Excerpted from 62-342.700 Financial Responsibility.

(1) To provide reasonable assurances that the proposed Mitigation Bank will meet the requirements of Section 373.4136, F.S., this section and the associated permit conditions, non-governmental bankers shall provide proof of financial responsibility for: (a) the construction and implementation phase of the bank, and (b) the perpetual management of the bank, as required in this section. Governmental entities shall provide proof of financial responsibility under subsection 62-342.700(12), F.A.C. The amount of financial responsibility provided in the mechanisms required in this section shall be based on the cost estimates determined under subsection 62-342.700(10), F.A.C.

(2) Submitting Financial Responsibility Documentation. The applicant shall provide draft documentation of the required financial responsibility mechanisms described below with the permit application, and shall submit to the Department the executed or finalized documentation within the time frames specified in the permit. The provisions of this section shall also apply for any modifications to the Mitigation Bank Permit.

(3) General Terms for Financial Responsibility Mechanisms. In addition to the specific provisions regarding financial responsibility mechanisms for construction and implementation in subsection 62-342.700(4), F.A.C., and perpetual management in subsection 62-342.700(9), F.A.C., the following terms shall be complied with:

(a) The financial responsibility mechanisms shall be payable at the direction of the Department to its designee or to a standby trust agreement. The financial responsibility mechanism shall be retained by the Department if it is of a type which is retained by the beneficiary according to industry standards.

(b) Demonstration of financial responsibility shall be continuous until complete satisfaction of the applicable permit conditions and approved release of financial responsibility by the Department.

(c) All financial mechanisms must guarantee that the banker will perform all of its obligations under the permit, provide alternative financial assurance of a type allowed by this section, and obtain the Department’s written approval of the alternative assurance provided within 90 days after receipt by both the banker and the Department of a notice of cancellation of a bond or intent not to extend the expiration date of a letter of credit.

(d) A banker may satisfy the requirements of this section by establishing more than one acceptable financial mechanism per Mitigation Bank.

(e) A banker may use a financial assurance mechanism allowed under this section for more than one Mitigation Bank. The amount of funds available through the mechanism must be no less than the sum of funds that would be available through separate mechanisms acceptable for each Mitigation Bank.

(f) A banker must notify the Department by certified mail within 10 days after the commencement of a voluntary or involuntary proceeding:

1. To dissolve the banker,
2. To place the banker in receivership,
3. For entry of an order for relief against the banker under Title 11 of the United States Code, or
4. A general assignment of its assets for the benefit of creditors under Chapter 727, F.S.

A banker may not assign its assets for the benefit of creditors. A banker will be without the required financial assurance in the event of a bankruptcy of the trustee of any trust provided under this rule, or the suspension or revocation of the authority of any trustee to act as trustee, or in the event of a bankruptcy of the issuing institution of any bond or letter of credit, or the revocation of the authority of such institution to issue such instruments. The banker must notify the Department within 10 days, and establish other financial assurance within 60 days after such an event.

(4) Financial Responsibility for Construction and Implementation.

(a) No financial responsibility shall be required where the construction and implementation of the Mitigation Bank, or a phase thereof, is completed and successful prior to the withdrawal of any credits.

(b) Financial responsibility for the construction and implementation of each phase of the Mitigation Bank may be established by surety bonds, performance bonds, irrevocable letters of credit, or trust funds. If a bond or an irrevocable letter of credit is used as the financial mechanism, a standby trust fund shall be established, in which all payments under the bonds or irrevocable letter of credit shall be directly deposited.

(c) The amount of financial responsibility established shall equal 110% of the cost of construction and implementation of the Mitigation Bank (or each phase of the Mitigation Bank) which is being constructed and implemented. When the bank (or appropriate phase) has been completely constructed, implemented, and is trending toward success in compliance with the permit, the respective amount of financial responsibility shall be released.

(d) The financial responsibility mechanism shall become effective prior to the release of any mitigation credits.