] calendar days prior to [insert date].
2. Within [insert number (#)] business days of receipt of the Required Escrow Amount or additional funds pursuant to Paragraph 3 below, the Escrow Agent shall place the Required Escrow Amount in an interest bearing account (the "Escrow Account") at the "Depository Bank", [insert name of institution bank] located at [insert city, state] [city, state cont.]. All funds delivered by the Grantor to the Escrow Agent shall be deposited and held by the Escrow Agent in the Escrow Account.
3. Within [insert number (#)] calendar days of any disbursement form the Escrow Account, the Grantor shall deliver additional funds to the Escrow Agent so that the amount available in the Escrow Account shall be no less than the Required Escrow Amount, provided that at no time may the Escrow Account incur a negative balance.
4. The Depository Bank shall be entitled to charge the Escrow Account for services related to the maintenance of the Escrow Account at a rate not exceeding the Depository Bank's standard charges to other customers for similar services.
5. The Escrow Account shall be opened with the signature of the Escrow Agent indicating that checks drawn against the Escrow Account shall be signed by the Escrow Agent and by no other persons. Disbursements shall be made from the Escrow Account only in accordance with the terms of this Agreement.
6. The Escrow Agent shall maintain a record of all deposits, income, disbursements, and other transactions concerning the Escrow Account. [More details can be inserted here.] _____ _____.
7. The Escrow Agent shall keep in its possession all book(s) and records relating to the Escrow Account until such time as they are delivered to a successor Escrow Agent pursuant to [insert paragraph] or to the Grantor and the Agency pursuant to [insert paragraph] below.

Disbursements

8. The Escrow Agent shall make disbursements of the Escrow Account funds including any accrued interest only as follows:
   a. [Number (#) of business days] following receipt of written direction from the Agency stating that funds held in the Escrow Account are required to pay for [corrective action, injection well plugging, post injection site care and site closure, and/or emergency and remedial response], the Escrow Agent shall disburse such funds to the standby trust fund in the amount(s) identified, in accordance with the Agency's written direction for the fulfillment of [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. Or, if an order is issued to begin [corrective action, injection well plugging, post injection site care and site closure, and/or emergency and remedial response] by a U.S. district court or other count of

competent jurisdiction, the Escrow Agent shall disburse such funds to the standby trust fund within [number (#) of business days] .

b. The Agency's written direction shall include invoice(s) evidencing the expenditure made or to be made by the Grantor. The Grantor shall send a copy of the written direction including the invoice(s) to the attention of the Agency as set forth in [paragraph number] below.

c. The Escrow Agent shall disburse all funds in the Escrow Account to the Grantor within [number (#)] business days of receipt of a joint written direction from the Agency and the Grantor that the Escrow Account funds are no longer required to fund the [corrective action, injection well plugging, post injection site care and site closure, and/or emergency and remedial response], as required by the Permit.

Duties and Liabilities of Escrow Agent

9. The Escrow Agent shall have no liability or obligation with respect to the Escrow Account funds except for the Escrow Agent's willful misconduct, bad faith, or gross negligence. The Escrow Agent shall be under no duty to: (a) pass upon the adequacy of any documents; (b) determine whether any of the Parties are complying with the terms and provisions of the Escrow Agreement; or (c) determine the identity or authority of any person purporting to be a signatory authorized by the Grantor or the Agency.

Escrow Agent's Fee

10. The Escrow Agent shall be entitled to compensation from the Grantor for its services under this Escrow Agreement in accordance with the attached fee schedule.

Investment Risk

11. In no event shall the Escrow agent have any liability as a result of any loss occasioned by the financial difficulty or failure of any institution, including the Depository Bank, or for failure of any banking institutions, including the Depository bank, to follow the instructions of the Escrow Agent.

Notices

12. All notices, certifications, authorizations, request, or other communications permitted or required shall be delivered as follows:

    a. To the Grantor: [insert address]

    b. To the Agency: [insert address]

    c. To the Escrow Agent: [insert address]

13. The Escrow Agent shall annually, at least 30 days prior to the anniversary date of establishment of the account, furnish to the Grantor and to the appropriate Agency a statement confirming the value of the account. Any securities in the account shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the account. The failure of the Grantor to object in writing to the Escrow

Agency within 90 days after the statement has been furnished to the Grantor and the Agency shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Escrow Agent with respect to matters disclosed in the statement.

Resignation, Removal, and Successor Escrow Agent

14. If, at any time, the Escrow Agent shall resign, be removed, be dissolved, or otherwise become incapable of acting, or the position of the Escrow Agent shall become vacant for any reason, the Parties shall promptly appoint a successor Escrow Agent.
15. The Escrow Agency may not cancel or terminate the Escrow Account unless there is a failure to pay service fees. The Escrow Agent should send notice of cancellation by certified mail to the owner or operator and the Agency.
16. All interest income accrued on funds in the Escrow Account shall become part of the Escrow Account and shall remain in the Escrow Account. The Grantor shall be solely responsible for the payment of all federal and state taxes on accrued Escrow Account interest.

Miscellaneous

17. This Escrow Agreement constitutes the entire agreement between the Parties relating to the holding, investment, and disbursement of the Escrow Account funds.
18. The Escrow Agreement shall be binding upon, and shall inure to the benefit of the Parties hereto and their successors and assigns.

    This Escrow Agreement shall be governed by and be construed and interpreted in accordance with the laws of [name of state]_____ with regard to the Grantor without giving effect to the conflict of laws principles thereof. Any claims relating to EPA will be resolved under federal law including, but not limited to the Federal Tort Claims Act 28 U.S.C. 2671, 2680.

19. This Escrow Agreement may be executed in any number of counterparts each which shall constitute an original and all counterparts shall constitute one Agreement.
20. This Escrow Agreement may not be assigned, amended, altered, or modified except by written instrument duly executed by all of the Parties.
21. This Escrow Agreement shall terminate, and the Escrow Agent shall be relieved of all liability to the Grantor after: (a) all funds in the Escrow Account have been properly disbursed in accordance with the terms and conditions of this agreement; (b) the Escrow Agent has provided a final accounting of all transactions hereunder to the Parties; and (c) a copy of all books and records relating to the Escrow Account has been delivered to the Grantor, and, if requested, to the Agency. EPA does not indemnify either the Grantor or the Escrow Agent due to the restrictions imposed by the Anti-Deficiency Act, 31 U.S.C. 1341.
22. This Agreement shall take effect on the latest date of execution by the Grantor, Agency, or Escrow Agent.

23. [Can add additional terms here.] _____
_____
_____
_____

In witness whereof, the Parties have caused this Escrow Agreement to be duly executed as set forth below.

Signature of Grantor: _____

Title: _____

Seal:

Signature of Agency: _____

Name of Agency: _____

Title: _____

Seal:

Signature of Escrow Agent: _____

Title: _____

Seal: