

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a RCRA Standardized Permit
- 2) Code Citation: 35 Ill. Adm. Code 727
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
727.110	Amend
727.240	Amend
- 4) Statutory Authority: 415 ILCS 5/7.2, 22.4, and 27
- 5) A Complete Description of the Subjects and Issues Involved: The amendments to Part 727 are a single segment of the docket R13-15 rulemaking that also affects 35 Ill. Adm. Code 703, 704, 720, 722, 724, 725, 726, 728, and 738, each of which is covered by a separate notice in this issue of the Illinois Register. To save space, a more detailed description of the subjects and issues involved in the docket R13-15 rulemaking in this issue of the Illinois Register only in the answer to question 5 in the Notice of Adopted Amendments for 35 Ill. Adm. Code 703. A comprehensive description is contained in the Board's opinion and order of June 20, 2013, proposing amendments in docket R13-15, which opinion and order is available from the address below.

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Pollution Control Board

Specifically, the amendments to Part 724 implement corrections suggested by USEPA and make corrections that the Board has determined are needed, including corrections that facilitate updating the incorporations by reference. The Board's opinion and order of June 20, 2013 in docket R13-15 discusses the more substantial corrections made in the text. Tables that appear in that opinion and order list all of the various corrections and amendments included in this proceeding. Persons interested in the details of those corrections and amendments should refer to the June 20, 2013 opinion and order in docket R13-15.

Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace emergency amendments currently in effect? No

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No. The centralized location of all incorporations by reference for the purposes of all of the Illinois hazardous waste and underground injection control regulations, including Part 727, is 35 Ill. Adm. Code 720.111.
- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2010)].
- 11) Are there any other rulemakings pending on this Part? No
- 12) Time, Place and Manner in which interested persons may comment on this rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R13-15 and be addressed to:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
State of Illinois Center, Suite 11-500
100 W. Randolph St.
Chicago, IL 60601

Please direct inquiries to the following person and reference docket R13-15:

Michael J. McCambridge
Staff Attorney
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago, IL 60601

Phone: 312/814-6924
E-mail: mccambm@ipcb.state.il.us

Request copies of the Board's opinion and order at 312-814-3620, or download a copy from the Board's Website at <http://www.ipcb.state.il.us>.

- 13) Initial regulatory flexibility analysis:

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking may affect those small businesses, small municipalities, and not-for-profit corporations that generate, transport, treat, store, or dispose of hazardous waste. These proposed amendments do not create or enlarge a state mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2010)].
- B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments require extensive reporting, bookkeeping and other procedures, including the preparation of manifests and annual reports, waste analyses and maintenance of operating records. These proposed amendments do not create or enlarge a state mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2010)].
- C) Types of Professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer. These proposed amendments do not create or enlarge a state mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2010)].
- 14) Regulatory Agenda on which this rulemaking was summarized: December 2012

The full text of the Proposed Amendments begins on the next page:

EXEMPT

JCAR350727-1309388r01

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE G: WASTE DISPOSAL
3 CHAPTER I: POLLUTION CONTROL BOARD
4 SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS
5

6 PART 727
7 STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE
8 FACILITIES OPERATING UNDER A RCRA STANDARDIZED PERMIT
9

10	Section	
11	727.100	General
12	727.110	General Facility Standards
13	727.130	Preparedness and Prevention
14	727.150	Contingency Plan and Emergency Procedures
15	727.170	Recordkeeping, Reporting, and Notifying
16	727.190	Releases from Solid Waste Management Units
17	727.210	Closure
18	727.240	Financial Requirements
19	727.270	Use and Management of Containers
20	727.290	Tank Systems
21	727.900	Containment Buildings
22		
23	727.APPENDIX A	Financial Assurance Forms
24	727.ILLUSTRATION A	Letter of Chief Financial Officer: Financial Assurance for
25		Facility Closure
26	727.ILLUSTRATION B	Letter of Chief Financial Officer: Financial Assurance for
27		Liability Coverage
28	727.APPENDIX B	Correlation of State and Federal Provisions
29	727.TABLE A	Correlation of Federal RCRA Standardized Permit Provisions to
30		State Provisions
31	727.TABLE B	Correlation of State RCRA Standardized Permit Provisions to
32		Federal Provisions

33
34 AUTHORITY: Implementing Sections 7.2 and 22.4 and authorized by Section 27 of the
35 Environmental Protection Act [415 ILCS 5/7.2, 22.4, and 27].
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37 SOURCE: Adopted in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1146, effective December 20,
38 2006; amended in R07-5/R07-14 at 32 Ill. Reg. 12829, effective July 14, 2008; amended in R13-
39 15 at 37 Ill. Reg. _____, effective _____.
40

41 **Section 727.110 General Facility Standards**
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- 43 a) Applicability of this Section. This Section applies to the owner or operator of a

44 facility that treats or stores hazardous waste under a Subpart J of 35 Ill. Adm.
45 Code 703 RCRA standardized permit, except as provided in Section
46 727.100(a)(2).
47

48 BOARD NOTE: Subsection (a) of this Section is derived from 40 CFR 267.10
49 ~~(2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- 50
- 51 b) Compliance with this Section. To comply with this Section, the facility owner or
52 operator must obtain a USEPA identification number, and follow the
53 requirements of this Part for waste analysis, security, inspections, training, special
54 waste handling, and location standards.
55

56 BOARD NOTE: Subsection (b) of this Section is derived from 40 CFR 267.11
57 ~~(2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- 58
- 59 c) Obtaining a USEPA identification number. The facility owner or operator must
60 apply to USEPA Region 5 for a USEPA identification number ~~following the~~
61 ~~USEPA notification procedures and using USEPA Form form 8700-12.~~ The
62 owner or operator ~~must~~ may obtain a copy of the form information and required
63 forms from the Agency, and submit a completed copy of the form to the Bureau
64 of Land, in addition to notification to or from USEPA Region 5.
65

66 BOARD NOTE: Subsection (c) of this Section is derived from 40 CFR 267.12
67 ~~(2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- 68
- 69 d) Waste analysis requirements:
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71 1) Before it treats or stores any hazardous wastes, the facility owner or
72 operator must obtain a detailed chemical and physical analysis of a
73 representative sample of the wastes. At a minimum, the analysis must
74 contain all the information needed to treat or store the waste to comply
75 with this Part and 35 Ill. Adm. Code 728.
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77 A) The facility owner or operator may include data in the analysis that
78 was developed pursuant to 35 Ill. Adm. Code 721 or data
79 published or documented on the hazardous waste or on hazardous
80 waste generated from similar processes.

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82 B) The facility owner or operator must repeat the analysis as
83 necessary to ensure that it is accurate and up to date. At a
84 minimum, the owner or operator must repeat the analysis if the
85 process or operation generating the hazardous wastes has changed.
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- 2) The facility owner or operator must develop and follow a written waste analysis plan that describes the procedures it will follow to comply with subsection (d)(1) of this Section. The owner or operator must keep this plan at the facility. If the owner or operator receives wastes generated from off-site and is eligible for a RCRA standardized permit, the owner or operator also must have submitted the waste analysis plan with the Notice of Intent. At a minimum, the plan must specify all of the following:
- A) The hazardous waste parameters that the owner or operator will analyze and the rationale for selecting these parameters (that is, how analysis for these parameters will provide sufficient information on the waste's properties to comply with subsection (d)(1) of this Section).
 - B) The test methods the owner or operator will use to test for these parameters.
 - C) The sampling method the owner or operator will use to obtain a representative sample of the waste to be analyzed. The owner or operator may obtain a representative sample using either of the following methods:
 - i) One of the sampling methods described in Appendix A of 35 Ill. Adm. Code 721; or
 - ii) An equivalent sampling method.
 - D) How frequently the owner or operator will review or repeat the initial analysis of the waste to ensure that the analysis is accurate and up to date.
 - E) Where applicable, the methods the owner or operator will use to meet the additional waste analysis requirements for specific waste management methods, as specified in 35 Ill. Adm. Code 724.117, 724.934(d), 724.963(d), and 724.983.

123 BOARD NOTE: Subsection (d) of this Section is derived from 40 CFR 267.13
124 (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- 125
126 e) Security requirements:
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128 1) The facility owner or operator must prevent, and minimize the possibility
129 for, livestock and unauthorized people from entering the active portion of

its facility.

2) The facility must have either of the features listed in subsection (e)(2)(A) of this Section or those listed in subsections (e)(2)(B) and (e)(2)(C) of this Section:

A) A 24-hour surveillance system (for example, television monitoring or surveillance by guards or facility personnel) that continuously monitors and controls entry onto the active portion of the facility; or

B) An artificial or natural barrier (for example, a fence in good repair or a fence combined with a cliff) that completely surrounds the active portion of the facility; and

C) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (for example, an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

3) The facility owner or operator must post a sign at each entrance to the active portion of a facility, and at other prominent locations, in sufficient numbers to be seen from any approach to this active portion. The sign must bear the legend "Danger – Unauthorized Personnel Keep Out." The legend must be in English and in any other language predominant in the area surrounding the facility (for example, French or Spanish), and must be legible from a distance of at least 25 feet. The owner or operator may use existing signs with a legend other than "Danger – Unauthorized Personnel Keep Out" if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion and entry onto the active portion can be dangerous.

BOARD NOTE: Subsection (e) of this Section is derived from 40 CFR 267.14 (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

f) General inspection requirements:

1) The owner or operator must inspect its facility for malfunctions and deterioration, operator errors, and discharges that may be causing, or may lead to either of the conditions listed in subsection (f)(1)(A) or (f)(1)(B) of this Section. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they result in harm to human health and the environment.

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- A) A release of hazardous waste constituents to the environment; or
 - B) A threat to human health.
- 2) The facility owner or operator must develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.
- A) The owner or operator must keep this schedule at the facility.
 - B) The schedule must identify the equipment and devices that the owner or operator will inspect and what problems it will look for, such as malfunctions or deterioration of equipment (for example, inoperative sump pump, leaking fitting, etc.).
 - C) The frequency of the owner's or operator's inspections may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies required in Sections 727.270(e), 727.290(d) and (f), and 727.900(d) and 35 Ill. Adm. Code 724.933, 724.952, 724.953, 724.958, and 724.983 through 724.989, where applicable.
- 3) The facility owner or operator must remedy any deterioration or malfunction of equipment or structures that the inspection reveals in time to prevent any environmental or human health hazards. Where hazard is imminent or has already occurred, the owner or operator must take immediate remedial action.
- 4) The facility owner or operator must record all inspections. The owner or operator must keep these records for at least three years from the date of inspection. At a minimum, the owner or operator must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

216 BOARD NOTE: Subsection (f) of this Section is derived from 40 CFR 267.15
 217 (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
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219 g) Employee training:
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221 1) Facility personnel must successfully complete a program of classroom
 222 instruction or on-the-job training that teaches them to perform their duties
 223 in a way that ensures the facility's compliance with the requirements of
 224 this Part. The facility owner or operator must ensure that this program
 225 includes all the elements described in the documents that are required
 226 pursuant to subsection (g)(4)(C) of this Section.
 227

228 A) A person trained in hazardous waste management procedures must
 229 direct this program, and must teach facility personnel hazardous
 230 waste management procedures (including contingency plan
 231 implementation) relevant to their employment positions.
 232

233 B) At a minimum, the training program must be designed to ensure
 234 that facility personnel are able to respond effectively to
 235 emergencies by including instruction on emergency procedures,
 236 emergency equipment, and emergency systems, including all of the
 237 following, where applicable:
 238

239 i) Procedures for using, inspecting, repairing, and replacing
 240 facility emergency and monitoring equipment.
 241

242 ii) Key parameters for automatic waste feed cut-off systems.
 243

244 iii) Communications or alarm systems.
 245

246 iv) Response to fires or explosions.
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248 v) Response to groundwater contamination incidents.
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250 vi) Shutdown of operations.
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252 2) Facility personnel must successfully complete the program required in
 253 subsection (g)(1) of this Section within six months after the date of their
 254 employment or assignment to a facility or to a new position at a facility,
 255 whichever is later. Employees hired after the effective date of the owner's
 256 or operator's RCRA standardized permit must not work in unsupervised
 257 positions until they have completed the training requirements of
 258 subsection (g)(1) of this Section.

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- 3) Facility personnel must take part in an annual review of the initial training required in subsection (g)(1) of this Section.
- 4) The facility owner or operator must maintain the following documents and records at its facility:
 - A) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;
 - B) A written job description for each position listed pursuant to subsection (g)(4)(A) of this Section. This description must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;
 - C) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed pursuant to subsection (g)(4)(A) of this Section;
 - D) Records that document that facility personnel have received and completed the training or job experience required pursuant to subsections (g)(1), (g)(2), and (g)(3) of this Section.
- 5) The facility owner or operator must keep training records on current personnel until its facility closes. The owner or operator must keep training records on former employees for at least three years from the date the employee last worked at its facility. Personnel training records may accompany personnel transferred within a company.

BOARD NOTE: Subsection (g) of this Section is derived from 40 CFR 267.16 (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- h) Requirements for managing ignitable, reactive, or incompatible wastes:
 - 1) The facility owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste by following these requirements:
 - A) The owner or operator must separate these wastes and protect them from sources of ignition or reaction such as open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (for example, from heat-producing chemical reactions), and radiant heat.

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- B) While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flames to specially designated locations.
 - C) "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.
- 2) If it treats or stores ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, the owner or operator must take precautions to prevent reactions that do the following:
- A) Generate extreme heat or pressure, fire or explosions, or violent reactions.
 - B) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment.
 - C) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions.
 - D) Damage the structural integrity of the device or facility.
 - E) Threaten human health and the environment in any similar way.
- 3) The facility owner or operator must document compliance with subsection (h)(1) or (h)(2) of this Section. The owner or operator may base this documentation on references to published scientific or engineering literature, data from trial tests (for example bench scale or pilot scale tests), waste analyses (as specified in Section 727.110(d)), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

BOARD NOTE: Subsection (h) of this Section is derived from 40 CFR 267.17 (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- i) Facility location standards:
 - 1) The facility owner or operator may not locate any portion of a new facility where hazardous waste will be treated or stored within 61 meters (200 feet) of a fault that has had displacement in Holocene time.
 - A) "Fault" means a fracture along which rocks on one side have been

345 displaced with respect to those on the other side.

- 346
- 347 B) "Displacement" means the relative movement of any two sides of a
- 348 fault measured in any direction.
- 349
- 350 C) "Holocene" means the most recent epoch of the Quaternary period,
- 351 extending from the end of the Pleistocene to the present.
- 352

353 BOARD NOTE: Under the note to corresponding 40 CFR
 354 267.18(a)(3) and 40 CFR 270.14(b)(11), a facility that is located in
 355 a political jurisdiction other than those listed in appendix VI of 40
 356 CFR 264, incorporated by reference in 35 Ill. Adm. Code
 357 720.111(b), is assumed to be in compliance with this requirement.
 358 No area of Illinois is listed in appendix VI of 40 CFR 264.

- 359
- 360 2) If an owner's or operator's facility is located within a 100-year flood plain,
- 361 it must be designed, constructed, operated, and maintained to prevent
- 362 washout of any hazardous waste by a 100-year flood.
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- 364 A) "100-year flood plain" means any land area that is subject to a one
- 365 percent or greater chance of flooding in any given year from any
- 366 source.
- 367
- 368 B) "Washout" means the movement of hazardous waste from the
- 369 active portion of the facility as a result of flooding.
- 370
- 371 C) "100-year flood" means a flood that has a one percent chance of
- 372 being equaled or exceeded in any given year.
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374 BOARD NOTE: Subsection (i) of this Section is derived from 40 CFR 267.18
 375 (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

376
 377 (Source: Amended at 37 Ill. Reg. _____, effective _____)

378

379 **Section 727.240 Financial Requirements**

- 380
- 381 a) Applicability and substance of the financial requirements:
- 382
- 383 1) The regulations in this Section apply to owners and operators who treat or
- 384 store hazardous waste under a RCRA standardized permit, except as
- 385 provided in Section 727.100(a)(2) or subsection (a)(4) of this Section.
- 386
- 387 2) The facility owner or operator must do each of the following:

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- A) It must prepare a closure cost estimate as required in subsection (c) of this Section;
 - B) It must demonstrate financial assurance for closure as required in subsection (d) of this Section; and
 - C) It must demonstrate financial assurance for liability as required in subsection (h) of this Section.
- 3) The owner or operator must notify the Agency if the owner or operator is named as a debtor in a bankruptcy proceeding under Title 11 (Bankruptcy) of the United States Code (see also subsection (i) of this Section).
 - 4) States and the federal government are exempt from the requirements of this Section.

BOARD NOTE: Subsection (a) of this Section is derived from 40 CFR 267.140 (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

b) Definitions of terms as used in this Section:

- 1) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 727.210(c).
- 2) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with subsections (c)(1), (c)(2), and (c)(3) of this Section.
- 3) This subsection (b)(3) corresponds with 40 CFR 267.141(c), which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.
- 4) "Parent corporation" means a corporation that directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator. In this instance, the owned corporation that is the facility owner or operator is deemed a "subsidiary" of the parent corporation.
- 5) This subsection (b)(5) corresponds with 40 CFR 267.141(e), which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.
- 6) The following terms are used in the specifications for the financial tests

431 for closure and liability coverage. The definitions are intended to assist in
432 the understanding of these regulations and are not intended to limit the
433 meanings of terms in a way that conflicts with generally accepted
434 accounting practices:

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436 "Assets" means all existing and all probable future economic
437 benefits obtained or controlled by a particular entity.

438
439 "Current plugging and abandonment cost estimate" means the most
440 recent of the estimates prepared in accordance with 35 Ill. Adm.
441 Code 704.212(a), (b), and (c).

442
443 "Independently audited" refers to an audit performed by an
444 independent certified public accountant in accordance with
445 generally accepted auditing standards.

446
447 "Liabilities" means probable future sacrifices of economic benefits
448 arising from present obligations to transfer assets or provide
449 services to other entities in the future as a result of past
450 transactions or events.

451
452 "Tangible net worth" means the tangible assets that remain after
453 deducting liabilities; such assets would not include intangibles
454 such as goodwill and rights to patents or royalties.

- 455
456 7) In the liability insurance requirements, the terms "bodily injury" and
457 "property damage" have the meanings given them by applicable State law.
458 However, these terms do not include those liabilities that, consistent with
459 standard industry practices, are excluded from coverage in liability
460 insurance policies for bodily injury and property damage. The Agency
461 intends the meanings of other terms used in the liability insurance
462 requirements to be consistent with their common meanings within the
463 insurance industry. The definitions given below of several of the terms
464 are intended to assist in the understanding of these regulations and are not
465 intended to limit their meanings in a way that conflicts with general
466 insurance industry usage.

467
468 "Accidental occurrence" means an accident, including continuous
469 or repeated exposure to conditions, that results in bodily injury or
470 property damage neither expected nor intended from the standpoint
471 of the insured.

472
473 "Legal defense costs" means any expenses that an insurer incurs in

474 defending against claims of third parties brought under the terms
 475 and conditions of an insurance policy.

476
 477 "Sudden accidental occurrence" means an occurrence that is not
 478 continuous or repeated in nature.

- 479
 480 8) "Substantial business relationship" means the extent of a business
 481 relationship necessary under applicable ~~state~~State law to make a guarantee
 482 contract issued incident to that relationship valid and enforceable. A
 483 "substantial business relationship" must arise from a pattern of recent or
 484 ongoing business transactions, in addition to the guarantee itself, such that
 485 the Agency can reasonably determine that a substantial business
 486 relationships currently exist~~existing~~business relationship between the
 487 guarantor and the facility owner or operator that is adequate consideration
 488 to support the obligation of the guarantee relating to any liability towards a
 489 third-party. "Applicable state law", as used in this subsection (b)(8),
 490 means the laws of the State of Illinois and those of any sister state that
 491 govern the guarantee and the adequacy of the consideration is
 492 demonstrated to the satisfaction of the Agency.

493
 494 BOARD NOTE: Subsection (b) of this Section is derived from 40 CFR 267.141
 495 (2012). Subsection (b)(8) is also derived from the discussion at 53 Fed. Reg.
 496 33938, 41-43 (Sept. 1, 1988). The term "substantial business relationship" is also
 497 independently defined in 35 Ill. Adm. Code 724.241(h) and 725.241(h). Any
 498 Agency determination that a substantial business relationship exists is subject to
 499 Board review pursuant to Section 40 of the Act [415 ILCS 5/40], ~~as added at 70~~
 500 Fed. Reg. 53420 (Sep. 8, 2005).

501
 502 c) Cost estimate for closure:

- 503
 504 1) The facility owner or operator must have at the facility a detailed written
 505 estimate, in current dollars, of the cost of closing the facility in accordance
 506 with the requirements in Section 727.210(b) through (f) and applicable
 507 closure requirements in Sections 727.270(g), 727.290(l), and 727.900(i).
 508
 509 A) The estimate must equal the cost of final closure at the point in the
 510 facility's active life when the extent and manner of its operation
 511 would make closure the most expensive, as indicated by the
 512 closure plan (see Section 727.210(c)(2)).
 513
 514 B) The closure cost estimate must be based on the costs to the owner
 515 or operator of hiring a third party to close the facility. A third
 516 party is a party who is neither a parent nor a subsidiary of the

owner or operator. (See the definition of parent corporation in subsection (b)(4) of this Section.) The owner or operator may use costs for on-site disposal if it can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

- C) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.
- D) The facility owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes that might have economic value.

2) During the active life of the facility, the facility owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with subsection (d) of this Section. For an owner or operator using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the guarantor's fiscal year and before submission of updated information to the Agency as specified in subsection (n)(3) of this Section. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product (Deflator) published by the U.S. Department of Commerce in its Survey of Current Business, as specified in subsections (c)(2)(A) and (c)(2)(B) of this Section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

- A) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.
- B) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

BOARD NOTE: The table of Deflators is available as Table 1.1.9. in the National Income and Product Account Tables, published by U.S. Department of Commerce, Bureau of Economic Analysis, National Economic Accounts, available on-line at the following web address:

www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&903=13.

- 3) During the active life of the facility, the facility owner or operator must revise the closure cost estimate no later than 30 days after the Agency has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subsection (c)(2) of this Section.
- 4) The facility owner or operator must keep the following at the facility during the operating life of the facility: the latest closure cost estimate prepared in accordance with subsections (c)(1) and (c)(3) of this Section and, when this estimate has been adjusted in accordance with subsection (c)(2) of this Section, the latest adjusted closure cost estimate.

BOARD NOTE: Subsection (c) of this Section is derived from 40 CFR 267.142 (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- d) Financial assurance for closure. The facility owner or operator must establish financial assurance for closure of each storage or treatment unit that it owns or operates. In establishing financial assurance for closure, the owner or operator must choose from among the financial assurance mechanisms in subsections (d)(1) through (d)(7) of this Section. The owner or operator can also use a combination of mechanisms for a single facility if the combination meets the requirement in subsection (d)(8) of this Section, or it may use a single mechanism for multiple facilities as in subsection (d)(9) of this Section. The Agency must release the owner or operator from the requirements of this subsection (d) after the owner or operator meets the criteria pursuant to subsection (d)(10) of this Section.
 - 1) Closure trust fund. An owner or operator may use the "closure trust fund" that is specified in 35 Ill. Adm. Code 724.243(a)(1), (a)(2), and (a)(6) through (a)(11). For purposes of this subsection (d)(1), the following provisions also apply:
 - A) Payments into the trust fund for a new facility must be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over three years, whichever period is shorter. This period of time is hereafter referred to as the "pay-in period."

602 B) For a new facility, the facility owner or operator must make the
 603 first payment into the closure trust fund before the facility may
 604 accept the initial storage. A receipt from the trustee must be
 605 submitted by the owner or operator to the Agency before this
 606 initial storage of waste. The first payment must be at least equal to
 607 the current closure cost estimate, divided by the number of years in
 608 the pay-in period, except as provided in subsection (d)(8) of this
 609 Section for multiple mechanisms. Subsequent payments must be
 610 made no later than 30 days after each anniversary date of the first
 611 payment. The owner or operator determines the amount of each
 612 subsequent payment by subtracting the current value of the trust
 613 fund from the current closure cost estimate, and dividing this
 614 difference by the number of years remaining in the pay-in period.
 615 Mathematically, the formula is as follows:
 616

$$NP = \frac{(CCE - CVTF)}{YRPP}$$

617
 618 Where:
 619

- NP = the amount of the next payment
- CCE = the current closure cost estimate
- CVTF = the current value of the trust fund
- YRPP = the years remaining in the pay-in period.

620 C) The owner or operator of a facility existing on the effective date of
 621 this subsection (d)(1) can establish a trust fund to meet the
 622 financial assurance requirements of this subsection (d)(1). If the
 623 value of the trust fund is less than the current closure cost estimate
 624 when a final approval of the permit is granted for the facility, the
 625 owner or operator must pay the difference into the trust fund
 626 within 60 days.
 627
 628

629 D) The facility owner or operator may accelerate payments into the
 630 trust fund or deposit the full amount of the closure cost estimate
 631 when establishing the trust fund. However, the owner or operator
 632 must maintain the value of the fund at no less than the value that
 633 the fund would have if annual payments were made as specified in
 634 subsections (d)(1)(B) or (d)(1)(C) of this Section.
 635

636 E) The facility owner or operator must submit a trust agreement with
 637 the wording designated by the Agency pursuant to subsection (l)(3)
 638 of this Section ~~specified in 40 CFR 264.151(a)(1), incorporated by~~

reference in 35 Ill. Adm. Code 720.111(b).

- 2) Surety bond guaranteeing payment into a closure trust fund. An owner or operator may use the "surety bond guaranteeing payment into a closure trust fund," as specified in 35 Ill. Adm. Code 724.243(b), including the use of the surety bond instrument designated by the Agency pursuant to subsection (1)(3) of this Section specified at 40 CFR 264.151(b); incorporated by reference in 35 Ill. Adm. Code 720.111(b), and the standby trust specified at 35 Ill. Adm. Code 724.243(b)(3).
- 3) Surety bond guaranteeing performance of closure. An owner or operator may use the "surety bond guaranteeing performance of closure," as specified in 35 Ill. Adm. Code 724.243(c), the submission and use of the surety bond instrument designated by the Agency pursuant to subsection (1)(3) of this Section specified at 40 CFR 264.151(e), incorporated by reference in 35 Ill. Adm. Code 720.111(b), and the standby trust specified at 35 Ill. Adm. Code 724.243(c)(3).
- 4) Closure letter of credit. An owner or operator may use the "closure letter of credit" specified in 35 Ill. Adm. Code 724.243(d), the submission and use of the irrevocable letter of credit instrument designated by the Agency pursuant to subsection (1)(3) of this Section specified in 40 CFR 264.151(d), incorporated by reference in 35 Ill. Adm. Code 720.111(b), and the standby trust specified in 35 Ill. Adm. Code 724.243(d)(3).
- 5) Closure insurance. An owner or operator may use "closure insurance," as specified in 35 Ill. Adm. Code 724.243(e), utilizing the certificate of insurance for closure designated by the Agency pursuant to subsection (1)(3) of this Section specified at 40 CFR 264.151(e), incorporated by reference in 35 Ill. Adm. Code 720.111(b).
- 6) Corporate financial test. An owner or operator that satisfies the requirements of this subsection (d)(6) may demonstrate financial assurance up to the amount specified in this subsection (d)(6).

A) Financial component. See subsection (m) of this Section.

BOARD NOTE: It was necessary for the Board to codify corresponding 40 CFR 267.143(f)(1) as subsection (m) of this Section to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (d), (d)(6), or (d)(6)(A) also include added subsection (m) of this Section, as applicable.

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- B) Recordkeeping and reporting requirements. See subsection (n) of this Section.

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.143(f)(2) as subsection (n) of this Section to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (d), (d)(6), or (d)(6)(B) also include added subsection (n) of this Section, as applicable.

- ~~C) The terms of the guarantee must provide as set forth in subsection (o) of this Section.~~

~~BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.143(f)(3) as subsection (o) of this Section to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (d), (d)(6), or (d)(6)(C) also include added subsection (o) of this Section, as applicable.~~

- 7) Corporate guarantee.

- A) A facility owner or operator may meet the requirements of this subsection (d) by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subsection (d)(6) of this Section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording designated by the Agency pursuant to subsection (1)(3) of this Section in 40 CFR 264.151(h), incorporated by reference in 35 Ill. Adm. Code 720.111(b). The certified copy of the guarantee must accompany the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of

725 the guarantee.

726
727 B) For a new facility, the guarantee must be effective and the
728 guarantor must submit the items in subsection (d)(7)(A) of this
729 Section and the items specified in subsection (n)(1) of this Section
730 to the Agency at least 60 days before the owner or operator places
731 waste in the facility.

732
733 C) The terms of the guarantee must provide as required by subsection
734 (o) of this Section.

735
736 BOARD NOTE: It was necessary for the Board to codify 40 CFR
737 267.143(g)(3) as subsection (o) of this Section to comport with
738 Illinois Administrative Code indent level codification
739 requirements. The Board intends that any citation to this
740 subsection (d), (d)(7), or (d)(7)(C) also include added subsection
741 (o) of this Section, as applicable.

742
743 D) If a corporate guarantor no longer meets the requirements of
744 subsection (d)(6)(A) of this Section, the owner or operator must,
745 within 90 days, obtain alternative assurance, and submit the
746 assurance to the Agency for approval. If the owner or operator
747 fails to provide alternate financial assurance within the 90-day
748 period, the guarantor must provide that alternate assurance within
749 the next 30 days, and submit it to the Agency for approval.

750
751 E) The guarantor is no longer required to meet the requirements of
752 this subsection (d)(7) when either of the following occurs:

753
754 i) The facility owner or operator substitutes alternate financial
755 assurance as specified in this subsection (d); or

756
757 ii) The facility owner or operator is released from the
758 requirements of this subsection (d) in accordance with
759 subsection (d)(10) of this Section.

760
761 8) Use of multiple financial mechanisms. An owner or operator may use
762 more than one mechanism at a particular facility to satisfy the
763 requirements of this subsection (d). The acceptable mechanisms are trust
764 funds, surety bonds guaranteeing payment into a trust fund, letters of
765 credit, insurance, the financial test, and the guarantee, except owners or
766 operators cannot combine the financial test with the guarantee. The
767 mechanisms must be as specified in subsections (d)(1), (d)(2), (d)(4),

768 (d)(5), (d)(6), and (d)(7) of this Section, respectively, except it is the
769 combination of mechanisms rather than a single mechanism that must
770 provide assurance for an amount at least equal to the cost estimate. If an
771 owner or operator uses a trust fund in combination with a surety bond or
772 letter of credit, it may use the trust fund as the standby trust for the other
773 mechanisms. A single trust fund can be established for two or more
774 mechanisms. The Agency may use any or all of the mechanisms to
775 provide for closure of the facility.
776

- 777 9) Use of a financial mechanism for multiple facilities. An owner or operator
778 may use a financial mechanism for multiple facilities, as specified in 35
779 Ill. Adm. Code 724.243(h).
780
- 781 10) Release of the owner or operator from the requirements of this subsection
782 (d). Within 60 days after receiving certifications from the owner or
783 operator and an independent registered professional engineer that final
784 closure has been completed in accordance with the approved closure plan,
785 the Agency will notify the owner or operator in writing that the owner or
786 operator is no longer required by this subsection (d) to maintain financial
787 assurance for final closure of the facility, unless the Agency has reason to
788 believe that final closure has not been completed in accordance with the
789 approved closure plan. The Agency must provide the owner or operator
790 with a detailed written statement of any such reasons to believe that
791 closure has not been conducted in accordance with the approved closure
792 plan.
793

794 BOARD NOTE: Subsection (d) of this Section is derived from 40 CFR 267.143
795 (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
796

- 797 e) This subsection (e) corresponds with 40 CFR 267.144, which USEPA has marked
798 "Reserved." This statement maintains structural consistency with the
799 corresponding federal rules.
800
- 801 f) This subsection (f) corresponds with 40 CFR 267.145, which USEPA has marked
802 "Reserved." This statement maintains structural consistency with the
803 corresponding federal rules.
804
- 805 g) This subsection (g) corresponds with 40 CFR 267.146, which USEPA has marked
806 "Reserved." This statement maintains structural consistency with the
807 corresponding federal rules.
808
- 809 h) Liability requirements:
810

- 811 1) Coverage for sudden accidental occurrences. The owner or operator of a
 812 hazardous waste treatment or storage facility, or a group of such facilities,
 813 must demonstrate financial responsibility for bodily injury and property
 814 damage to third parties caused by sudden accidental occurrences arising
 815 from operations of the facility or group of facilities. The owner or
 816 operator must have and maintain liability coverage for sudden accidental
 817 occurrences in the amount of at least \$1 million per occurrence with an
 818 annual aggregate of at least \$2 million, exclusive of legal defense costs.
 819 This liability coverage may be demonstrated as specified in subsection
 820 (h)(1)(A) through (h)(1)(G) of this Section:
 821
- 822 A) Trust fund for liability coverage. The owner or operator may meet
 823 the requirements of this subsection (h) by obtaining a trust fund for
 824 liability coverage as specified in 35 Ill. Adm. Code 724.247(j).
 825
 - 826 B) Surety bond for liability coverage. The owner or operator may
 827 meet the requirements of this subsection (h) by obtaining a surety
 828 bond for liability coverage as specified in 35 Ill. Adm. Code
 829 724.247(i).
 830
 - 831 C) Letter of credit for liability coverage. The owner or operator may
 832 meet the requirements of this subsection (h) by obtaining a letter of
 833 credit for liability coverage as specified in 35 Ill. Adm. Code
 834 724.247(h).
 835
 - 836 D) Insurance for liability coverage. The owner or operator may meet
 837 the requirements of this subsection (h) by obtaining liability
 838 insurance as specified in 35 Ill. Adm. Code 724.247(a)(1).
 839
 - 840 E) Financial test for liability coverage. The owner or operator may
 841 meet the requirements of this subsection (h) by passing a financial
 842 test as specified in subsection (h)(6) of this Section.
 843
 - 844 F) Guarantee for liability coverage. The owner or operator may meet
 845 the requirements of this subsection (h) by obtaining a guarantee as
 846 specified in subsection (h)(7) of this Section.
 847
 - 848 G) Combination of mechanisms. The owner or operator may
 849 demonstrate the required liability coverage through the use of
 850 combinations of mechanisms as allowed by 35 Ill. Adm. Code
 851 724.247(a)(6).
 852
 - 853 H) An owner or operator shall notify the Agency in writing within 30

854 days whenever either of the following occurs:

- 855
- 856 i) A claim results in a reduction in the amount of financial
- 857 assurance for liability coverage provided by a financial
- 858 instrument authorized in subsections (h)(1)(A) through
- 859 (h)(1)(G) of this Section; or
- 860
- 861 ii) A Certification of Valid Claim for bodily injury or property
- 862 damages caused by a sudden accidental occurrence arising
- 863 from the operation of a hazardous waste treatment, storage,
- 864 or disposal facility is entered between the owner or
- 865 operator and third-party claimant for liability coverage
- 866 pursuant to subsections (h)(1)(A) through (h)(1)(G) of this
- 867 Section; or
- 868
- 869 iii) A final court order establishing a judgment for bodily
- 870 injury or property damage caused by a sudden accidental
- 871 occurrence arising from the operation of a hazardous waste
- 872 treatment, storage, or disposal facility is issued against the
- 873 owner or operator or an instrument that is providing
- 874 financial assurance for liability coverage pursuant to
- 875 subsections (h)(1)(A) through (h)(1)(G) of this Section.
- 876

- 877 2) This subsection (h)(2) corresponds with 40 CFR 267.147(b), which
- 878 USEPA has marked "Reserved." This statement maintains structural
- 879 consistency with the corresponding federal rules.
- 880
- 881 3) This subsection (h)(3) corresponds with 40 CFR 267.147(c), which
- 882 USEPA has marked "Reserved." This statement maintains structural
- 883 consistency with the corresponding federal rules.
- 884
- 885 4) This subsection (h)(4) corresponds with 40 CFR 267.147(d), which
- 886 USEPA has marked "Reserved." This statement maintains structural
- 887 consistency with the corresponding federal rules.
- 888
- 889 5) Period of coverage. Within 60 days after receiving certifications from the
- 890 facility owner or operator and an independent registered professional
- 891 engineer that final closure has been completed in accordance with the
- 892 approved closure plan, the Agency must notify the owner or operator in
- 893 writing that he is no longer required by this section to maintain liability
- 894 coverage from that facility, unless the Agency has reason to believe that
- 895 closure has not been in accordance with the approved closure plan.
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- 6) Financial test for liability coverage. A facility owner or operator that satisfies the requirements of this subsection (h)(6) may demonstrate financial assurance for liability up to the amount specified in this subsection (h)(6):
- A) Financial component:
 - i) If using the financial test for only liability coverage, the owner or operator must have tangible net worth greater than the sum of the liability coverage to be demonstrated by this test plus \$10 million.
 - ii) The owner or operator must have assets located in the United States amounting to at least the amount of liability covered by this financial test.
 - iii) An owner or operator who is demonstrating coverage for liability and any other environmental obligations, including closure pursuant to subsection (d)(6) of this Section, through a financial test must meet the requirements of subsection (d)(6) of this Section.
 - B) Recordkeeping and reporting requirements. See subsection (p) of this Section.

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.147(f)(2) as subsection (p) of this Section to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (h), (h)(6), or (h)(6)(B) also include added subsection (p) of this Section, as applicable.
- 7) Guarantee for liability coverage:
- A) Subject to subsection (h)(7)(B) of this Section, a facility owner or operator may meet the requirements of this subsection (h) by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subsections (h)(6)(A) and (h)(6)(B) of this Section.

940 The wording of the guarantee must be identical to the wording
 941 designated by the Agency pursuant to subsection (1)(3) of this
 942 Sectionspecified in 40 CFR 264.151(h)(2), incorporated by
 943 reference in 35 Ill. Adm. Code 720.111(b). A certified copy of the
 944 guarantee must accompany the items sent to the Agency as
 945 specified in subsection (h)(6)(B) of this Section. One of these
 946 items must be the letter from the guarantor's chief financial officer.
 947 If the guarantor's parent corporation is also the parent corporation
 948 of the owner or operator, this letter must describe the value
 949 received in consideration of the guarantee. If the guarantor is a
 950 firm with a "substantial business relationship" with the owner or
 951 operator, this letter must describe this "substantial business
 952 relationship" and the value received in consideration of the
 953 guarantee.

- 954
- 955 i) If the facility owner or operator fails to satisfy a judgment
- 956 based on a determination of liability for bodily injury or
- 957 property damage to third parties caused by sudden
- 958 accidental occurrences arising from the operation of
- 959 facilities covered by this corporate guarantee, or fails to pay
- 960 an amount agreed to in settlement of claims arising from or
- 961 alleged to arise from such injury or damage, the guarantor
- 962 will do so up to the limits of coverage.
- 963
- 964 ii) This subsection (h)(7)(A)(ii) corresponds with 40 CFR
- 965 267.147(g)(1)(ii), which USEPA has marked "Reserved."
- 966 This statement maintains structural consistency with the
- 967 corresponding federal rules.
- 968

969 B) Foreign Corporations. See subsection (q) of this Section.

970

971 BOARD NOTE: It was necessary for the Board to codify 40 CFR

972 267.147(g)(2) as subsection (q) of this Section to comport with

973 Illinois Administrative Code indent level codification

974 requirements. The Board intends that any citation to this

975 subsection (h), (h)(7), or (h)(7)(B) also include added subsection

976 (q) of this Section, as applicable. See the further explanation of the

977 differences between subsection (q) of this Section and 40 CFR

978 267.147(g)(2) in the Board note appended to subsection (q).

979

980 BOARD NOTE: Subsection (h) of this Section is derived from 40 CFR 267.147

981 (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

982

- 983 i) Incapacity of owners or operators, guarantors, or financial institutions:-
 984
 985 1) The facility owner or operator must notify the Agency by certified mail of
 986 the commencement of a voluntary or involuntary proceeding under Title
 987 11 (Bankruptcy) of the United States Code, naming the owner or operator
 988 as debtor, within 10 days after commencement of the proceeding. A
 989 guarantor of a corporate guarantee as specified in subsections (d)(7) and
 990 (h)(7) of this Section must make such a notification if it is named as
 991 debtor, as required under the terms of the corporate guarantee designated
 992 by the Agency pursuant to subsection (1)(3) of this Section(see 40 CFR
 993 264.151(h), incorporated by reference in 35 Ill. Adm. Code 720.111(b)).
 994
 995 2) An owner or operator who fulfills the requirements of subsection (d) or (h)
 996 of this Section by obtaining a trust fund, surety bond, letter of credit, or
 997 insurance policy will be deemed to be without the required financial
 998 assurance or liability coverage in the event of bankruptcy of the trustee or
 999 issuing institution, or a suspension or revocation of the authority of the
 1000 trustee institution to act as trustee or of the institution issuing the surety
 1001 bond, letter of credit, or insurance policy to issue such instruments. The
 1002 owner or operator must establish other financial assurance or liability
 1003 coverage within 60 days after such an event.
 1004
 1005 BOARD NOTE: Subsection (i) of this Section is derived from 40 CFR 267.148
 1006 (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
 1007
 1008 j) This subsection (j) corresponds with 40 CFR 267.149, which USEPA has marked
 1009 "Reserved." This statement maintains structural consistency with the
 1010 corresponding federal rules.
 1011
 1012 k) State assumption of responsibility:-
 1013
 1014 1) If the State either assumes legal responsibility for an owner's or operator's
 1015 compliance with the closure care or liability requirements of this Part or
 1016 assures that funds will be available from State sources to cover those
 1017 requirements, the owner or operator will be in compliance with the
 1018 requirements of subsection (d) or (h) of this Section if USEPA Region
 1019 5~~the Agency~~ determines that the State's assumption of responsibility is at
 1020 least equivalent to the financial mechanisms specified in this Section.
 1021 USEPA has stated that USEPA Region 5 will~~The Agency must~~ evaluate
 1022 the equivalency of State guarantees principally in terms of the following:
 1023 the certainty of the availability of funds for the required closure care
 1024 activities or liability coverage; and the amount of funds that will be made
 1025 available. USEPA has stated that USEPA Region 5~~The Agency~~ may also

1026 consider other factors as it deems appropriate. The facility owner or
 1027 operator must submit to USEPA Region 5~~the Agency~~ a letter from the
 1028 State describing the nature of the State's assumption of responsibility
 1029 together with a letter from the owner or operator requesting that the State's
 1030 assumption of responsibility be considered acceptable for meeting the
 1031 requirements of this Section. The letter from the State must include, or
 1032 have attached to it, the following information: the facility's USEPA
 1033 identification number, the facility name and address, and the amount of
 1034 funds for closure care or liability coverage that are guaranteed by the
 1035 State. USEPA has stated that USEPA Region 5~~The Agency~~ will notify the
 1036 owner or operator of ~~its~~this determination regarding the acceptability of the
 1037 State's guarantee in lieu of financial mechanisms specified in this Section.
 1038 USEPA has stated that USEPA Region 5~~The Agency~~ may require the
 1039 owner or operator to submit additional information as is deemed necessary
 1040 to make this determination. Pending this determination, the owner or
 1041 operator will be deemed to be in compliance with the requirements of
 1042 subsection (d) or (h) of this Section, as applicable.
 1043

- 1044 2) If a State's assumption of responsibility is found acceptable as specified in
 1045 subsection (k)(1) of this Section except for the amount of funds available,
 1046 the owner or operator may satisfy the requirements of this Section by use
 1047 of both the State's assurance and additional financial mechanisms as
 1048 specified in this Section. The amount of funds available through the State
 1049 and federal mechanisms must at least equal the amount required by this
 1050 Section.
 1051

1052 BOARD NOTE: Subsection (k) of this Section is derived from 40 CFR 267.150
 1053 (2012), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- 1054
 1055 1) Wording of the instruments:
 1056

- 1057 1) Forms for using the corporate financial test to demonstrate financial
 1058 assurance for closure. The chief financial officer of an owner or operator
 1059 of a facility with a RCRA standardized permit who uses a financial test to
 1060 demonstrate financial assurance for that facility must complete a letter as
 1061 specified in subsection (d)(6) of this Section. The letter must be worded
 1062 as designated by the Agency pursuant to subsection (1)(3) of this
 1063 Section set forth in Appendix A, Illustration A of this Part.
 1064

1065 BOARD NOTE: ~~It was necessary for the Board to codify the form set~~
 1066 ~~forth in 40 CFR 267.151(a) as Appendix A, Illustration A of this Part.~~
 1067 ~~The Board intends that any citation to this subsection (1) or (1)(1) also~~
 1068 ~~include added Appendix A, Illustration A of this Part, as applicable.~~

- 1069
1070
1071 2) Forms for using the financial test to demonstrate financial assurance for
1072 third-party liability. The chief financial officer of an owner or operator of
1073 a facility with a RCRA standardized permit who use a financial test to
1074 demonstrate financial assurance only for third party liability for that (or
1075 other RCRA standardized permit) facility (or those facilities) must
1076 complete a letter as specified in subsection (h)(6) of this Section. The
1077 letter must be worded as designated by the Agency pursuant to subsection
1078 (1)(3) of this Section set forth in Appendix A, Illustration A of this Part.

1079 BOARD NOTE: It was necessary for the Board to codify the form set
1080 forth in 40 CFR 267.151(b) as Appendix A, Illustration B of this Part.
1081 The Board intends that any citation to this subsection (l) or (l)(2) also
1082 include added Appendix A, Illustration B of this Part, as applicable.
1083

- 1084 3) The Agency must designate standardized forms based on 40 CFR 264.151
1085 and 40 CFR 267.151 (Wording of the Instruments), each incorporated by
1086 reference in 35 Ill. Adm. Code 720.111(b), with such changes in wording
1087 as are necessary under Illinois law. Any owner or operator required to
1088 establish financial assurance under this Section must do so only upon the
1089 standardized forms promulgated by the Agency. The Agency must reject
1090 any financial assurance document that is not submitted on such
1091 standardized forms.

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1093 BOARD NOTE: Subsection (l) of this Section is derived from 40 CFR 267.151
1094 (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
1095

- 1096 m) Financial component for using the corporate financial test to demonstrate
1097 financial assurance for closure-
1098

- 1099 1) The facility owner or operator must satisfy one of the following three
1100 conditions:
1101
1102 A) A current rating for its senior unsecured debt of AAA, AA, A, or
1103 BBB, as issued by Standard and Poor's, or Aaa, Aa, A or Baa, as
1104 issued by Moody's; or
1105
1106 B) A ratio of less than 1.5 comparing total liabilities to net worth; or
1107
1108 C) A ratio of greater than 0.10 comparing the sum of net income plus
1109 depreciation, depletion and amortization, minus \$10 million, to
1110 total liabilities.
1111

- 1112 2) The tangible net worth of the owner or operator must be greater than both
 1113 of the following:
 1114
 1115 A) The sum of the current environmental obligations (see subsection
 1116 (n)(1)(A)(i) of this Section), including guarantees, covered by a
 1117 financial test plus \$10 million, except as provided in subsection
 1118 (m)(2)(B) of this Section; and
 1119
 1120 B) \$10 million in tangible net worth plus the amount of any
 1121 guarantees that have not been recognized as liabilities on the
 1122 financial statements provided all of the environmental obligations
 1123 (see subsection (n)(1)(A)(i) of this Section) covered by a financial
 1124 test are recognized as liabilities on the owner's or operator's
 1125 audited financial statements, and subject to the approval of the
 1126 Agency.
 1127
 1128 3) The facility owner or operator must have assets located in the United
 1129 States amounting to at least the sum of environmental obligations covered
 1130 by a financial test as described in subsection (n)(1)(A)(i) of this Section.
 1131

1132 BOARD NOTE: Subsection (m) of this Section is derived from 40 CFR
 1133 267.143(f)(1) (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005). The Board
 1134 moved the corresponding federal provision to comport with Illinois
 1135 Administrative Code indent level codification requirements. The Board intends
 1136 that any citation to subsection (d), (d)(6), or (d)(6)(A) of this Section also include
 1137 this added subsection (m), as applicable.
 1138

- 1139 n) Recordkeeping and reporting requirements for using the corporate financial test to
 1140 demonstrate financial assurance for closure-
 1141
 1142 1) The facility owner or operator must submit the following items to the
 1143 Agency:
 1144
 1145 A) A letter signed by the owner's or operator's chief financial officer
 1146 that provides the following information:
 1147
 1148 i) It lists all the applicable current types, amounts, and sums
 1149 of environmental obligations covered by a financial test.
 1150 These obligations include both obligations in the programs
 1151 that USEPA directly operates and obligations where
 1152 USEPA has delegated authority to a State or approved a
 1153 State's program. These obligations include, but are not
 1154 limited to the information described in subsection (n)(1)(E)

of this Section.

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.143(f)(2)(i)(A)(I) through (f)(2)(i)(A)(I)(vii) as subsection (n)(1)(E) through (n)(1)(E)(vii) of this Section to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), (d)(6), or (d)(6)(B) of this Section or to this subsection (n), (n)(1), (n)(1)(A), or (n)(1)(A)(i) also include added subsection (n)(1)(E) through (n)(1)(E)(vii) of this Section, as applicable.

ii) It provides evidence demonstrating that the firm meets the conditions of either subsection (m)(1)(A), (m)(1)(B), or (m)(1)(C) of this Section and subsections (m)(2) and (m)(3) of this Section.

B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Agency may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Agency deems that the matters that form the basis for the qualification are insufficient to warrant disallowance of the test. If the Agency does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section within 30 days after the notification of disallowance.

C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subsection (m)(1)(B) or (m)(1)(C) of this Section that are different from data in the audited financial statements referred to in subsection (n)(1)(B) of this Section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report must be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall

- 1198 describe the procedures performed in comparing the data in the
 1199 chief financial officer's letter derived from the independently
 1200 audited, year-end financial statements for the latest fiscal year with
 1201 the amounts in such financial statements, the findings of that
 1202 comparison, and the reasons for any differences.
 1203
- 1204 D) If the chief financial officer's letter provides a demonstration that
 1205 the firm has assured for environmental obligations as provided in
 1206 subsection (m)(2)(B) of this Section, then the letter shall include a
 1207 report from the independent certified public accountant that
 1208 verifies that all of the environmental obligations covered by a
 1209 financial test have been recognized as liabilities on the audited
 1210 financial statements, how these obligations have been measured
 1211 and reported, and that the tangible net worth of the firm is at least
 1212 \$10 million plus the amount of any guarantees provided.
 1213
- 1214 E) Contents of the letter signed by the chief financial officer (for the
 1215 purposes of subsection (n)(1)(A)(i) of this Section):
 1216
- 1217 i) The liability, closure, post-closure and corrective action
 1218 cost estimates required for hazardous waste treatment,
 1219 storage, and disposal facilities pursuant to the applicable
 1220 provisions of 35 Ill. Adm. Code 724.201, 724.242, 724.244,
 1221 724.247, 725.242, 725.244, and 725.247;
 1222
 - 1223 ii) The cost estimates required for municipal solid waste
 1224 management facilities pursuant to the applicable provisions
 1225 of Subpart G of 35 Ill. Adm. Code 811;
 1226
 - 1227 iii) The current plugging cost estimates required for UIC
 1228 facilities pursuant to 35 Ill. Adm. Code 704.212;
 1229
 - 1230 iv) The federally required cost estimates required for
 1231 petroleum underground storage tank facilities pursuant to
 1232 40 CFR 280.93;
 1233
 - 1234 v) The federally required cost estimates required for PCB
 1235 storage facilities pursuant to 40 CFR 761.65;
 1236
 - 1237 vi) Any federally required financial assurance required by or as
 1238 part of an action undertaken pursuant to the Comprehensive
 1239 Environmental Response, Compensation, and Liability Act
 1240 (42 USC 9601 et seq.); and

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vii) Any other environmental obligations that are assured through a financial test.

BOARD NOTE: Subsections (n)(1)(E) through (n)(1)(E)(vi) of this Section ~~are~~ derived from 40 CFR 267.143(f)(2)(i)(A)(I) through (f)(2)(i)(A)(I)(vi) (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005). The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), (d)(6), (d)(6)(B), (n), (n)(1), (n)(1)(A), or (n)(1)(A)(i) of this Section also include added subsections (n)(1)(E) through (n)(1)(E)(vi), as applicable.

- 2) The owner or operator of a new facility must submit the items specified in subsection (n)(1) of this Section to the Agency at least 60 days before placing waste in the facility.
- 3) After the initial submission of items specified in subsection (n)(1) of this Section, the owner or operator must send updated information to the Agency within 90 days following the close of the owner or operator's fiscal year. The Agency may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in subsection (n)(1) of this Section.
- 4) The owner or operator is no longer required to submit the items specified in this subsection (n) of this Section or comply with the requirements of subsection (d)(6) of this Section when either of the following occurs:
 - A) The owner or operator substitutes alternate financial assurance as specified in subsection (d) of this Section that is not subject to these recordkeeping and reporting requirements; or
 - B) The Agency releases the owner or operator from the requirements of subsection (d) of this Section in accordance with subsection (d)(10) of this Section.
- 5) An owner or operator who no longer meets the requirements of subsection (m) of this Section cannot use the financial test to demonstrate financial assurance. Instead an owner or operator who no longer meets the requirements of subsection (m) of this Section, must do the following:

- 1284 A) It must send notice to the Agency of intent to establish alternate
 1285 financial assurance as specified in this section. The owner or
 1286 operator must send this notice by certified mail within 90 days
 1287 following the close the owner or operator's fiscal year for which
 1288 the year-end financial data show that the owner or operator no
 1289 longer meets the requirements of this subsection (n) and
 1290 subsections (d), (m), and (o) of this Section; and
 1291
 1292 B) It must provide alternative financial assurance within 120 days
 1293 after the end of such fiscal year.
 1294
 1295 6) The Agency may, based on a reasonable belief that the owner or operator
 1296 may no longer meet the requirements of subsection (m) of this Section,
 1297 require at any time the owner or operator to provide reports of its financial
 1298 condition in addition to or including current financial test documentation
 1299 as specified in this subsection (n) of this Section. If the Agency finds that
 1300 the owner or operator no longer meets the requirements of subsection (m)
 1301 of this Section, the owner or operator must provide alternate financial
 1302 assurance that meets the requirements of subsection (d) of this Section.
 1303

1304 BOARD NOTE: Subsection (n) of this Section is derived from 40 CFR
 1305 267.143(f)(2) (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005). The Board
 1306 moved the corresponding federal provision to comport with Illinois
 1307 Administrative Code indent level codification requirements. The Board intends
 1308 that any citation to subsection (d), (d)(6), or (d)(6)(B) of this Section also include
 1309 this added subsection (n), as applicable.
 1310

- 1311 o) The terms of the guarantee for using the corporate guarantee to demonstrate
 1312 financial assurance for closure must provide as follows:
 1313
 1314 1) If the facility owner or operator fails to perform closure at a facility
 1315 covered by the guarantee, the guarantor will accomplish the following:
 1316
 1317 A) It will perform, or pay a third party to perform closure
 1318 (performance guarantee); or
 1319
 1320 B) It will establish a fully funded trust fund as specified in subsection
 1321 (d)(1) of this Section in the name of the owner or operator
 1322 (payment guarantee).
 1323
 1324 2) The guarantee will remain in force for as long as the facility owner or
 1325 operator must comply with the applicable financial assurance requirements
 1326 of this Section unless the guarantor sends prior notice of cancellation by

certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency as evidenced by the return receipts.

- 3) If notice of cancellation is given, the facility owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the Agency, obtain alternate financial assurance, and submit documentation for that alternate financial assurance to the Agency. If the owner or operator fails to provide alternate financial assurance and obtain the written approval of such alternative assurance from the Agency within the 90-day period, the guarantor must provide that alternate assurance in the name of the owner or operator and submit the necessary documentation for the alternative assurance to the Agency within 120 days after the cancellation notice.

BOARD NOTE: Subsection (o) of this Section is derived from 40 CFR ~~267.143(g)(3) (2012)~~267.143(f)(3), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005). The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), ~~(d)(7)(d)(6)~~, or ~~(d)(7)(C)(d)(6)(C)~~ of this Section also include this added subsection (o), as applicable.

p) Recordkeeping and reporting requirements-

- 1) The owner or operator must submit the following items to the Agency:
- A) A letter signed by the owner's or operator's chief financial officer that provides evidence demonstrating that the firm meets the conditions of subsections (h)(6)(A)(i) and (h)(6)(A)(ii) of this Section. If the firm is providing only liability coverage through a financial test for a facility or facilities with a permit pursuant to this Part 727, the letter should use the wording in subsection (l)(2) of this Section. If the firm is providing only liability coverage through a financial test for facilities regulated pursuant to this Part 727 and 35 Ill. Adm. Code 724 or 725, it should use the letter designated by the Agency pursuant to subsection (1)(3) of this Sectionin 40 CFR 264.151(g), incorporated by reference in 35 Ill. Adm. Code 720.111(b). If the firm is providing liability coverage through a financial test for a facility or facilities with a permit pursuant to this Part 727, and it assures closure costs or any other environmental obligations through a financial test, it must use the letter in subsection (l)(1) of this Section for the facilities issued a

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permit pursuant to this Part 727.

- B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Agency may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Agency deems that the matters that form the basis for the qualification are insufficient to warrant disallowance of the test. If the Agency does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this subsection (h) within 30 days after the notification of disallowance.
 - C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subsections (h)(6)(A)(i) and (h)(6)(A)(ii) of this Section that are different from data in the audited financial statements referred to in subsection (p)(1)(B) of this Section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.
- 2) The owner or operator of a new facility must submit the items specified in subsection (p)(1) of this Section to the Agency at least 60 days before placing waste in the facility.
 - 3) After the initial submission of items specified in subsection (p)(1) of this Section, the facility owner or operator must send updated information to the Agency within 90 days following the close of the owner or operator's fiscal year. The Agency may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to

1413 acquire audited financial statements. The updated information must
 1414 consist of all items specified in subsection (p)(1) of this Section.
 1415

1416 4) The owner or operator is no longer required to submit the items specified
 1417 in this subsection (p) or comply with the requirements of subsection (h)(6)
 1418 of this Section when either of the following occurs:
 1419

1420 A) The facility owner or operator substitutes alternate financial
 1421 assurance as specified in subsection (h) of this Section that is not
 1422 subject to these recordkeeping and reporting requirements; or
 1423

1424 B) The Agency releases the facility owner or operator from the
 1425 requirements of subsection (h) of this Section in accordance with
 1426 subsection (d)(10) of this Section.
 1427

1428 5) An owner or operator that no longer meets the requirements of subsection
 1429 (h)(6)(A) of this Section cannot use the financial test to demonstrate
 1430 financial assurance. An owner or operator who no longer meets the
 1431 requirements of subsection (h)(6)(A) of this Section, must do the
 1432 following:
 1433

1434 A) Send notice to the Agency of intent to establish alternate financial
 1435 assurance as specified in this section. The facility owner or
 1436 operator must send this notice by certified mail within 90 days
 1437 following the close of the owner or operator's fiscal year for which
 1438 the year-end financial data show that the owner or operator no
 1439 longer meets the requirements of this ~~Section~~section.
 1440

1441 B) Provide alternative financial assurance within 120 days after the
 1442 end of ~~the~~such fiscal year.
 1443

1444 6) The Agency may, based on a reasonable belief that the owner or operator
 1445 may no longer meet the requirements of subsection (h)(6)(A) of this
 1446 Section, require at any time the owner or operator to provide reports of its
 1447 financial condition in addition to or including current financial test
 1448 documentation as specified in this subsection (p) of this Section. If the
 1449 Agency finds that the owner or operator no longer meets the requirements
 1450 of subsection (h)(6)(A) of this Section, the owner or operator must provide
 1451 alternate financial assurance that meets the requirements of subsection (h)
 1452 of this Section.
 1453

1454 BOARD NOTE: Subsection (p) of this Section is derived from 40 CFR
 1455 267.147(f)(2) (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005). The Board

1456 moved the corresponding federal provision to comport with Illinois
 1457 Administrative Code indent level codification requirements. The Board intends
 1458 that any citation to subsection (h), (h)(6), or (h)(6)(B) of this Section also include
 1459 this added subsection (p), as applicable.
 1460

1461 q) Foreign corporations:

- 1462
- 1463 1) The guarantor must execute the guarantee in Illinois. The guarantee must
 1464 be accompanied by a letter signed by the guarantor that states as follows:
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 - 1466 A) The guarantee was signed in Illinois by an authorized agent of the
 1467 guarantor;
 - 1468 B) The guarantee is governed by Illinois law; and
 - 1469 C) The name and address of the guarantor's registered agent for
 1470 service of process.
 - 1471 2) The guarantor must have a registered agent pursuant to Section 5.05 of the
 1472 Business Corporation Act of 1983 [805 ILCS 5/5.05] or Section 105.05 of
 1473 the General Not-for-Profit Corporation Act of 1986 [805 ILCS
 1474 105/105.05].
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1479 BOARD NOTE: Subsection (q) of this Section is derived from 40 CFR
 1480 267.147(g)(2) (2012), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005). The Board
 1481 moved the corresponding federal provision to comport with Illinois
 1482 Administrative Code indent level codification requirements. The Board intends
 1483 that any citation to subsection (h), (h)(7), or (h)(7)(B) of this Section also include
 1484 this added subsection (q), as applicable. The text of 40 CFR 267.147(g)(2) is
 1485 substantially identical to that of 40 CFR 264.147(g)(2). The Board has substituted
 1486 the language of 35 Ill. Adm. Code 724.247(g)(2), which corresponds with 40 CFR
 1487 264.147(g)(2), for that of 40 CFR 267.147(g)(2).
 1488

1489 (Source: Amended at 37 Ill. Reg. _____, effective _____)

~~NOTICE OF PROPOSED AMENDMENTS~~

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 727

STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE
FACILITIES OPERATING UNDER A RCRA STANDARDIZED PERMIT

Section

727.100	General
727.110	General Facility Standards
727.130	Preparedness and Prevention
727.150	Contingency Plan and Emergency Procedures
727.170	Recordkeeping, Reporting, and Notifying
727.190	Releases from Solid Waste Management Units
727.210	Closure
727.240	Financial Requirements
727.270	Use and Management of Containers
727.290	Tank Systems
727.900	Containment Buildings

727. ~~Appendix~~ APPENDIX A Financial Assurance Forms

727. ~~Illustration~~ ILLUSTRATION A Letter of Chief Financial Officer: Financial Assurance for Facility Closure

727. ~~Illustration~~ ILLUSTRATION B Letter of Chief Financial Officer: Financial Assurance for Liability Coverage

727. ~~Appendix~~ APPENDIX B Correlation of State and Federal Provisions

727. ~~Table~~ TABLE A Correlation of Federal RCRA Standardized Permit Provisions to State Provisions

727. ~~Table~~ TABLE B Correlation of State RCRA Standardized Permit Provisions to Federal Provisions

AUTHORITY: Implementing Sections 7.2 and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4, and 27].

SOURCE: Adopted in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1146, effective December 20, 2006; amended in R07-5/R07-14 at 32 Ill. Reg. 12829, effective July 14, 2008; amended in R13-15 at 37 Ill. Reg. _____, effective _____.

~~NOTICE OF PROPOSED AMENDMENTS~~

Section 727.110 General Facility Standards

- a) Applicability of this Section. This Section applies to the owner or operator of a facility that treats or stores hazardous waste under a Subpart J of 35 Ill. Adm. Code 703 RCRA standardized permit, except as provided in Section 727.100(a)(2).

BOARD NOTE: Subsection (a) of this Section is derived from 40 CFR ~~267.10, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~267.10 (2012).

- b) Compliance with this Section. To comply with this Section, the facility owner or operator must obtain a USEPA identification number, and follow the requirements of this Part for waste analysis, security, inspections, training, special waste handling, and location standards.

BOARD NOTE: Subsection (b) of this Section is derived from 40 CFR ~~267.11, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~267.11 (2012).

- c) Obtaining a USEPA identification number. The facility owner or operator must apply to USEPA Region 5 for a USEPA identification number ~~following the USEPA notification procedures and~~ using USEPA ~~form~~ Form 8700-12. The owner or operator ~~may~~ must obtain ~~information and required forms~~ a copy of the form from the Agency ~~or from~~, and submit a completed copy of the form to the Bureau of Land, in addition to notification to USEPA Region 5.

BOARD NOTE: Subsection (c) of this Section is derived from 40 CFR ~~267.12, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~267.12 (2012).

- d) Waste analysis requirements:

- 1) Before it treats or stores any hazardous wastes, the facility owner or operator must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information needed to treat or store the waste to comply with this Part and 35 Ill. Adm. Code 728.

- A) The facility owner or operator may include data in the analysis that was developed pursuant to 35 Ill. Adm. Code 721 or data published or documented on the hazardous waste or on hazardous waste generated from similar processes.

~~NOTICE OF PROPOSED AMENDMENTS~~

- B) The facility owner or operator must repeat the analysis as necessary to ensure that it is accurate and up to date. At a minimum, the owner or operator must repeat the analysis if the process or operation generating the hazardous wastes has changed.
- 2) The facility owner or operator must develop and follow a written waste analysis plan that describes the procedures it will follow to comply with subsection (d)(1) of this Section. The owner or operator must keep this plan at the facility. If the owner or operator receives wastes generated from off-site and is eligible for a RCRA standardized permit, the owner or operator also must have submitted the waste analysis plan with the Notice of Intent. At a minimum, the plan must specify all of the following:
- A) The hazardous waste parameters that the owner or operator will analyze and the rationale for selecting these parameters (that is, how analysis for these parameters will provide sufficient information on the waste's properties to comply with subsection (d)(1) of this Section).
 - B) The test methods the owner or operator will use to test for these parameters.
 - C) The sampling method the owner or operator will use to obtain a representative sample of the waste to be analyzed. The owner or operator may obtain a representative sample using either of the following methods:
 - i) One of the sampling methods described in Appendix A of 35 Ill. Adm. Code 721; or
 - ii) An equivalent sampling method.
 - D) How frequently the owner or operator will review or repeat the initial analysis of the waste to ensure that the analysis is accurate and up to date.
 - E) Where applicable, the methods the owner or operator will use to meet the additional waste analysis requirements for specific waste management methods, as specified in 35 Ill. Adm. Code 724.117,

~~NOTICE OF PROPOSED AMENDMENTS~~

724.934(d), 724.963(d), and 724.983.

BOARD NOTE: Subsection (d) of this Section is derived from 40 CFR ~~267.13,~~
~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~ 267.13 (2012).

- e) Security requirements:
- 1) The facility owner or operator must prevent, and minimize the possibility for, livestock and unauthorized people from entering the active portion of its facility.
 - 2) The facility must have either of the features listed in subsection (e)(2)(A) of this Section or those listed in subsections (e)(2)(B) and (e)(2)(C) of this Section:
 - A) A 24-hour surveillance system (for example, television monitoring or surveillance by guards or facility personnel) that continuously monitors and controls entry onto the active portion of the facility; or
 - B) An artificial or natural barrier (for example, a fence in good repair or a fence combined with a cliff) that completely surrounds the active portion of the facility; and
 - C) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (for example, an attendant, television monitors, locked entrance, or controlled roadway access to the facility).
 - 3) The facility owner or operator must post a sign at each entrance to the active portion of a facility, and at other prominent locations, in sufficient numbers to be seen from any approach to this active portion. The sign must bear the legend ~~"Danger—Unauthorized Personnel Keep Out."~~ The legend must be in English and in any other language predominant in the area surrounding the facility (for example, French or Spanish), and must be legible from a distance of at least 25 feet. The owner or operator may use existing signs with a legend other than ~~"Danger—Unauthorized Personnel Keep Out"~~ if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion and entry onto the active portion can be dangerous.

NOTICE OF PROPOSED AMENDMENTS

BOARD NOTE: Subsection (e) of this Section is derived from 40 CFR ~~267.14,~~
~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~ 267.14 (2012).

- f) General inspection requirements:
- 1) The owner or operator must inspect its facility for malfunctions and deterioration, operator errors, and discharges that may be causing, or may lead to either of the conditions listed in subsection (f)(1)(A) or (f)(1)(B) of this Section. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they result in harm to human health and the environment.
 - A) A release of hazardous waste constituents to the environment; or
 - B) A threat to human health.
 - 2) The facility owner or operator must develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.
 - A) The owner or operator must keep this schedule at the facility.
 - B) The schedule must identify the equipment and devices that the owner or operator will inspect and what problems it will look for, such as malfunctions or deterioration of equipment (for example, inoperative sump pump, leaking fitting, etc.).
 - C) The frequency of the owner's or operator's inspections may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies required in Sections 727.270(e), 727.290(d) and (f), and 727.900(d) and 35 Ill. Adm. Code 724.933, 724.952, 724.953,

~~NOTICE OF PROPOSED AMENDMENTS~~

724.958, and 724.983 through 724.989, where applicable.

- 3) The facility owner or operator must remedy any deterioration or malfunction of equipment or structures that the inspection reveals in time to prevent any environmental or human health hazards. Where hazard is imminent or has already occurred, the owner or operator must take immediate remedial action.
- 4) The facility owner or operator must record all inspections. The owner or operator must keep these records for at least three years from the date of inspection. At a minimum, the owner or operator must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

BOARD NOTE: Subsection (f) of this Section is derived from 40 CFR ~~267.15, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~267.15 (2012).

g) ~~Employee training-~~

- 1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this Part. The facility owner or operator must ensure that this program includes all the elements described in the documents that are required pursuant to subsection (g)(4)(C) of this Section.
 - A) A person trained in hazardous waste management procedures must direct this program, and must teach facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to their employment positions.
 - B) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by including instruction on emergency procedures, emergency equipment, and emergency systems, including all of the following, where applicable:
 - i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment.

~~NOTICE OF PROPOSED AMENDMENTS~~

- ii) Key parameters for automatic waste feed cut-off systems.
 - iii) Communications or alarm systems.
 - iv) Response to fires or explosions.
 - v) Response to groundwater contamination incidents.
 - vi) Shutdown of operations.
- 2) Facility personnel must successfully complete the program required in subsection (g)(1) of this Section within six months after the date of their employment or assignment to a facility or to a new position at a facility, whichever is later. Employees hired after the effective date of the owner's or operator's RCRA standardized permit must not work in unsupervised positions until they have completed the training requirements of subsection (g)(1) of this Section.
- 3) Facility personnel must take part in an annual review of the initial training required in subsection (g)(1) of this Section.
- 4) The facility owner or operator must maintain the following documents and records at its facility:
- A) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;
 - B) A written job description for each position listed pursuant to subsection (g)(4)(A) of this Section. This description must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;
 - C) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed pursuant to subsection (g)(4)(A) of this Section;
 - D) Records that document that facility personnel have received and completed the training or job experience required pursuant to subsections (g)(1), (g)(2), and (g)(3) of this Section.

~~NOTICE OF PROPOSED AMENDMENTS~~

- 5) The facility owner or operator must keep training records on current personnel until its facility closes. The owner or operator must keep training records on former employees for at least three years from the date the employee last worked at its facility. Personnel training records may accompany personnel transferred within a company.

BOARD NOTE: Subsection (g) of this Section is derived from 40 CFR ~~267.16,~~
~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~ 267.16 (2012).

- h) Requirements for managing ignitable, reactive, or incompatible wastes:
 - 1) The facility owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste by following these requirements:
 - A) The owner or operator must separate these wastes and protect them from sources of ignition or reaction such as open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (for example, from heat-producing chemical reactions), and radiant heat.
 - B) While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flames to specially designated locations.
 - C) "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.
 - 2) If it treats or stores ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, the owner or operator must take precautions to prevent reactions that do the following:
 - A) Generate extreme heat or pressure, fire or explosions, or violent reactions.
 - B) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment.
 - C) Produce uncontrolled flammable fumes or gases in sufficient

~~NOTICE OF PROPOSED AMENDMENTS~~

quantities to pose a risk of fire or explosions.

- D) Damage the structural integrity of the device or facility.
 - E) Threaten human health and the environment in any similar way.
- 3) The facility owner or operator must document compliance with subsection (h)(1) or (h)(2) of this Section. The owner or operator may base this documentation on references to published scientific or engineering literature, data from trial tests (for example bench scale or pilot scale tests), waste analyses (as specified in Section 727.110(d)), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

BOARD NOTE: Subsection (h) of this Section is derived from 40 CFR ~~267.17, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~ 267.17 (2012).

- i) Facility location standards:
 - 1) The facility owner or operator may not locate any portion of a new facility where hazardous waste will be treated or stored within 61 meters (200 feet) of a fault that has had displacement in Holocene time.
 - A) ~~“Fault”~~ means a fracture along which rocks on one side have been displaced with respect to those on the other side.
 - B) ~~“Displacement”~~ means the relative movement of any two sides of a fault measured in any direction.
 - C) ~~“Holocene”~~ means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

BOARD NOTE: Under the note to corresponding 40 CFR 267.18(a)(3) and 40 CFR 270.14(b)(11), a facility that is located in a political jurisdiction other than those listed in appendix VI of 40 CFR 264, incorporated by reference in 35 Ill. Adm. Code 720.111(b), is assumed to be in compliance with this requirement. No area of Illinois is listed in appendix VI of 40 CFR 264.

- 2) If an owner's or operator's facility is located within a 100-year flood

~~NOTICE OF PROPOSED AMENDMENTS~~

plain, it must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

- A) ~~“100-year flood plain”~~ means any land area that is subject to a one percent or greater chance of flooding in any given year from any source.
- B) ~~“Washout”~~ means the movement of hazardous waste from the active portion of the facility as a result of flooding.
- C) ~~“100-year flood”~~ means a flood that has a one percent chance of being equaled or exceeded in any given year.

BOARD NOTE: Subsection (i) of this Section is derived from 40 CFR ~~267.18, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~ 267.18 (2012).

(Source: Amended at 37 Ill. Reg. , effective)

Section 727.240 Financial Requirements

- a) Applicability and substance of the financial requirements:
 - 1) The regulations in this Section apply to owners and operators who treat or store hazardous waste under a RCRA standardized permit, except as provided in Section 727.100(a)(2) or subsection (a)(4) of this Section.
 - 2) The facility owner or operator must do each of the following:
 - A) It must prepare a closure cost estimate as required in subsection (c) of this Section;
 - B) It must demonstrate financial assurance for closure as required in subsection (d) of this Section; and
 - C) It must demonstrate financial assurance for liability as required in subsection (h) of this Section.
 - 3) The owner or operator must notify the Agency if the owner or operator is named as a debtor in a bankruptcy proceeding under Title 11 (Bankruptcy) of the United States Code (see also subsection (i) of this Section).

~~NOTICE OF PROPOSED AMENDMENTS~~

- 4) States and the federal government are exempt from the requirements of this Section.

BOARD NOTE: Subsection (a) of this Section is derived from 40 CFR ~~267.140,~~
~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~ 267.140 (2012).

b) Definitions of terms as used in this Section-

- 1) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 727.210(c).
- 2) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with subsections (c)(1), (c)(2), and (c)(3) of this Section.
- 3) This subsection (b)(3) corresponds with 40 CFR 267.141(c), which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.
- 4) "Parent corporation" means a corporation that directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator. In this instance, the owned corporation that is the facility owner or operator is deemed a "subsidiary" of the parent corporation.
- 5) This subsection (b)(5) corresponds with 40 CFR 267.141(e), which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.
- 6) The following terms are used in the specifications for the financial tests for closure and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 35 Ill.

~~NOTICE OF PROPOSED AMENDMENTS~~

Adm. Code 704.212(a), (b), and (c).

~~“Independently audited”~~ refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

~~“Liabilities”~~ means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

~~“Tangible net worth”~~ means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

- 7) In the liability insurance requirements, the terms ~~“bodily injury”~~ and ~~“property damage”~~ have the meanings given them by applicable State law. However, these terms do not include those liabilities that, consistent with standard industry practices, are excluded from coverage in liability insurance policies for bodily injury and property damage. The Agency intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

~~“Accidental occurrence”~~ means an accident, including continuous or repeated exposure to conditions, that results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

~~“Legal defense costs”~~ means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

~~“Sudden accidental occurrence”~~ means an occurrence that is not continuous or repeated in nature.

- 8) ~~“Substantial business relationship”~~ means the extent of a business

NOTICE OF PROPOSED AMENDMENTS

relationship necessary under applicable ~~State~~-state law to make a guarantee contract issued incident to that relationship valid and enforceable. A ~~"substantial business relationship"~~ must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that the Agency can reasonably determine that a substantial business relationship currently ~~existing business relationship~~ exists between the guarantor and the facility owner or operator ~~is demonstrated to the satisfaction of the Agency~~ that is adequate consideration to support the obligation of the guarantee relating to any liability towards a third-party. ~~"Applicable state law,"~~ as used in this subsection (~~d~~b)(8), means the laws of the State of Illinois and those of any sister state that govern the guarantee and the adequacy of the consideration.

BOARD NOTE: Subsection (b) of this Section is derived from 40 CFR ~~267.141,~~ ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~ 267.141 (2012). Subsection (b)(8) is also derived from the discussion at 53 Fed. Reg. 33938, 41-43 (Sept. 1, 1988). The term ~~"substantial business relationship"~~ is also independently defined in 35 Ill. Adm. Code 724.241(h) and 725.241(h). Any Agency determination that a substantial business relationship exists is subject to Board review pursuant to ~~section~~ Section 40 of the Act [415 ILCS 5/40].

- c) Cost estimate for closure:
 - 1) The facility owner or operator must have at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Section 727.210(b) through (f) and applicable closure requirements in Sections 727.270(g), 727.290(l), and 727.900(i).
 - A) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan (see Section 727.210(c)(2)).
 - B) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See the definition of parent corporation in subsection (b)(4) of this Section.) The owner or operator may use costs for on-site disposal if it can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

~~NOTICE OF PROPOSED AMENDMENTS~~

- C) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.
 - D) The facility owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes that might have economic value.
- 2) During the active life of the facility, the facility owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with subsection (d) of this Section. For an owner or operator using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the guarantor's fiscal year and before submission of updated information to the Agency as specified in subsection (n)(3) of this Section. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product (Deflator) published by the U.S. Department of Commerce in its Survey of Current Business, as specified in subsections (c)(2)(A) and (c)(2)(B) of this Section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.
- A) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.
 - B) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

BOARD NOTE: The table of Deflators is available as Table 1.1.9. in the National Income and Product Account Tables, published by U.S. Department of Commerce, Bureau of Economic Analysis, National Economic Accounts, available on-line at the following web address: www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&903=13.

NOTICE OF PROPOSED AMENDMENTS

- 3) During the active life of the facility, the facility owner or operator must revise the closure cost estimate no later than 30 days after the Agency has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subsection (c)(2) of this Section.
- 4) The facility owner or operator must keep the following at the facility during the operating life of the facility: the latest closure cost estimate prepared in accordance with subsections (c)(1) and (c)(3) of this Section and, when this estimate has been adjusted in accordance with subsection (c)(2) of this Section, the latest adjusted closure cost estimate.

BOARD NOTE: Subsection (c) of this Section is derived from 40 CFR ~~267.142, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~ 267.142 (2012).

- d) Financial assurance for closure. The facility owner or operator must establish financial assurance for closure of each storage or treatment unit that it owns or operates. In establishing financial assurance for closure, the owner or operator must choose from among the financial assurance mechanisms in subsections (d)(1) through (d)(7) of this Section. The owner or operator can also use a combination of mechanisms for a single facility if the ~~combination~~ combination meets the requirement in subsection (d)(8) of this Section, or it may use a single mechanism for multiple facilities as in subsection (d)(9) of this Section. The Agency must release the owner or operator from the requirements of this subsection (d) after the owner or operator meets the criteria pursuant to subsection (d)(10) of this Section.
 - 1) Closure trust fund. An owner or operator may use the ~~"~~closure trust fund~~"~~ that is specified in 35 Ill. Adm. Code 724.243(a)(1), (a)(2), and (a)(6) through (a)(11). For purposes of this subsection (d)(1), the following provisions also apply:
 - A) Payments into the trust fund for a new facility must be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over three years, whichever period is shorter. This period of time is hereafter referred to as the ~~"~~pay-in period~~"~~.

~~NOTICE OF PROPOSED AMENDMENTS~~

B) For a new facility, the facility owner or operator must make the first payment into the closure trust fund before the facility may accept the initial storage. A receipt from the trustee must be submitted by the owner or operator to the Agency before this initial storage of waste. The first payment must be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period, except as provided in subsection (d)(8) of this Section for multiple mechanisms. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The owner or operator determines the amount of each subsequent payment by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period. Mathematically, the formula is as follows:

$$NP = \frac{(CCE - CVTF)}{YRPP}$$

Where:

~~NP = the amount of the next payment
CCE = the current closure cost estimate
CVTF = the current value of the trust fund
YRPP = the years remaining in the pay-in period.~~

NP = the amount of the next payment
CCE = the current closure cost estimate
CVTF = the current value of the trust fund
YRPP = the years remaining in the pay-in period.

C) The owner or operator of a facility existing on the effective date of this subsection (d)(1) can establish a trust fund to meet the financial assurance requirements of this subsection (d)(1). If the value of the trust fund is less than the current closure cost estimate when a final approval of the permit is granted for the facility, the owner or operator must pay the difference into the trust fund within 60 days.

NOTICE OF PROPOSED AMENDMENTS

- D) The facility owner or operator may accelerate payments into the trust fund or deposit the full amount of the closure cost estimate when establishing the trust fund. However, the owner or operator must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subsections (d)(1)(B) or (d)(1)(C) of this Section.
- E) The facility owner or operator must submit a trust agreement with the wording ~~specified in 40 CFR 264.151(a)(1), incorporated by reference in 35 Ill. Adm. Code 720.111(b)~~ designated by the Agency pursuant to subsection (l)(3) of this Section.
- 2) Surety bond guaranteeing payment into a closure trust fund. An owner or operator may use the "surety bond guaranteeing payment into a closure trust fund," as specified in 35 Ill. Adm. Code 724.243(b), including the use of the surety bond instrument ~~specified at 40 CFR 264.151(b), incorporated by reference in 35 Ill. Adm. Code 720.111(b)~~ designated by the Agency pursuant to subsection (1)(3) of this Section, and the standby trust specified at 35 Ill. Adm. Code 724.243(b)(3).
- 3) Surety bond guaranteeing performance of closure. An owner or operator may use the "surety bond guaranteeing performance of closure," as specified in 35 Ill. Adm. Code 724.243(c), the submission and use of the surety bond instrument ~~specified at 40 CFR 264.151(e), incorporated by reference in 35 Ill. Adm. Code 720.111(b)~~ designated by the Agency pursuant to subsection (1)(3) of this Section, and the standby trust specified at 35 Ill. Adm. Code 724.243(c)(3).
- 4) Closure letter of credit. An owner or operator may use the "closure letter of credit" specified in 35 Ill. Adm. Code 724.243(d), the submission and use of the irrevocable letter of credit instrument ~~specified in 40 CFR 264.151(d), incorporated by reference in 35 Ill. Adm. Code 720.111(b)~~ designated by the Agency pursuant to subsection (1)(3) of this Section, and the standby trust specified in 35 Ill. Adm. Code 724.243(d)(3).
- 5) Closure insurance. An owner or operator may use "closure insurance," as specified in 35 Ill. Adm. Code 724.243(e), utilizing the certificate of insurance for closure ~~specified at 40 CFR 264.151(e), incorporated by reference in 35 Ill. Adm. Code 720.111(b)~~ designated by the Agency

NOTICE OF PROPOSED AMENDMENTS

pursuant to subsection (1)(3) of this Section.

- 6) Corporate financial test. An owner or operator that satisfies the requirements of this subsection (d)(6) may demonstrate financial assurance up to the amount specified in this subsection (d)(6).

- A) Financial component. See subsection (m) of this Section.

BOARD NOTE: It was necessary for the Board to codify corresponding 40 CFR 267.143(f)(1) as subsection (m) of this Section to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (d), (d)(6), or (d)(6)(A) also include added subsection (m) of this Section, as applicable.

- B) Recordkeeping and reporting requirements. See subsection (n) of this Section.

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.143(f)(2) as subsection (n) of this Section to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (d), (d)(6), or (d)(6)(B) also include added subsection (n) of this Section, as applicable.

- ~~C) The terms of the guarantee must provide as set forth in subsection (o) of this Section.~~

~~BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.143(f)(3) as subsection (o) of this Section to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (d), (d)(6), or (d)(6)(C) also include added subsection (o) of this Section, as applicable.~~

- 7) Corporate guarantee-

- A) A facility owner or operator may meet the requirements of this subsection (d) by obtaining a written guarantee. The guarantor

NOTICE OF PROPOSED AMENDMENTS

must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subsection (d)(6) of this Section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording ~~in 40 CFR 264.151(h), incorporated by reference in 35 Ill. Adm. Code 720.111(b)~~ designated by the Agency pursuant to subsection (1)(3) of this Section. The certified copy of the guarantee must accompany the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

- B) For a new facility, the guarantee must be effective and the guarantor must submit the items in subsection (d)(7)(A) of this Section and the items specified in subsection (n)(1) of this Section to the Agency at least 60 days before the owner or operator places waste in the facility.
- C) The terms of the guarantee must provide as required by subsection (o) of this Section.

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.143(g)(3) as subsection (o) of this Section to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (d), (d)(7), or (d)(7)(C) also include added subsection (o) of this Section, as applicable.

- D) If a corporate guarantor no longer meets the requirements of subsection (d)(6)(A) of this Section, the owner or operator must, within 90 days, obtain alternative assurance, and submit the assurance to the Agency for approval. If the owner or operator

~~NOTICE OF PROPOSED AMENDMENTS~~

fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days, and submit it to the Agency for approval.

- E) The guarantor is no longer required to meet the requirements of this subsection (d)(7) when either of the following occurs:
 - i) The facility owner or operator substitutes alternate financial assurance as specified in this subsection (d); or
 - ii) The facility owner or operator is released from the requirements of this subsection (d) in accordance with subsection (d)(10) of this Section.
- 8) Use of multiple financial mechanisms. An owner or operator may use more than one mechanism at a particular facility to satisfy the requirements of this subsection (d). The acceptable mechanisms are trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, the financial test, and the guarantee, except owners or operators cannot combine the financial test with the guarantee. The mechanisms must be as specified in subsections (d)(1), (d)(2), (d)(4), (d)(5), (d)(6), and (d)(7) of this Section, respectively, except it is the combination of mechanisms rather than a single mechanism that must provide assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, it may use the trust fund as the standby trust for the other mechanisms. A single trust fund can be established for two or more mechanisms. The Agency may use any or all of the mechanisms to provide for closure of the facility.
- 9) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial mechanism for multiple facilities, as specified in 35 Ill. Adm. Code 724.243(h).
- 10) Release of the owner or operator from the requirements of this subsection (d). Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Agency will notify the owner or operator in writing that the owner or operator is no longer required by this subsection (d) to maintain financial

~~NOTICE OF PROPOSED AMENDMENTS~~

assurance for final closure of the facility, unless the Agency has reason to believe that final closure has not been completed in accordance with the approved closure plan. The Agency must provide the owner or operator with a detailed written statement of any such reasons to believe that closure has not been conducted in accordance with the approved closure plan.

BOARD NOTE: Subsection (d) of this Section is derived from 40 CFR ~~267.143, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~ 267.143 (2012).

- e) This subsection (e) corresponds with 40 CFR 267.144, which USEPA has marked ~~"Reserved."~~ This statement maintains structural consistency with the corresponding federal rules.
- f) This subsection (f) corresponds with 40 CFR 267.145, which USEPA has marked ~~"Reserved."~~ This statement maintains structural consistency with the corresponding federal rules.
- g) This subsection (g) corresponds with 40 CFR 267.146, which USEPA has marked ~~"Reserved."~~ This statement maintains structural consistency with the corresponding federal rules.
- h) Liability requirements:
 - 1) Coverage for sudden accidental occurrences. The owner or operator of a hazardous waste treatment or storage facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in subsection (h)(1)(A) through (h)(1)(G) of this Section:
 - A) Trust fund for liability coverage. The owner or operator may meet the requirements of this subsection (h) by obtaining a trust fund for liability coverage as specified in 35 Ill. Adm. Code 724.247(j).
 - B) Surety bond for liability coverage. The owner or operator may

~~NOTICE OF PROPOSED AMENDMENTS~~

meet the requirements of this subsection (h) by obtaining a surety bond for liability coverage as specified in 35 Ill. Adm. Code 724.247(i).

- C) Letter of credit for liability coverage. The owner or operator may meet the requirements of this subsection (h) by obtaining a letter of credit for liability coverage as specified in 35 Ill. Adm. Code 724.247(h).
- D) Insurance for liability coverage. The owner or operator may meet the requirements of this subsection (h) by obtaining liability insurance as specified in 35 Ill. Adm. Code 724.247(a)(1).
- E) Financial test for liability coverage. The owner or operator may meet the requirements of this subsection (h) by passing a financial test as specified in subsection (h)(6) of this Section.
- F) Guarantee for liability coverage. The owner or operator may meet the requirements of this subsection (h) by obtaining a guarantee as specified in subsection (h)(7) of this Section.
- G) Combination of mechanisms. The owner or operator may demonstrate the required liability coverage through the use of combinations of mechanisms as allowed by 35 Ill. Adm. Code 724.247(a)(6).
- H) An owner or operator shall notify the Agency in writing within 30 days whenever either of the following occurs:
 - i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subsections (h)(1)(A) through (h)(1)(G) of this Section; or
 - ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage pursuant to subsections (h)(1)(A) through (h)(1)(G) of this Section; or

~~NOTICE OF PROPOSED AMENDMENTS~~

- iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage pursuant to subsections (h)(1)(A) through (h)(1)(G) of this Section.
- 2) This subsection (h)(2) corresponds with 40 CFR 267.147(b), which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.
- 3) This subsection (h)(3) corresponds with 40 CFR 267.147(c), which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.
- 4) This subsection (h)(4) corresponds with 40 CFR 267.147(d), which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.
- 5) Period of coverage. Within 60 days after receiving certifications from the facility owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Agency must notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage from that facility, unless the Agency has reason to believe that closure has not been in accordance with the approved closure plan.
- 6) Financial test for liability coverage. A facility owner or operator that satisfies the requirements of this subsection (h)(6) may demonstrate financial assurance for liability up to the amount specified in this subsection (h)(6):
 - A) Financial component-
 - i) If using the financial test for only liability coverage, the owner or operator must have tangible net worth greater than the sum of the liability coverage to be demonstrated by this test plus \$10 million.

NOTICE OF PROPOSED AMENDMENTS

- ii) The owner or operator must have assets located in the United States amounting to at least the amount of liability covered by this financial test.
- iii) An owner or operator who is demonstrating coverage for liability and any other environmental obligations, including closure pursuant to subsection (d)(6) of this Section, through a financial test must meet the requirements of subsection (d)(6) of this Section.

- B) Recordkeeping and reporting requirements. See subsection (p) of this Section.

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.147(f)(2) as subsection (p) of this Section to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (h), (h)(6), or (h)(6)(B) also include added subsection (p) of this Section, as applicable.

- 7) Guarantee for liability coverage-

- A) Subject to subsection (h)(7)(B) of this Section, a facility owner or operator may meet the requirements of this subsection (h) by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subsections (h)(6)(A) and (h)(6)(B) of this Section. The wording of the guarantee must be identical to the wording ~~specified in 40 CFR 264.151(h)(2), incorporated by reference in 35 Ill. Adm. Code 720.111(b)~~ designated by the Agency pursuant to subsection (1)(3) of this Section. A certified copy of the guarantee must accompany the items sent to the Agency, as specified in subsection (h)(6)(B) of this Section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the

~~NOTICE OF PROPOSED AMENDMENTS~~

parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a ~~“substantial business relationship”~~ with the owner or operator, this letter must describe this ~~“substantial business relationship”~~ and the value received in consideration of the guarantee.

- i) If the facility owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.
- ii) This subsection (h)(7)(A)(ii) corresponds with 40 CFR 267.147(g)(1)(ii), which USEPA has marked ~~“Reserved.”~~ This statement maintains structural consistency with the corresponding federal rules.

B) Foreign Corporations. See subsection (q) of this Section.

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.147(g)(2) as subsection (q) of this Section to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (h), (h)(7), or (h)(7)(B) also include added subsection (q) of this Section, as applicable. See the further explanation of the differences between subsection (q) of this Section and 40 CFR 267.147(g)(2) in the Board note appended to subsection (q).

BOARD NOTE: Subsection (h) of this Section is derived from 40 CFR ~~267.147, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~[267.147](#) (2012).

- i) Incapacity of owners or operators, guarantors, or financial institutions:
 - 1) The facility owner or operator must notify the Agency by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) of the United States Code, naming the owner or operator

NOTICE OF PROPOSED AMENDMENTS

as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in subsections (d)(7) and (h)(7) of this Section must make such a notification if it is named as debtor, as required under the terms of the corporate guarantee (~~see 40 CFR 264.151(h), incorporated by reference in 35 Ill. Adm. Code 720.111(b)~~) designated by the Agency pursuant to subsection (1)(3) of this Section.

- 2) An owner or operator who fulfills the requirements of subsection (d) or (h) of this Section by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

BOARD NOTE: Subsection (i) of this Section is derived from 40 CFR ~~267.148, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~ 267.148 (2012).

- j) This subsection (j) corresponds with 40 CFR 267.149, which USEPA has marked “Reserved.” This statement maintains structural consistency with the corresponding federal rules.
- k) State assumption of responsibility:
 - 1) If the State either assumes legal responsibility for an owner's or operator's compliance with the closure care or liability requirements of this Part or assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with the requirements of subsection (d) or (h) of this Section if ~~the Agency~~ USEPA Region 5 determines that the State's assumption of responsibility is at least equivalent to the financial mechanisms specified in this Section. ~~The Agency must~~ USEPA has stated that USEPA Region 5 will evaluate the equivalency of State guarantees principally in terms of the following: the certainty of the availability of funds for the required closure care activities or liability coverage; and the amount of funds that will be made available. ~~The Agency~~ USEPA has stated that USEPA Region 5 may also consider other factors as it deems appropriate. The facility owner or operator must submit to ~~the Agency~~ USEPA Region 5 a letter from the State describing

~~NOTICE OF PROPOSED AMENDMENTS~~

the nature of the State's assumption of responsibility together with a letter from the owner or operator requesting that the State's assumption of responsibility be considered acceptable for meeting the requirements of this Section. The letter from the State must include, or have attached to it, the following information: the facility's USEPA identification number, the facility name and address, and the amount of funds for closure care or liability coverage that are guaranteed by the State. ~~The Agency~~ USEPA has stated that USEPA Region 5 will notify the owner or operator of ~~his~~its determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this Section. ~~The Agency~~ USEPA has stated that USEPA Region 5 may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of subsection (d) or (h) of this Section, as applicable.

- 2) If a State's assumption of responsibility is found acceptable as specified in subsection (k)(1) of this Section except for the amount of funds available, the owner or operator may satisfy the requirements of this Section by use of both the State's assurance and additional financial mechanisms as specified in this Section. The amount of funds available through the State and federal mechanisms must at least equal the amount required by this Section.

BOARD NOTE: Subsection (k) of this Section is derived from 40 CFR ~~267.150, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~267.150 (2012).

- 1) Wording of the instruments-

- 1) Forms for using the corporate financial test to demonstrate financial assurance for closure. The chief financial officer of an owner or operator of a facility with a RCRA standardized permit who uses a financial test to demonstrate financial assurance for that facility must complete a letter as specified in subsection (d)(6) of this Section. The letter must be worded as ~~set forth in Appendix A, Illustration A of this Part~~ designated by the Agency pursuant to subsection ~~(1)~~(3) of this Section.

~~BOARD NOTE: It was necessary for the Board to codify the form set forth in 40 CFR 267.151(a) as Appendix A, Illustration A of this Part. The~~

~~NOTICE OF PROPOSED AMENDMENTS~~

~~Board intends that any citation to this subsection (l) or (l)(1) also include added Appendix A, Illustration A of this Part, as applicable.~~

- 2) Forms for using the financial test to demonstrate financial assurance for third-party liability. The chief financial officer of an owner or operator of a facility with a RCRA standardized permit who use a financial test to demonstrate financial assurance only for third party liability for that (or other RCRA standardized permit) facility (or those facilities) must complete a letter as specified in subsection (h)(6) of this Section. The letter must be worded as ~~set forth in Appendix A, Illustration B of this Part~~ designated by the Agency pursuant to subsection (1)(3) of this Section.

~~BOARD NOTE: It was necessary for the Board to codify the form set forth in 40 CFR 267.151(b) as Appendix A, Illustration B of this Part. The Board intends that any citation to this subsection (l) or (l)(2) also include added Appendix A, Illustration B of this Part, as applicable.~~

- 3) The Agency must designate standardized forms based on 40 CFR 264.151 and 40 ~~C.F.R.~~ CFR 267.151 (Wording of the Instruments), each incorporated by reference in 35 Ill. Adm. Code 720.111(b), with such changes in wording as are necessary under Illinois law. Any owner or operator required to establish financial assurance under this Section must do so only upon the standardized forms promulgated by the Agency. The Agency must reject any financial assurance document that is not submitted on such standardized forms.

BOARD NOTE: Subsection (l) of this Section is derived from 40 CFR ~~267.151, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~ 267.151 (2012).

- m) Financial component for using the corporate financial test to demonstrate financial assurance for closure:
 - 1) The facility owner or operator must satisfy one of the following three conditions:
 - A) A current rating for its senior unsecured debt of AAA, AA, A, or BBB, as issued by Standard and Poor's, or Aaa, Aa, A or Baa, as issued by Moody's; or
 - B) A ratio of less than 1.5 comparing total liabilities to net worth; or

~~NOTICE OF PROPOSED AMENDMENTS~~

- C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.
- 2) The tangible net worth of the owner or operator must be greater than both of the following:
 - A) The sum of the current environmental obligations (see subsection (n)(1)(A)(i) of this Section), including guarantees, covered by a financial test plus \$10 million, except as provided in subsection (m)(2)(B) of this Section; and
 - B) \$10 million in tangible net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the environmental obligations (see subsection (n)(1)(A)(i) of this Section) covered by a financial test are recognized as liabilities on the owner²'s or operator²'s audited financial statements, and subject to the approval of the Agency.
- 3) The facility owner or operator must have assets located in the United States amounting to at least the sum of environmental obligations covered by a financial test as described in subsection (n)(1)(A)(i) of this Section.

BOARD NOTE: Subsection (m) of this Section is derived from 40 CFR 267.143(f)(1), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~ (2012). The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), (d)(6), or (d)(6)(A) of this Section also include this added subsection (m), as applicable.

- n) Recordkeeping and reporting requirements for using the corporate financial test to demonstrate financial assurance for closure:
 - 1) The facility owner or operator must submit the following items to the Agency:
 - A) A letter signed by the owner²'s or operator²'s chief financial officer that provides the following information:

~~NOTICE OF PROPOSED AMENDMENTS~~

- i) It lists all the applicable current types, amounts, and sums of environmental obligations covered by a financial test. These obligations include both obligations in the programs that USEPA directly operates and obligations where USEPA has delegated authority to a State or approved a State's program. These obligations include, but are not limited to the information described in subsection (n)(1)(E) of this Section.

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.143(f)(2)(i)(A)(I) through (f)(2)(i)(A)(I)(vii) as subsection (n)(1)(E) through (n)(1)(E)(vii) of this Section to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), (d)(6), or (d)(6)(B) of this Section or to this subsection (n), (n)(1), (n)(1)(A), or (n)(1)(A)(i) also include added subsection (n)(1)(E) through (n)(1)(E)(vii) of this Section, as applicable.

- ii) It provides evidence demonstrating that the firm meets the conditions of either subsection (m)(1)(A), (m)(1)(B), or (m)(1)(C) of this Section and subsections (m)(2) and (m)(3) of this Section.

- B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Agency may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Agency deems that the matters that form the basis for the qualification are insufficient to warrant disallowance of the test. If the Agency does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section within 30 days after the

~~NOTICE OF PROPOSED AMENDMENTS~~

notification of disallowance.

- C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subsection (m)(1)(B) or (m)(1)(C) of this Section that are different from data in the audited financial statements referred to in subsection (n)(1)(B) of this Section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report must be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.
- D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in subsection (m)(2)(B) of this Section, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.
- E) Contents of the letter signed by the chief financial officer (for the purposes of subsection (n)(1)(A)(i) of this Section):
 - i) The liability, closure, post-closure and corrective action cost estimates required for hazardous waste treatment, storage, and disposal facilities pursuant to the applicable provisions of 35 Ill. Adm. Code 724.201, 724.242, 724.244, 724.247, 725.242, 725.244, and 725.247;
 - ii) The cost estimates required for municipal solid waste management facilities pursuant to the applicable provisions of Subpart G of 35 Ill. Adm. Code 811;

~~NOTICE OF PROPOSED AMENDMENTS~~

- iii) The current plugging cost estimates required for UIC facilities pursuant to 35 Ill. Adm. Code 704.212;
- iv) The federally required cost estimates required for petroleum underground storage tank facilities pursuant to 40 CFR 280.93;
- v) The federally required cost estimates required for PCB storage facilities pursuant to 40 CFR 761.65;
- vi) Any federally required financial assurance required by or as part of an action undertaken pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC 9601 et seq.); and
- vii) Any other environmental obligations that are assured through a financial test.

BOARD NOTE: Subsections (n)(1)(E) through (n)(1)(E)(vi) of this Section ~~is~~are derived from 40 CFR 267.143(f)(2)(i)(A)(I) through (f)(2)(i)(A)(I)(vi), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~ (2012). The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), (d)(6), (d)(6)(B), (n), (n)(1), (n)(1)(A), or (n)(1)(A)(i) of this Section also include added subsections (n)(1)(E) through (n)(1)(E)(vi), as applicable.

- 2) The owner or operator of a new facility must submit the items specified in subsection (n)(1) of this Section to the Agency at least 60 days before placing waste in the facility.
- 3) After the initial submission of items specified in subsection (n)(1) of this Section, the owner or operator must send updated information to the Agency within 90 days following the close of the owner or operator's fiscal year. The Agency may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in subsection (n)(1) of this Section.

~~NOTICE OF PROPOSED AMENDMENTS~~

- 4) The owner or operator is no longer required to submit the items specified in this subsection (n) of this Section or comply with the requirements of subsection (d)(6) of this Section when either of the following occurs:
 - A) The owner or operator substitutes alternate financial assurance as specified in subsection (d) of this Section that is not subject to these recordkeeping and reporting requirements; or
 - B) The Agency releases the owner or operator from the requirements of subsection (d) of this Section in accordance with subsection (d)(10) of this Section.
- 5) An owner or operator who no longer meets the requirements of subsection (m) of this Section cannot use the financial test to demonstrate financial assurance. Instead an owner or operator who no longer meets the requirements of subsection (m) of this Section, must do the following:
 - A) It must send notice to the Agency of intent to establish alternate financial assurance as specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this subsection (n) and subsections (d), (m), and (o) of this Section; and
 - B) It must provide alternative financial assurance within 120 days after the end of such fiscal year.
- 6) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (m) of this Section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in this subsection (n) ~~of this Section~~. If the Agency finds that the owner or operator no longer meets the requirements of subsection (m) of this Section, the owner or operator must provide alternate financial assurance that meets the requirements of subsection (d) of this Section.

BOARD NOTE: Subsection (n) of this Section is derived from 40 CFR 267.143(f)(2), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~ (2012). The Board

~~NOTICE OF PROPOSED AMENDMENTS~~

moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), (d)(6), or (d)(6)(B) of this Section also include this added subsection (n), as applicable.

- o) The terms of the guarantee for using the corporate guarantee to demonstrate financial assurance for closure must provide as follows:
 - 1) If the facility owner or operator fails to perform closure at a facility covered by the guarantee, the guarantor will accomplish the following:
 - A) It will perform, or pay a third party to perform closure (performance guarantee); or
 - B) It will establish a fully funded trust fund as specified in subsection (d)(1) of this Section in the name of the owner or operator (payment guarantee).
 - 2) The guarantee will remain in force for as long as the facility owner or operator must comply with the applicable financial assurance requirements of this Section unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency as evidenced by the return receipts.
 - 3) If notice of cancellation is given, the facility owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the Agency, obtain alternate financial assurance, and submit documentation for that alternate financial assurance to the Agency. If the owner or operator fails to provide alternate financial assurance and obtain the written approval of such alternative assurance from the Agency within the 90-day period, the guarantor must provide that alternate assurance in the name of the owner or operator and submit the necessary documentation for the alternative assurance to the Agency within 120 days after the cancellation notice.

BOARD NOTE: Subsection (o) of this Section is derived from 40 CFR 267.143 ~~(f)(3), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005) 267.143~~(g)(3) (2012). The Board moved the corresponding federal provision to comport with

NOTICE OF PROPOSED AMENDMENTS

Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), ~~(d)(6)~~(d)(7), or ~~(d)(6)(C)~~ (d)(7)(C) of this Section also include this added subsection (o), as applicable.

- p) Recordkeeping and reporting requirements:
- 1) The owner or operator must submit the following items to the Agency:
 - A) A letter signed by the owner²'s or operator²'s chief financial officer that provides evidence demonstrating that the firm meets the conditions of subsections (h)(6)(A)(i) and (h)(6)(A)(ii) of this Section. If the firm is providing only liability coverage through a financial test for a facility or facilities with a permit pursuant to this Part 727, the letter should use the wording in subsection (l)(2) of this Section. If the firm is providing only liability coverage through a financial test for facilities regulated pursuant to this Part ~~727 and 35 Ill. Adm. Code 724 or 725, 727~~, it should use the letter in ~~40 CFR 264.151(g), incorporated by reference in 35 Ill. Adm. Code 720.111(b)~~ designated by the Agency pursuant to subsection ~~(l)~~(3) of this Section. If the firm is providing liability coverage through a financial test for a facility or facilities with a permit pursuant to this Part 727, and it assures closure costs or any other environmental obligations through a financial test, it must use the letter in subsection (l)(1) of this Section for the facilities issued a permit pursuant to this Part 727.
 - B) A copy of the independent certified public accountant²'s unqualified opinion of the owner²'s or operator²'s financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner²'s or operator²'s financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Agency may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Agency deems that the matters that form the basis for the qualification are insufficient to warrant disallowance of the test. If the Agency does not allow use of the test, the owner or operator must provide alternate financial assurance that meets

NOTICE OF PROPOSED AMENDMENTS

the requirements of this subsection (h) within 30 days after the notification of disallowance.

- C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subsections (h)(6)(A)(i) and (h)(6)(A)(ii) of this Section that are different from data in the audited financial statements referred to in subsection (p)(1)(B) of this Section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.
- 2) The owner or operator of a new facility must submit the items specified in subsection (p)(1) of this Section to the Agency at least 60 days before placing waste in the facility.
- 3) After the initial submission of items specified in subsection (p)(1) of this Section, the facility owner or operator must send updated information to the Agency within 90 days following the close of the owner or operator's fiscal year. The Agency may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in subsection (p)(1) of this Section.
- 4) The owner or operator is no longer required to submit the items specified in this subsection (p) or comply with the requirements of subsection (h)(6) of this Section when either of the following occurs:
- A) The facility owner or operator substitutes alternate financial assurance as specified in subsection (h) of this Section that is not subject to these recordkeeping and reporting requirements; or
- B) The Agency releases the facility owner or operator from the

~~NOTICE OF PROPOSED AMENDMENTS~~

requirements of subsection (h) of this Section in accordance with subsection (d)(10) of this Section.

- 5) An owner or operator that no longer meets the requirements of subsection (h)(6)(A) of this Section cannot use the financial test to demonstrate financial assurance. An owner or operator who no longer meets the requirements of subsection (h)(6)(A) of this Section, must do the following:
 - A) Send notice to the Agency of intent to establish alternate financial assurance as specified in this section. The facility owner or operator must send this notice by certified mail within 90 days following the close of the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this ~~section~~ Section.
 - B) Provide alternative financial assurance within 120 days after the end of ~~such~~the fiscal year.
- 6) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (h)(6)(A) of this Section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in this subsection (p) of this Section. If the Agency finds that the owner or operator no longer meets the requirements of subsection (h)(6)(A) of this Section, the owner or operator must provide alternate financial assurance that meets the requirements of subsection (h) of this Section.

BOARD NOTE: Subsection (p) of this Section is derived from 40 CFR 267.147(f)(2), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~ (2012). The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (h), (h)(6), or (h)(6)(B) of this Section also include this added subsection (p), as applicable.

- q) Foreign corporations:
 - 1) The guarantor must execute the guarantee in Illinois. The guarantee must be accompanied by a letter signed by the guarantor that states as follows:

~~NOTICE OF PROPOSED AMENDMENTS~~

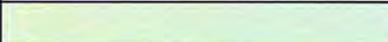
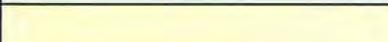
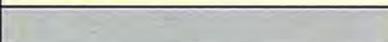
- A) The guaratee was signed in Illinois by an authorized agent of the guarantor;
 - B) The guaratee is governed by Illinois law; and
 - C) The name and address of the guarantor's registered agent for service of process.
- 2) The guarantor must have a registered agent pursuant to Section 5.05 of the Business Corporation Act of 1983 [805 ILCS 5/5.05] or Section 105.05 of the General Not-for-Profit Corporation Act of 1986 [805 ILCS 105/105.05].

BOARD NOTE: Subsection (q) of this Section is derived from 40 CFR 267.147(g)(2), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~ (2012). The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (h), (h)(7), or (h)(7)(B) of this Section also include this added subsection (q), as applicable. The text of 40 CFR 267.147(g)(2) is substantially identical to that of 40 CFR 264.147(g)(2). The Board has substituted the language of 35 Ill. Adm. Code 724.247(g)(2), which corresponds with 40 CFR 264.147(g)(2), for that of 40 CFR 267.147(g)(2).

(Source: Amended at 37 Ill. Reg. _____, effective _____)

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