

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) Section Numbers:

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
727.100	Amendment
727.110	Amendment
727.150	Amendment
727.170	Amendment
727.190	Amendment
727.210	Amendment
727.240	Amendment
727.270	Amendment
727.290	Amendment
727.900	Amendment
- 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 consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking that also affects 35 Ill. Adm. Code 702 through 705, 720 through 726, 728, 730, 733, 738, 739, and 810 through 812. Due to the extreme volume of the consolidated docket, each Part is covered by a notice in four separate issues of the *Illinois Register*. Included in this issue are 35 Ill. Adm. Code 722, 723, and 726 through 728. To save space, a more detailed description of the subjects and issues involved in the consolidated docket R17-14/R17-15/R18-11/R18-31 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 722. A comprehensive description is contained in the Board's opinion and order of March 3, 2016, proposing amendments in docket R16-7, which opinion and order is available from the address below.

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STATE OF ILLINOIS
Pollution Control Board

Specifically, the amendments to Part 727 incorporate elements of the Generator Improvements Rule and the Hazardous Waste Import-Export Revisions. The Board makes several needed corrections in the text of the rules.

Tables appear in a document entitled "Identical-in-Substance Rulemaking Addendum (Proposed)" that the Board added to consolidated docket R17-14/R17-15/R18-11/R18-31. The tables list the deviations from the literal text of the federal amendments and the several necessary corrections and stylistic revisions not directly derived from USEPA

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actions. Persons interested in the details of those deviations from the literal text should refer to the Identical-in-Substance Rulemaking Addendum (Proposed) in consolidated docket R17-14/R17-15/R18-11/R18-31.

Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Illinois 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 IAPA, 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) Does this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of statewide policy Objective: 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)].
- 12) Time, Place and Manner in which interested persons may comment on this proposed 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 consolidated docket R17-14/R17-15/R18-11/R18-31 and be addressed to:

Don A. Brown, 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 consolidated docket R17-14/R17-15/R18-11/R18-31:

Michael J. McCambridge

POLLUTION CONTROL BOARD

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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:
- 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 disposing of industrial wastewaters into the sewage collection system of a publicly owned treatment works. 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)].
 - 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)].
 - 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)].
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2017 and January 2018

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

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 A Financial Assurance Forms (Repealed)
727.ILLUSTRATION A Letter of Chief Financial Officer: Financial Assurance for Facility Closure (Repealed)
727.ILLUSTRATION B Letter of Chief Financial Officer: Financial Assurance for Liability Coverage (Repealed)
727.APPENDIX B Correlation of State and Federal Provisions
727.TABLE A Correlation of Federal RCRA Standardized Permit Provisions to State Provisions
727.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. 17909, effective October 24, 2013; amended in R14-1/2R14-2/3R14-3 at 38 Ill. Reg. 7221, effective March 13, 2014; amended in R16-7 at 40 Ill. Reg. 12011, effective August 9, 2016; amended in R17-14/R17-15/R18-12 at 42 Ill. Reg. _____, effective _____.

Section 727.100 General

a) Purpose, scope, and applicability.

1) The purpose of this Part is to establish minimum national standards that define the acceptable management of hazardous waste under a RCRA standardized permit, as such is defined in 35 Ill. Adm. Code

702.110 and 720.110, issued pursuant to Subpart J of 35 Ill. Adm. Code 703.

2) This Part applies to owners and operators of facilities that treat or store hazardous waste under a RCRA standardized permit issued pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided otherwise in Subpart A of 35 Ill. Adm. Code 721 or 35 Ill. Adm. Code 724.101(f) and (g).

BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.1 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~. The exemptions of subsection (a) (2) ~~of this Section~~ are directly derived from corresponding 40 CFR 267.1(b). The Board assumes that USEPA exempted from the RCRA standardized permit requirements those wastes excluded from the definition of hazardous waste (in Subpart A of 35 Ill. Adm. Code 721) and those exempted from the T/S/D facility standards (by 35 Ill. Adm. Code 724.101(g)). The Board has retained the reference to 35 Ill. Adm. Code 724.101(f), even though it does no more than reference corresponding 40 CFR 264.1(f), which relates exclusively to the applicability of the federal regulations.

b) Relationship to interim status standards. A facility owner or operator that has fully complied with the requirements for interim status, as defined in section 3005(e) of federal RCRA and regulations pursuant to 35 Ill. Adm. Code 703.153, must comply with the regulations specified in 35 Ill. Adm. Code 725 instead of the regulations in this Part, until final administrative disposition of the RCRA standardized permit application is made, except as provided in Subpart S of 35 Ill. Adm. Code 724.

BOARD NOTE: Subsection (b) ~~of this Section~~ is derived from 40 CFR 267.2 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

c) Effect on a federal imminent hazard action. Notwithstanding any other provisions of this Part, enforcement actions may be brought in a federal court pursuant to section 7003 of RCRA.

BOARD NOTE: Subsection (c) ~~of this Section~~ is derived from 40 CFR 267.3 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~. The corresponding federal regulation relates to an imminent hazard action under RCRA. An enforcement action for violation of any applicable provision of the ~~Environmental Protection Act [415 ILCS 5] (Act)~~ Act is also possible.

d) Electronic reporting. The filing of any document pursuant to any provision of this Part as an electronic document is subject to 35 Ill. Adm. Code 720.104.

BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 3, ~~as added, and 40 CFR 271.10(b), 271.11(b), and 271.12(h) (2017) (2005), as amended at 70 Fed. Reg. 59848 (Oct. 13, 2005)~~.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

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 (2017) ~~(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 (2017) ~~(2012)~~.

c) Obtaining a USEPA identification number. The facility owner or operator must apply to USEPA Region 5 for a USEPA identification number using USEPA Form 8700-12. The owner or operator must obtain a copy of the form from the Agency, 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 (2017) ~~(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.

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

BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 267.13 (2017) ~~(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.

BOARD NOTE: Subsection (e) ~~of this Section~~ is derived from 40 CFR 267.14 (2017) ~~-(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, 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 (2017) ~~(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.

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~~.

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 (2017) ~~(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 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 (2017) ~~(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 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 (2017) ~~(2012)~~.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 727.150 Contingency Plan and Emergency Procedures

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

BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.50 (2017) ~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

b) The purpose and use of the contingency plan.

1) The facility owner or operator must have a contingency plan for its facility. The owner or operator must design the plan to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

2) The owner or operator must implement the provisions of the plan immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents that could threaten human health or the environment.

BOARD NOTE: Subsection (b) ~~of this Section~~ is derived from 40 CFR 267.51 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

c) Contents of the contingency plan.

1) The facility contingency plan must include the following information:

A) It must describe the actions facility personnel will take to comply with subsections (b) and (g) of this Section in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility;

B) It must describe all arrangements agreed upon pursuant to Section 727.130(g) by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services;

C) It must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see subsection (f) of this Section), and the owner or operator must keep the list up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates;

D) It must include a current list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. In addition, the facility owner or operator must include the location and a physical description of each item on the list, and a brief outline of its capabilities; and

E) It must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. The plan must describe signals to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

2) If the facility owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan pursuant to federal 40 CFR 112, or some other emergency or contingency plan, the owner or operator needs only to amend that plan to incorporate hazardous waste management provisions that will comply with the requirements of this Part.

BOARD NOTE: Subsection (c) ~~of this Section~~ is derived from 40 CFR 267.52 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

d) Who must have copies of the contingency plan.

1) The facility owner or operator must maintain a copy of the plan with all revisions at the facility; and

2) The owner or operator must submit a copy with all revisions to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 267.53 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

e) When the facility owner or operator must amend the contingency plan. The facility owner or operator must review, and immediately amend the contingency plan, if necessary, whenever any of the following occurs:

1) The facility permit is revised;

2) The plan fails in an emergency;

3) The owner or operator changes the facility (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

4) The owner or operator changes the list of emergency coordinators; or

5) The owner or operator changes the list of emergency equipment.

BOARD NOTE: Subsection (e) ~~of this Section~~ is derived from 40 CFR 267.54 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

f) The role of the emergency coordinator. At least one employee must be either on the facility premises or on call at all times (that is, available to respond to an emergency by reaching the facility within a short period of time) who has the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

BOARD NOTE: Subsection (f) ~~of this Section~~ is derived from 40 CFR 267.55 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

g) Required emergency procedures for the emergency coordinator.

1) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately undertake the following actions:

A) He or she must activate internal facility alarm or communication systems, where applicable, to notify all facility personnel; and

B) He or she must notify appropriate State or local agencies with designated response roles if their help is needed.

2) Whenever there is a release, fire, or explosion, the emergency coordinator must undertake the following actions:

A) He or she must immediately identify the character, exact source, amount, and areal extent of any released materials. He or she may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis; and

B) He or she must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion. For example, the assessment would consider the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions.

3) If the emergency coordinator determines that the facility has had a release, fire, or explosion that could threaten human health or the environment outside the facility, he or she must report his findings as follows:

A) If his or her assessment indicates that evacuation of local areas may be advisable, he or she must immediately notify appropriate local authorities. He or she must be available to help appropriate officials decide whether local areas should be evacuated; and

B) He or she must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll-free number 800-424-8802). The report must include the following information:

i) The name and telephone number of the reporter;

ii) The name and address of facility;

iii) The time and type of incident (for example, a release or a fire);

- iv) The name and quantity of materials involved, to the extent known;
- v) The extent of injuries, if any; and
- vi) The possible hazards to human health, or the environment outside the facility.

4) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing release waste, and removing or isolating containers.

5) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, when appropriate.

BOARD NOTE: Subsection (g) ~~of this Section~~ is derived from 40 CFR 267.56 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

h) The emergency coordinator's responsibilities after an emergency.

1) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

2) The emergency coordinator must ensure that the following occur in the affected areas of the facility:

A) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

B) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

BOARD NOTE: Subsection (h) ~~of this Section~~ is derived from 40 CFR 267.57 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

i) Emergency notification and recordkeeping requirements.

1) The facility owner or operator must notify the Agency and other appropriate State and local authorities that the facility is in compliance with Section 727.150(h)(2) before operations are resumed in the affected areas of the facility.

2) The facility owner or operator must note the time, date, and details of any incident that requires implementing the contingency plan

in the operating record. Within 15 days after the incident, the owner or operator must submit a written report on the incident to the Agency. The owner or operator must include the following information in the report:

- A) The name, address, and telephone number of the owner or operator;
- B) The name, address, and telephone number of the facility;
- C) The date, time, and type of incident (e.g., fire, explosion);
- D) The name and quantity of materials involved;
- E) The extent of injuries, if any;
- F) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
- G) The estimated quantity and disposition of recovered material that resulted from the incident.

BOARD NOTE: Subsection (i) ~~of this Section~~ is derived from 40 CFR 267.58 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 727.170 Recordkeeping, Reporting, and Notifying

a) Applicability of this Section. This Section applies to the owner and operator of a facility that stores or non-thermally treats a hazardous waste under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2). In addition, the owner or operator must comply with the manifest requirements of 35 Ill. Adm. Code 722 whenever a shipment of hazardous waste is initiated from the facility.

BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.70 (2017) ~~(2007)~~.

- b) Use of the manifest system.
 - 1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or its agent, must do each of the following:
 - A) It must sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;
 - B) It must note any significant discrepancies in the manifest (as defined in Section 727.170(c)(1)) on each copy of the manifest;

C) It must immediately give the transporter at least one copy of the signed manifest;

D) Within 30 days after the delivery, it must send a copy of the manifest to the generator; ~~and~~

E) It must retain at the facility a copy of each manifest for at least three years from the date of delivery; ~~and-~~

F) If a facility receives hazardous waste subject to Subpart H of 35 Ill. Adm. Code 722 from a foreign source, the receiving facility must do both of the following:

i) Additionally list the relevant consent number from consent documentation supplied by USEPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b of the hazardous waste manifest (USEPA Form 8700-22). If additional space is needed, the receiving facility should use Continuation Sheets (USEPA Form 8700-22A); and

ii) Mail a copy of the hazardous waste manifest to USEPA using the addresses listed in 35 Ill. Adm. Code 722.182(e) within 30 days of delivery until the facility can submit such a copy to the e-Manifest system per 35 Ill. Adm. Code 724.171(a)(2)(E) or 725.171(a)(2)(E).

2) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste that is accompanied by a shipping paper containing all the information required on the manifest (excluding the USEPA identification numbers, generator's certification, and signatures), the owner or operator, or its agent, must do each of the following:

A) It must sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

B) It must note any significant discrepancies (as defined in Section 727.170(c)(1)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

BOARD NOTE: USEPA does not intend that the owner or operator of a facility whose procedures pursuant to Section 727.110(d)(3) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 727.170(c)(2), however, requires reporting an unreconciled discrepancy discovered during later analysis.

C) It must immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

D) Within 30 days after the delivery, it must send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or its agent, must send a copy of the shipping paper signed and dated to the generator; and

BOARD NOTE: Section 722.123(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).

E) It must retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

3) Whenever a shipment of hazardous waste is initiated from a facility, the facility owner or operator must comply with the requirements of 35 Ill. Adm. Code 722.

BOARD NOTE: The provisions of 35 Ill. Adm. Code 722.116 or 722.117-~~724.134~~ are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of 35 Ill. Adm. Code 722.116 or 722.117-~~724.134~~ apply only to an owner or operator that is shipping hazardous waste that it generated at that facility.

4) As required by 35 Ill. Adm. Code 722.184(d)(2)(O), within ~~Within~~ three working days after the receipt of a shipment subject to Subpart H of 35 Ill. Adm. Code 722 the owner or operator of the facility must provide a copy of the movement ~~tracking~~ document bearing all required signatures to the foreign exporter; ~~notifier, to the Agency, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and to~~ to the competent authorities of the ~~all other concerned~~ countries of export and transit that control the shipment as an export or transit of hazardous waste. On or after the electronic import-export reporting compliance date, to USEPA electronically using USEPA's Waste Import Export Tracking System (WIETS). The original copy of the movement ~~tracking~~ document must be maintained at the facility for at least three years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on USEPA's WIETS, provided that copies are readily available for viewing and production if requested by any USEPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with USEPA's WIETS for which the owner or operator of a facility bears no responsibility.

BOARD NOTE: Subsection (b) ~~of this Section~~ is derived from 40 CFR 267.71 (2017) ~~(2007)~~.

c) Manifest discrepancies.

1) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are either of the following:

A) For bulk waste, variations greater than 10 percent in weight; or

B) For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences that can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

2) Upon discovering a significant discrepancy, the facility owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Agency a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

BOARD NOTE: Subsection (c) ~~of this Section~~ is derived from 40 CFR 267.72 (2017) ~~(2007)~~.

d) Retention of information.

1) The facility owner or operator must keep a written operating record at its facility.

2) The facility owner or operator must record the following information, as it becomes available, and maintain the operating record until it closes the facility:

A) A description and the quantity of each type of hazardous waste generated, and the methods and dates of its storage or treatment at the facility as required by Appendix A of 35 Ill. Adm. Code 724;

B) The location of each hazardous waste within the facility and the quantity at each location;

C) Records and results of waste analyses and waste determinations performed as specified in Section 727.110(d) and (h) and 35 Ill. Adm. Code 724.934, 724.963, 724.983, and 728.107;

D) Summary reports and details of all incidents that require the owner or operator to implement the contingency plan as specified in Section 727.150(i)(2));

E) Records and results of inspections as required by Section 727.110(f)(4) (except that the facility owner or operator needs to keep these data for only three years);

F) Monitoring, testing or analytical data, and corrective action when required by Section 727.190, Section 727.290(b), (d), and (f) and 35 Ill. Adm. Code 724.934(c) through (f), 724.935, 724.963(d) through (i), 724.964, 724.988, 724.989, and 724.990;

G) All closure cost estimates pursuant to Section 727.240(c);

H) The facility owner or operator certification, executed at least annually, that the owner or operator has a program in place to reduce the volume and toxicity of hazardous waste that it generates to the degree that the owner or operator determines to be economically practicable; and that the proposed method of treatment or storage is that practicable method currently available to the owner or operator that minimizes the present and future threat to human health and the environment;

I) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration, if applicable, required by the facility owner or operator pursuant to 35 Ill. Adm. Code 728.107;

J) For an on-site storage facility, the information in the notice (except the manifest number), and the certification and demonstration, if applicable, required by the facility owner or operator pursuant to 35 Ill. Adm. Code 728.107;

K) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the facility owner or operator pursuant to 35 Ill. Adm. Code 728.107 or 728.108; and

L) For an off-site storage facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator pursuant to 35 Ill. Adm. Code 728.107 or 728.108.

BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 267.73 (2017) ~~(2007)~~.

e) Availability of records.

1) The facility owner or operator must furnish all records, including plans, required pursuant to this Part upon the request of any officer, employee, or representative of the Agency or USEPA and make them available at all reasonable times for inspection.

2) The retention period for all records required pursuant to this Part is extended automatically during the course of any unresolved

enforcement action involving the facility or as requested in writing by the Agency.

BOARD NOTE: Any Agency request for extended records retention under this subsection (e)(2) is subject to Board review pursuant to Section 40 of the Act.

BOARD NOTE: Subsection (e) ~~of this Section~~ is derived from 40 CFR 267.74 (2017) ~~(2007)~~.

f) Submission of reports. The facility owner or operator must prepare an annual facility activities report and other reports listed in subsection (f)(2) ~~of this Section~~.

1) Annual facility activities report. The facility owner or operator must prepare and submit a single copy of an annual facility activities report to the Agency by March 1 of each year. The annual facility activities report must be submitted on USEPA Form 8700-13B. The report must cover facility activities during the previous calendar year and must include the following information:

BOARD NOTE: Corresponding 40 CFR 267.75(a) (2006) requires biennial reporting. The Board has required annual reporting, since Section 20.1 of the Act ~~[415 ILCS 5/20.1 (2006)]~~ requires the Agency to assemble annual reports, and only annual facility activity reports will enable the Agency to fulfill this mandate.

A) The USEPA identification number, name, and address of the facility;

B) The calendar year covered by the report;

C) The method of treatment or storage for each hazardous waste;

D) The most recent closure cost estimate pursuant to Section 727.240(c);

E) A description of the efforts undertaken during the year to reduce the volume and toxicity of generated waste;

F) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984; and

G) The certification signed by the owner or operator.

2) Additional reports. In addition to submitting the annual ~~biennial~~ reports, the owner or operator must also report the following information to the Agency:

A) Releases, fires, and explosions as specified in Section 727.150(i)(2);

d) This subsection (d) corresponds with 40 CFR 267.93, which USEPA has marked "Reserved-". This statement maintains structural consistency with the corresponding federal rules.

e) This subsection (e) corresponds with 40 CFR 267.94, which USEPA has marked "Reserved-". This statement maintains structural consistency with the corresponding federal rules.

f) This subsection (f) corresponds with 40 CFR 267.95, which USEPA has marked "Reserved-". This statement maintains structural consistency with the corresponding federal rules.

g) This subsection (g) corresponds with 40 CFR 267.96, which USEPA has marked "Reserved-". This statement maintains structural consistency with the corresponding federal rules.

h) This subsection (h) corresponds with 40 CFR 267.97, which USEPA has marked "Reserved-". This statement maintains structural consistency with the corresponding federal rules.

i) This subsection (i) corresponds with 40 CFR 267.98, which USEPA has marked "Reserved-". This statement maintains structural consistency with the corresponding federal rules.

j) This subsection (j) corresponds with 40 CFR 267.99, which USEPA has marked "Reserved-". This statement maintains structural consistency with the corresponding federal rules.

k) This subsection (k) corresponds with 40 CFR 267.100, which USEPA has marked "Reserved-". This statement maintains structural consistency with the corresponding federal rules.

l) Requirements for addressing corrective action for solid waste management units.

1) The facility owner or operator must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

2) The Agency must specify corrective action in the supplemental portion of the facility owner's or operator's RCRA standardized permit in accordance with this subsection (l) and Subpart S of 35 Ill. Adm. Code 724. The Agency must include in the supplemental portion of the RCRA standardized permit schedules of compliance for corrective action (where corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing corrective action.

3) The facility owner or operator must implement corrective action beyond the facility property boundary, where necessary to protect human

health and the environment, unless the owner or operator demonstrates to the satisfaction of the Agency that, despite its best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. The owner or operator must provide assurances of financial responsibility for such corrective action.

4) The facility owner or operator of a remediation site does not have to comply with this subsection (~~1m~~) unless the site is part of a facility that is subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

BOARD NOTE: Subsection (1) ~~of this Section~~ is derived from 40 CFR 267.101 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

(Source: Amended at 42 Ill. Reg. ~~_____~~, effective ~~_____~~)

Section 727.210 Closure

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

BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.110 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

b) Required general standards when operations cease. The facility owner or operator must close the storage and treatment units in a manner that fulfills the following conditions:

1) It minimizes the need for further maintenance;

2) It controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere; and

3) It meets the closure requirements of this Section and the requirements of Sections 727.270(g), 727.290(1), and 727.900(i). If the facility owner or operator determines that, when applicable, the closure requirements of Section 727.290(1) (tanks) or 727.900(i) (containment buildings) cannot be met, then the owner or operator must close the unit in accordance with the requirements that apply to landfills (35 Ill. Adm. Code 724.410). In addition, for the purposes of post-closure and financial responsibility, such a tank system or containment building is then considered to be a landfill, and the owner or operator must apply

for a post-closure care permit in accordance with 35 Ill. Adm. Code 702 and 703.

BOARD NOTE: Subsection (b) ~~of this Section~~ is derived from 40 CFR 267.111 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

c) Closure procedures.

1) To close a facility, the facility owner or operator must follow its approved closure plan, and follow notification requirements.

A) The facility owner or operator must submit its closure plan at the time it submits its Notice of Intent to operate under a RCRA standardized permit. Final issuance of the RCRA standardized permit constitutes approval of the closure plan, and the plan becomes a condition of the RCRA standardized permit.

B) The Agency's approval of the plan must ensure that the approved plan is consistent with Sections 727.210(b) through (f), 727.270(g), 727.290(1), and 727.900(i).

2) Content of closure plan. The closure plan must identify steps necessary to perform partial or final closure of the facility. The closure plan must include at least the following minimum information:

A) A description of how each hazardous waste management unit at the facility subject to this Section will be closed following the requirements of Section 727.210(b);

B) A description of how final closure of the facility will be conducted in accordance with Section 727.210(b). The description must identify the maximum extent of the operations that will be unclosed during the active life of the facility;

C) An estimate of the maximum inventory of hazardous wastes ever on site during the active life of the facility and a detailed description of the methods that the facility owner or operator will use during partial or final closure, such as methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the types of off-site hazardous waste management units to be used, if applicable;

D) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial or final closure. These might include procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;

E) A detailed description of other activities necessary during the closure period to ensure that partial or final closure satisfies the closure performance standards;

F) A schedule for closure of each hazardous waste management unit, and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities that allow tracking of progress of partial or final closure; and

G) For facilities that use trust funds to establish financial assurance pursuant to Section 727.240(d) and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

3) The facility owner or operator may submit a written notification to the Agency for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility, following the applicable procedures in 35 Ill. Adm. Code 705.304.

A) Events leading to a change in the closure plan, and therefore requiring a modification, may include the following:

i) A change in the operating plan or facility design;

ii) A change in the expected year of closure, if applicable; or

iii) In conducting partial or final closure activities, an unexpected event requiring a modification of the approved closure plan.

B) The written notification or request must include a copy of the amended closure plan for review or approval by the Agency. The Agency must approve, disapprove, or modify this amended plan in accordance with the procedures in 35 Ill. Adm. Code 703.353 and 705.304.

4) Notification before final closure.

A) The facility owner or operator must notify the Agency in writing at least 45 days before the date that it expects to begin final closure of a treatment or storage tank, container storage area, or containment building.

B) The date when the owner or operator "expects to begin closure" must be no later than 30 days after the date that any hazardous waste management unit receives the known final volume of hazardous wastes.

C) If the facility's permit is terminated, or if the facility owner or operator is otherwise ordered, by a federal judicial decree or final order pursuant to section 3008 of RCRA (42 USC 6928), to cease receiving hazardous wastes or to close, then the requirements of this subsection (c)(4) do not apply. However, the owner or operator must close the

facility following the deadlines established in subsection (f) of this Section.

BOARD NOTE: Subsection (c) ~~of this Section~~ is derived from 40 CFR 267.112 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

d) Opportunity for public comment on the plan.

1) The Agency must provide the facility owner or operator and the public, when the draft RCRA standardized permit is public noticed, the opportunity to submit written comments on the plan and to the draft permit as allowed by 35 Ill. Adm. Code 705.303(b). The Agency must also, in response to a request or at its own discretion, hold a public hearing whenever it determines that such a hearing might clarify one or more issues concerning the closure plan, and the permit.

2) The Agency must give public notice of the hearing 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 267.113 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

e) This subsection (e) corresponds with 40 CFR 267.114, which USEPA has marked "Reserved-". This statement maintains structural consistency with the corresponding federal rules.

f) Time allowed for closure.

1) Within 90 days after the final volume of hazardous waste is sent to a unit, the facility owner or operator must treat or remove all hazardous wastes from the unit following the approved closure plan.

2) The facility owner or operator must complete final closure activities in accordance with the approved closure plan within 180 days after the final volume of hazardous wastes is sent to the unit. The Agency may approve an extension of 180 days to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that the conditions of subsections (f) (2) (A) and (f) (2) (B) ~~of this Section~~ are fulfilled subject to the limitation of subsection (f) (2) (C) ~~of this Section~~:

A) The final closure activities will take longer than 180 days to complete due to circumstances beyond the control of the owner or operator, excluding groundwater contamination; **and**

B) The facility owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed, but not operating hazardous waste management unit or

facility, including compliance with all applicable permit requirements; and

C) The demonstration of subsections (f)(2)(A) and (f)(2)(B) ~~of this Section~~ must be made at least 30 days prior to the expiration of the initial 180-day period.

3) Nothing in this subsection (f) precludes the facility owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved final closure plan at any time before or after notification of final closure.

BOARD NOTE: Subsection (f) ~~of this Section~~ is derived from 40 CFR 267.115 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

g) Disposition of contaminated equipment, structure, and soils. The facility owner or operator must properly dispose of or decontaminate all contaminated equipment, structures, and soils during the partial and final closure periods. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste following all applicable requirements of 35 Ill. Adm. Code 722.

BOARD NOTE: Subsection (g) ~~of this Section~~ is derived from 40 CFR 267.116 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

h) Certification of closure. Within 60 days after the completion of final closure of each unit under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 705, the facility owner or operator must submit to the Agency, by registered mail, a certification that each hazardous waste management unit or facility, as applicable, has been closed following the specifications in the closure plan. Both the owner or operator and an independent registered professional engineer must sign the certification. The owner or operator must furnish documentation supporting the independent registered professional engineer's certification to the Agency upon request until the Agency releases the owner or operator from the financial assurance requirements for closure pursuant to Section 727.240(d)(10).

BOARD NOTE: Subsection (h) ~~of this Section~~ is derived from 40 CFR 267.117 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

(Source: Amended at 42 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~~).

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 (2017) ~~(2013)~~.

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. 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 relationship necessary under applicable 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 exists between the guarantor and the facility owner or operator 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)(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 (2017) ~~(2013)~~. 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 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(1), 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.

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 (2017) ~~(2013)~~.

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".

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:

$$NP = (CCE - CVTF) YRPP$$

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.

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.

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 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 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 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 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 designated by the Agency 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.

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~~. 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 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 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 (2017) ~~(2013)~~.

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 subsections ~~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 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 must 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

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.

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 designated by the Agency pursuant to subsection (11)(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 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 (2017) ~~(2013)~~.

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 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 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 (2017) ~~(2013)~~.

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 USEPA Region 5 determines that the State's assumption of responsibility is at least equivalent to the financial mechanisms specified in this Section. 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. USEPA has stated that USEPA Region 5 may also consider other factors as it deems appropriate. The facility owner or operator must submit to USEPA Region 5 a letter from the State describing 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. USEPA has stated that USEPA Region 5 will notify the owner or operator of its determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this Section. 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 (2017) ~~(2013)~~.

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 designated by the Agency pursuant to subsection (1) (3) ~~of this Section~~.

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 designated by the Agency pursuant to subsection (1) (3) ~~of this Section~~.

3) The Agency must designate standardized forms based on 40 CFR 264.151 and 40 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 (2017) ~~(2013)~~.

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

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 owner's or operator'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) (2017) ~~(2013)~~. 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 owner's or operator's chief financial officer that provides the following information:

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)(1) through (f)(2)(i)(A)(1)(vii) as subsections ~~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 must 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 must 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;

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~~ are derived from 40 CFR 267.143(f)(2)(i)(A)(1) through (f)(2)(i)(A)(1)(vi) (2017) ~~(2013)~~. 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's 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:

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 of the owner's 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). 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) (2017) ~~(2013)~~. 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)(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(g)(3) (2017) ~~(2013)~~. 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), or (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 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, it should use the letter 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 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 must be based

upon an agreed upon procedures engagement in accordance with professional auditing standards and must 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's 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 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's 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.

B) Provide alternative financial assurance within 120 days after the end of that 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) (2017) ~~(2013)~~. 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:

A) The guarantee was signed in Illinois by an authorized agent of the guarantor;

B) The guarantee 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) (2017) ~~(2013)~~. 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~~ includes 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 42 Ill. Reg. _____, effective _____)

Section 727.270 Use and Management of Containers

a) Applicability of this Section. This Section applies to the owner or operator of a facility that treats or stores hazardous waste in

containers under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2).

BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.170 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

b) Standards applicable to containers. Standards apply to the condition of containers, to the compatibility of waste with containers, and to the management of containers holding hazardous waste.

1) Condition of containers. If a container holding hazardous waste is not in good condition (for example, it exhibits severe rusting or apparent structural defects) or if it begins to leak, the facility owner or operator must undertake either of the following actions:

A) It must transfer the hazardous waste from the defective container to a container that is in good condition; or

B) It must manage the waste in some other way that complies with the requirements of this Part.

2) Compatibility of waste with containers. To ensure that the ability of the container to contain the waste is not impaired, the facility owner or operator must use a container made of or lined with materials that are compatible and will not react with the hazardous waste to be stored.

3) Management of containers.

A) The facility owner or operator must always keep a container holding hazardous waste closed during storage, except when it adds or removes waste.

B) The facility owner or operator must never open, handle, or store a container holding hazardous waste in a manner that may rupture the container or cause it to leak.

BOARD NOTE: Subsection (b) ~~of this Section~~ is derived from 40 CFR 267.171 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

c) Inspection requirements. At least weekly, the facility owner or operator must inspect areas where it stores containers, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

BOARD NOTE: Subsection (c) ~~of this Section~~ is derived from 40 CFR 267.172 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

d) Standards applicable to the container storage areas.

1) The facility owner or operator must design and operate a containment system for its container storage areas according to the

requirements in subsection (d) (2) ~~of this Section~~; except as otherwise provided by subsection (d) (3) ~~of this Section~~.

2) The design and operating requirements for a containment system are the following:

A) A base must underlie the containers that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

B) The base must be sloped, or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

C) The containment system must have sufficient capacity to contain 10 percent of the volume of all containers placed in it, or the volume of the largest container, whichever is greater. This requirement does not apply to containers that do not contain free liquids;

D) The owner or operator must prevent run-on into the containment system, unless the collection system has sufficient excess capacity to contain the liquid, in addition to that required by subsection (d) (2) (C) ~~of this Section~~; and

E) The owner or operator must remove any spilled or leaked waste and accumulated precipitation from the sump or collection area as promptly as is necessary to prevent overflow of the collection system.

3) Except as provided in subsection (d) (4) ~~of this Section~~, the owner or operator does not need a containment system, as defined in subsection (d) (2) ~~of this Section~~, for storage areas that store containers holding only wastes with no free liquids if either of the following conditions are fulfilled:

A) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or

B) The containers are elevated or are otherwise protected from contact with accumulated liquid.

4) The facility owner or operator must have a containment system defined by subsection (d) (2) ~~of this Section~~ for storage areas that store containers holding F020, F021, F022, F023, F026, and F027 wastes, even if the wastes do not contain free liquids.

BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 267.173 (2017) ~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

e) Special requirements for ignitable or reactive waste. The facility owner or operator must locate containers holding ignitable or reactive waste at least 15 meters (50 feet) from its facility property

line. The owner or operator must also follow the general requirements for ignitable or reactive wastes that are specified in Section 727.110(h)(1).

BOARD NOTE: Subsection (e) ~~of this Section~~ is derived from 40 CFR 267.174 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

f) Special requirements for incompatible wastes.

1) The facility owner or operator must not place incompatible wastes or incompatible wastes and materials (see appendix V to 40 CFR 264, incorporated by reference in 35 Ill. Adm. Code 720.111(b), for examples) in the same container, unless it complies with Section 727.110(h)(2).

2) The facility owner or operator must not place hazardous waste in an unwashed container that previously held an incompatible waste or material.

3) The facility owner or operator must separate a storage container holding a hazardous waste that is incompatible with any waste or with other materials stored nearby in other containers, piles, open tanks, or surface impoundments from the other materials, or protect the containers by means of a dike, berm, wall, or other device.

BOARD NOTE: Subsection (f) ~~of this Section~~ is derived from 40 CFR 267.175 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

g) Requirements for stopping the use of containers. The facility owner or operator must remove all hazardous waste and hazardous waste residues from the containment system. The owner or operator must decontaminate or remove remaining containers, liners, bases, and soil containing, or contaminated with, hazardous waste or hazardous waste residues.

BOARD NOTE: Subsection (g) ~~of this Section~~ is derived from 40 CFR 267.176 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

h) Air emission standards. The facility owner or operator must manage all hazardous waste placed in a container according to the requirements of Subparts AA, BB, and CC of 35 Ill. Adm. Code 724. Under a RCRA standardized permit, the following control devices are permissible: a thermal vapor incinerator, a catalytic vapor incinerator, a flame, a boiler, a process heater, a condenser, or a carbon absorption unit.

BOARD NOTE: Subsection (h) ~~of this Section~~ is derived from 40 CFR 267.177 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 727.290 Tank Systems

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

1) A facility owner or operator does not have to meet the secondary containment requirements in subsection (f) if its tank systems do not contain free liquids and are situated inside a building with an impermeable floor. The owner or operator must demonstrate the absence or presence of free liquids in the stored or treated waste, using Method 9095B (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods₇", USEPA Publication SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a).

2) The facility owner or operator does not have to meet the secondary containment requirements of subsection (f)(1) if its tank system, including sumps, as defined in 35 Ill. Adm. Code 720.110, is part of a secondary containment system to collect or contain releases of hazardous wastes.

BOARD NOTE: Subsection (a) is derived from 40 CFR 267.190 (2017)–
(2015).

b) Required Design and Construction Standards for New Tank Systems or Components. The facility owner or operator must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the wastes to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment, reviewed and certified by an independent, qualified registered professional engineer, following 35 Ill. Adm. Code 702.126(d), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include, at a minimum, the following information:

1) Design standards for the construction of tanks or the ancillary equipment.

2) Hazardous characteristics of the wastes to be handled.

3) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of the following:

A) Factors affecting the potential for corrosion, such as the following:

- i) Soil moisture content;
 - ii) Soil pH;
 - iii) Soil sulfides level;
 - iv) Soil resistivity;
 - v) Structure to soil potential;
 - vi) Existence of stray electric current; and
 - vii) Existing corrosion-protection measures (for example, coating, cathodic protection, etc.).
- B) The type and degree of external corrosion protection needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:
- i) Corrosion-resistant materials of construction (such as special alloys, fiberglass reinforced plastic, etc.);
 - ii) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (for example, impressed current or sacrificial anodes); and
 - iii) Electrical isolation devices (such as insulating joints, flanges, etc.).
- 4) Design considerations to ensure that the following will occur:
- A) Tank foundations will maintain the load of a full tank;
 - B) Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of Section 727.110(i)(1); and
 - C) Tank systems will withstand the effects of frost heave.

BOARD NOTE: Subsection (b) is derived from 40 CFR 267.191 (2017)-(2015).

c) Handling and Inspection Procedures During Installation of New Tank Systems.

1) The facility owner or operator must ensure that it follows proper handling procedures to prevent damage to a new tank system during installation. Before placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems or

components, must inspect the system for the presence of any of the following items:

- A) Weld breaks;
- B) Punctures;
- C) Scrapes of protective coatings;
- D) Cracks;
- E) Corrosion; or
- F) Other structural damage or inadequate construction or installation.

2) The facility owner or operator must remedy all discrepancies before the tank system is placed in use.

BOARD NOTE: Subsection (c) is derived from 40 CFR 267.192 (2017)-
(2015).

d) Testing Requirements. The facility owner or operator must test all new tanks and ancillary equipment for tightness before you place them in use. If the owner or operator finds a tank system that is not tight, it must perform all repairs necessary to remedy the leaks in the system before it covers, encloses, or places the tank system into use.

BOARD NOTE: Subsection (d) is derived from 40 CFR 267.193 (2017)-
(2015).

e) Installation Requirements.

1) The facility owner or operator must support and protect ancillary equipment against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

2) The facility owner or operator must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided pursuant to subsection (b)(3), to ensure the integrity of the tank system during use of the tank system. An independent corrosion expert must supervise the installation of a corrosion protection system that is field fabricated to ensure proper installation.

3) The facility owner or operator must obtain, and keep at the facility, written statements by those persons required to certify the design of the tank system and to supervise the installation of the tank system as required in subsections (c), (d), (e)(1), and (e)(2). The written statement must attest that the tank system was properly designed and installed and that the owner or operator made repairs pursuant to

subsections (c) and (d). These written statements must also include the certification statement as required in 35 Ill. Adm. Code 702.126(d).

BOARD NOTE: Subsection (e) is derived from 40 CFR 267.194 (2017)-
(2015).

f) Secondary Containment Requirements. To prevent the release of hazardous waste or hazardous constituents to the environment, the owner or operator must provide secondary containment that meets the requirements of this subsection (f) for all new and existing tank systems.

1) Secondary containment systems must meet both of the following requirements:

A) It must be designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to any soil, groundwater, or surface water at any time during the use of the tank system; and

B) It must be capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

2) To meet the requirements of subsection (f)(1), secondary containment systems must meet all of the following minimum requirements:

A) It must be constructed of or lined with materials that are compatible with the wastes to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic);

B) It must be placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

C) It must be provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours; and

D) It must be sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. The facility owner or operator must remove spilled or leaked waste and accumulated precipitation from the secondary containment system within 24 hours, or as promptly as possible, to prevent harm to human health and the environment.

BOARD NOTE: Subsection (f) is derived from 40 CFR 267.195 (2017)-
(2015).

g) Required Devices for Secondary Containment and Their Design, Operating, and Installation Requirements.

1) Secondary containment for tanks must include one or more of the following features:

A) A liner (external to the tank);

B) A double-walled tank; and

C) An equivalent device; the owner or operator must maintain documentation of equivalency at the facility.

2) An external liner system must fulfill the following requirements:

A) It must be designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

B) It must be designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. The additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

C) It must be free of cracks or gaps; and

D) It must be designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tanks (that is, it must be capable of preventing lateral as well as vertical migration of the waste).

3) A double-walled tank must fulfill the following requirements:

A) It must be designed as an integral structure (that is, it must be an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;

B) It must be protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

C) It must be provided with a built-in continuous leak detection system capable of detecting a release within 24 hours.

BOARD NOTE: Subsection (g) is derived from 40 CFR 267.196 (2017)-
(2015).

h) Requirements for Ancillary Equipment. The facility owner or operator must provide ancillary equipment with secondary containment (for example, trench, jacketing, double-walled piping, etc.) that meets the requirements of subsections (f)(1) and (f)(2), except for the following:

- 1) Above ground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;
- 2) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;
- 3) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and
- 4) Pressurized above ground piping systems with automatic shut-off devices (for example, excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices, etc.) that are visually inspected for leaks on a daily basis.

BOARD NOTE: Subsection (h) is derived from 40 CFR 267.197 (2017)-
(2015).

i) General Operating Requirements for Tank Systems.

- 1) The facility owner or operator must not place hazardous wastes or treatment reagents in a tank system if the substances could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.
- 2) The facility owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include the following minimum requirements:
 - A) Spill prevention controls (for example, check valves, dry disconnect couplings, etc.);
 - B) Overfill prevention controls (for example, level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank, etc.); and
 - C) Sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.
- 3) The facility owner or operator must comply with the requirements of subsection (k) if a leak or spill occurs in the tank system.

BOARD NOTE: Subsection (i) is derived from 40 CFR 267.198 (2017)-
(2015).

j) Inspection Requirements. The facility owner or operator must comply with the following requirements for scheduling, conducting, and documenting inspections:

1) It must develop and follow a schedule and procedure for inspecting overfill controls;

2) It must inspect the following at least once each operating day:

A) Aboveground portions of the tank system to detect corrosion or releases of waste;

B) Data gathered from monitoring and leak detection equipment (for example, pressure or temperature gauges, monitoring wells, etc.) to ensure that the tank system is being operated according to its design; and

C) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (for example, dikes) to detect erosion or signs of releases of hazardous waste (for example, wet spots, dead vegetation, etc.);

3) It must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

A) It must confirm that the cathodic protection system is operating properly within six months after initial installation and annually thereafter; and

B) It must inspect or test all sources of impressed current, as appropriate, at least every other month; and

4) It must document, in the operating record of the facility, an inspection of those items in subsections (j)(1) through (j)(3).

BOARD NOTE: Subsection (j) is derived from 40 CFR 267.199 (2017)-(2015).

k) Required Actions in Case of a Leak or a Spill. If there has been a leak or a spill from a tank system or secondary containment system, or if either system is unfit for use, the facility owner or operator must remove the system from service immediately, and it must satisfy the following requirements:

1) It must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release;

2) It must remove the waste from the tank system or secondary containment system, as follows:

A) If the release was from the tank system, the owner or operator must, within 24 hours after detecting the leak, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed; or

B) If the material released was to a secondary containment system, the owner or operator must remove all released materials within 24 hours or as quickly as possible to prevent harm to human health and the environment;

3) It must immediately conduct a visual inspection of the release and, based on that inspection, undertake the following actions:

A) It must prevent further migration of the leak or spill to soils or surface water; and

B) It must remove, and properly dispose of, any visible contamination of the soil or surface water;

4) It must report any release to the environment, except as provided in subsection (k) (4) (A), to the Agency within 24 hours after its detection. If the owner or operator has reported the release to USEPA pursuant to federal 40 CFR 302, that report will satisfy this requirement, subject to the following exceptions:

A) The facility owner or operator does not need to report on a leak or spill of hazardous waste if it fulfills the following conditions:

i) The spill was less than or equal to a quantity of one pound (2.2 kg); and

ii) The facility owner or operator immediately contained and cleaned up the spill; and

B) Within 30 days of detection of a release to the environment, the owner or operator must submit a report to the Agency that contains the following information:

i) The likely route of migration of the release;

ii) The characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate, etc.);

iii) The results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, the owner or operator must submit these data to the Agency as soon as they become available;

iv) The proximity to downgradient drinking water, surface water, and populated areas; and

v) A description of response actions taken or planned;

5) It must either close the system or make necessary repairs, as follows:

A) Unless the owner or operator satisfies the requirements of subsections (k)(5)(B) and (k)(5)(C), it must close the tank system according to subsection (l);

B) If the cause of the release was a spill that has not damaged the integrity of the system, the owner or operator may return the system to service as soon as it removes the released waste and makes any necessary repairs; or

C) If the cause of the release was a leak from the primary tank system into the secondary containment system, the owner or operator must repair the system before returning the tank system to service; and

6) If the owner or operator has made extensive repairs to a tank system in accordance with subsection (k)(5) (for example, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel, etc.), it may not return the tank system to service unless the repair is certified by an independent, qualified, registered, professional engineer in accordance with 35 Ill. Adm. Code 702.126(d), as follows:

A) The engineer must certify that the repaired system is capable of handling hazardous wastes without release for the intended life of the system; and

B) The facility owner or operator must submit this certification to the Agency within seven days after returning the tank system to use.

BOARD NOTE: Subsection (k) is derived from 40 CFR 267.200 (2017)-
(2015).

1) Requirements When the Owner or Operator Stops Operating the Tank System. When the facility owner or operator close a tank system, it must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless 35 Ill. Adm. Code 721.103(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in Sections 727.210 and 727.240.

BOARD NOTE: Subsection (l) is derived from 40 CFR 267.201 (2017)-
(2015).

m) Special Requirements for Ignitable or Reactive Wastes.

1) The facility owner or operator may not place ignitable or reactive waste in tank systems, unless any of the following three conditions are fulfilled:

A) The owner or operator treats, renders, or mixes the waste before or immediately after placement in the tank system so that the following is true:

i) The owner or operator complies with Section 727.110(h)(2); and

ii) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste pursuant to 35 Ill. Adm. Code 721.121 or 721.123;

B) The owner or operator stores or treats the waste in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

C) The facility owner or operator uses the tank system solely for emergencies.

2) If the facility owner or operator stores or treats ignitable or reactive waste in a tank, it must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built on, as required in Tables 2-1 through 2-6 of "Flammable and Combustible Liquids Code", NFPA 30, incorporated by reference in 35 Ill. Adm. Code 720.111(a)).

BOARD NOTE: Subsection (m) is derived from 40 CFR 267.202 (2017)-
(2015).

n) Special Requirements for Incompatible Wastes.

1) A facility owner or operator may not place incompatible wastes or incompatible wastes and materials in the same tank system, unless it complies with Section 727.110(h)(2).

2) A facility owner or operator may not place hazardous waste in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless it complies with Section 727.110(h)(2).

BOARD NOTE: Subsection (n) is derived from 40 CFR 267.203 (2017)-
(2015).

o) Air Emission Standards. The facility owner or operator must manage all hazardous waste placed in a tank following the requirements of Subparts AA, BB, and CC of 35 Ill. Adm. Code 724. Under a RCRA standardized permit, the following control devices are permissible: a

thermal vapor incinerator, a catalytic vapor incinerator, a flame, a boiler, a process heater, a condenser, or a carbon absorption unit.

BOARD NOTE: Subsection (o) is derived from 40 CFR 267.204 (2017)-
~~(2015)~~.

(Source: Amended at 42 Ill. Reg. ~~_____~~, effective
~~_____~~)

Section 727.900 Containment Buildings

a) Applicability of this Section. This Section applies to the owner or operator of a facility that treats or stores hazardous waste in containment buildings under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2). Storage or treatment in a containment building is not land disposal, as defined in 35 Ill. Adm. Code 728.102, if the unit meets the requirements of subsections (b), (c), and (d) ~~of this Section~~.

BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.1100 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

b) Design and operating standards for containment buildings. A containment building must comply with the design and operating standards in this subsection (b). The Agency may consider standards established by professional organizations generally recognized by the industry, such as the American Concrete Institute (ACI) or the American Society of Testing Materials (ASTM), in judging the structural integrity requirements of this subsection (b).

1) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements (e.g., precipitation, wind, runoff, etc.), and to assure containment of managed wastes.

2) The floor and containment walls of the unit, including the secondary containment system, if required pursuant to subsection (d) ~~of this Section~~, must be designed and constructed of manmade materials of sufficient strength and thickness to accomplish the following:

A) They must support themselves, the waste contents, and any personnel and heavy equipment that operates within the unit;

B) They must prevent failure due to any of the following causes:

i) Pressure gradients, settlement, compression, or uplift;

ii) Physical contact with the hazardous wastes to which they are exposed;

iii) Climatic conditions;

iv) Stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls; or

v) Collapse or other failure.

3) All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes.

4) The facility owner or operator must not place incompatible hazardous wastes or treatment reagents in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

5) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

6) If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

A) The doors and windows provide an effective barrier against fugitive dust emissions pursuant to subsection (c) (4) ~~of this Section~~; and

B) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

7) The facility owner or operator must inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment, as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

8) The facility owner or operator must obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of subsections (b) (1) through (b) (6), (c), and (d) ~~of this Section~~.

BOARD NOTE: Subsection (b) ~~of this Section~~ is derived from 40 CFR 267.1101 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

c) Other requirements for preventing releases. The facility owner or operator must use controls and practices to ensure containment of the hazardous waste within the unit and must meet the following minimum requirements:

- 1) It must maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;
- 2) It must maintain the level of the stored or treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;
- 3) It must take measures to prevent personnel or by equipment used in handling the waste from tracking hazardous waste out of the unit. The owner or operator must designate an area to decontaminate equipment, and it must collect and properly manage any rinsate; and
- 4) It must take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see Method 22 of appendix A to 40 CFR 60 (Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares), incorporated by reference in 35 Ill. Adm. Code 720.111(b)). In addition, the owner or operator must operate and maintain all associated particulate collection devices (for example, fabric filter, electrostatic precipitator, etc.) with sound air pollution control practices. The owner or operator must effectively maintain this state of no visible emissions at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

BOARD NOTE: Subsection (c) ~~of this Section~~ is derived from 40 CFR 267.1102 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

d) Additional design and operating standards when liquids are in the containment building. If a containment building will be used to manage hazardous wastes containing free liquids or treated with free liquids, as determined by the paint filter test, by a visual examination, or by other appropriate means, the facility owner or operator must include the following:

1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (for example, a geomembrane covered by a concrete wear surface);

2) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building, as follows:

A) The primary barrier must be sloped to drain liquids to the associated collection system; and

B) The facility owner or operator must collect and remove liquids and waste to minimize hydraulic head on the containment system at the earliest practicable time;

3) A secondary containment system, including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practical time, as follows:

A) The facility owner or operator may meet the requirements of the leak detection component of the secondary containment system by installing a system that meets the following minimum construction requirements:

i) It is constructed with a bottom slope of one percent or more; and

ii) It is constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m²/sec or more;

B) If the facility owner or operator will be conducting treatment in the building, it must design the area in which the treatment will be conducted to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building; and

C) The facility owner or operator must construct the secondary containment system using materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building.

BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 267.1103 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

e) Alternatives to secondary containment requirements.

Notwithstanding any other provision of this Section, the Agency must, in writing, allow the use of alternatives to the requirements for secondary containment for a permitted containment building where the Agency has determined that the facility owner or operator has adequately demonstrated both of the following:

1) The only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and

2) The containment of managed wastes and dust suppression liquids can be assured without a secondary containment system.

BOARD NOTE: Subsection (e) ~~of this Section~~ is derived from 40 CFR 267.1104 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

f) Requirements where the containment building contains areas both with and without secondary containment. For a containment building that

contains both areas that have secondary containment and areas that do not have secondary containment, the facility owner or operator must fulfill the following requirements:

- 1) It must design and operate each area in accordance with the requirements enumerated in subsections (b) through (d) ~~of this Section~~;
- 2) It must take measures to prevent the release of liquids or wet materials into areas without secondary containment; and
- 3) It must maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

BOARD NOTE: Subsection (f) ~~of this Section~~ is derived from 40 CFR 267.1105 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

g) Requirements in the event of a release. Throughout the active life of the containment building, if the facility owner or operator detects a condition that could lead to or has caused a release of hazardous waste, it must repair the condition promptly, in accordance with the following procedures.

1) Upon detection of a condition that has lead to a release of hazardous waste (for example, upon detection of leakage from the primary barrier), the owner or operator must undertake each of the following actions:

A) It must enter a record of the discovery in the facility operating record;

B) It must immediately remove the portion of the containment building affected by the condition from service;

C) It must determine what steps it will need to take to repair the containment building, to remove any leakage from the secondary collection system, and to establish a schedule for accomplishing the cleanup and repairs; and

D) Within seven days after the discovery of the condition, it must notify the Agency of the condition, and within 14 working days, provide a written notice to the Agency with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

2) The Agency must review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

3) Upon completing all repairs and cleanup, the facility owner or operator must notify the Agency in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with subsection (g) (1) (D) ~~of this Section.~~

BOARD NOTE: Subsection (g) of this Section is derived from 40 CFR 267.1106 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

h) A containment building that can be considered secondary containment. A containment building can serve as an acceptable secondary containment system for tanks placed within the building if both of the following conditions are fulfilled:

1) The containment building can serve as an external liner system for a tank if it meets the requirements of Section 727.290(g) (2); and

2) The containment building also meets the requirements of Sections 727.290(f) (1), (f) (2) (A), and (f) (2) (B).

BOARD NOTE: Subsection (h) ~~of this Section~~ is derived from 40 CFR 267.1107 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

i) Requirements when the owner or operator stops operating the containment building. When the facility owner or operator close a containment building, it must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate and manage them as hazardous waste unless 35 Ill. Adm. Code 721.103(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in Sections 727.210 and 727.240.

BOARD NOTE: Subsection (i) ~~of this Section~~ is derived from 40 CFR 267.1108 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

(Source: Amended at 42 Ill. Reg. ~~—~~, effective _____)

~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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Format changed	0
Total changes	410

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 (Repealed)

24 727.ILLUSTRATION A Letter of Chief Financial Officer: Financial Assurance for
25 Facility Closure (Repealed)

26 727.ILLUSTRATION B Letter of Chief Financial Officer: Financial Assurance for
27 Liability Coverage (Repealed)

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].
36

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. 17909, effective October 24, 2013; amended in R14-1/R14-2/R14-3 at 38 Ill.
40 Reg. 7221, effective March 13, 2014; amended in R16-7 at 40 Ill. Reg. 12011, effective August
41 9, 2016; amended in R17-14/R17-15/R18-12 at 42 Ill. Reg. _____, effective _____.
42

43 **Section 727.100 General**

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- a) Purpose, scope, and applicability.
 - 1) The purpose of this Part is to establish minimum national standards that define the acceptable management of hazardous waste under a RCRA standardized permit, as such is defined in 35 Ill. Adm. Code 702.110 and 720.110, issued pursuant to Subpart J of 35 Ill. Adm. Code 703.
 - 2) This Part applies to owners and operators of facilities that treat or store hazardous waste under a RCRA standardized permit issued pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided otherwise in Subpart A of 35 Ill. Adm. Code 721 or 35 Ill. Adm. Code 724.101(f) and (g).

BOARD NOTE: Subsection (a) of this Section is derived from 40 CFR 267.1 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005). The exemptions of subsection (a)(2) of this Section are directly derived from corresponding 40 CFR 267.1(b). The Board assumes that USEPA exempted from the RCRA standardized permit requirements those wastes excluded from the definition of hazardous waste (in Subpart A of 35 Ill. Adm. Code 721) and those exempted from the T/S/D facility standards (by 35 Ill. Adm. Code 724.101(g)). The Board has retained the reference to 35 Ill. Adm. Code 724.101(f), even though it does no more than reference corresponding 40 CFR 264.1(f), which relates exclusively to the applicability of the federal regulations.

- b) Relationship to interim status standards. A facility owner or operator that has fully complied with the requirements for interim status, as defined in section 3005(e) of federal RCRA and regulations pursuant to 35 Ill. Adm. Code 703.153, must comply with the regulations specified in 35 Ill. Adm. Code 725 instead of the regulations in this Part, until final administrative disposition of the RCRA standardized permit application is made, except as provided in Subpart S of 35 Ill. Adm. Code 724.

BOARD NOTE: Subsection (b) of this Section is derived from 40 CFR 267.2 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- c) Effect on a federal imminent hazard action. Notwithstanding any other provisions of this Part, enforcement actions may be brought in a federal court pursuant to section 7003 of RCRA.

BOARD NOTE: Subsection (c) of this Section is derived from 40 CFR 267.3 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005). The corresponding federal regulation relates to an imminent hazard action under RCRA. An enforcement

87 action for violation of any applicable provision of the Environmental Protection
88 Act [~~415 ILCS 5~~] (Act) is also possible.

- 89
90 d) Electronic reporting. The filing of any document pursuant to any provision of this
91 Part as an electronic document is subject to 35 Ill. Adm. Code 720.104.

92
93 BOARD NOTE: Subsection (d) of this Section is derived from 40 CFR 3, as
94 added, and 40 CFR 271.10(b), 271.11(b), and 271.12(h) (2017)(2005), as
95 amended at 70 Fed. Reg. 59848 (Oct. 13, 2005).

96
97 (Source: Amended at 42 Ill. Reg. _____, effective _____)

98
99 **Section 727.110 General Facility Standards**

- 100
101 a) Applicability of this Section. This Section applies to the owner or operator of a
102 facility that treats or stores hazardous waste under a Subpart J of 35 Ill. Adm.
103 Code 703 RCRA standardized permit, except as provided in Section
104 727.100(a)(2).

105
106 BOARD NOTE: Subsection (a) of this Section is derived from 40 CFR 267.10
107 (2017)(2012).

- 108
109 b) Compliance with this Section. To comply with this Section, the facility owner or
110 operator must obtain a USEPA identification number, and follow the
111 requirements of this Part for waste analysis, security, inspections, training, special
112 waste handling, and location standards.

113
114 BOARD NOTE: Subsection (b) of this Section is derived from 40 CFR 267.11
115 (2017)(2012).

- 116
117 c) Obtaining a USEPA identification number. The facility owner or operator must
118 apply to USEPA Region 5 for a USEPA identification number using USEPA
119 Form 8700-12. The owner or operator must obtain a copy of the form from the
120 Agency, and submit a completed copy of the form to the Bureau of Land, in
121 addition to notification to USEPA Region 5.

122
123 BOARD NOTE: Subsection (c) of this Section is derived from 40 CFR 267.12
124 (2017)(2012).

- 125
126 d) Waste analysis requirements.

- 127
128 1) Before it treats or stores any hazardous wastes, the facility owner or
129 operator must obtain a detailed chemical and physical analysis of a

130 representative sample of the wastes. At a minimum, the analysis must
 131 contain all the information needed to treat or store the waste to comply
 132 with this Part and 35 Ill. Adm. Code 728.
 133

134 A) The facility owner or operator may include data in the analysis that
 135 was developed pursuant to 35 Ill. Adm. Code 721 or data
 136 published or documented on the hazardous waste or on hazardous
 137 waste generated from similar processes.
 138

139 B) The facility owner or operator must repeat the analysis as
 140 necessary to ensure that it is accurate and up to date. At a
 141 minimum, the owner or operator must repeat the analysis if the
 142 process or operation generating the hazardous wastes has changed.
 143

144 2) The facility owner or operator must develop and follow a written waste
 145 analysis plan that describes the procedures it will follow to comply with
 146 subsection (d)(1) ~~of this Section~~. The owner or operator must keep this
 147 plan at the facility. If the owner or operator receives wastes generated
 148 from off-site and is eligible for a RCRA standardized permit, the owner or
 149 operator also must have submitted the waste analysis plan with the Notice
 150 of Intent. At a minimum, the plan must specify all of the following:
 151

152 A) The hazardous waste parameters that the owner or operator will
 153 analyze and the rationale for selecting these parameters (that is,
 154 how analysis for these parameters will provide sufficient
 155 information on the waste's properties to comply with subsection
 156 (d)(1) ~~of this Section~~).
 157

158 B) The test methods the owner or operator will use to test for these
 159 parameters.
 160

161 C) The sampling method the owner or operator will use to obtain a
 162 representative sample of the waste to be analyzed. The owner or
 163 operator may obtain a representative sample using either of the
 164 following methods:
 165

166 i) One of the sampling methods described in Appendix A of
 167 35 Ill. Adm. Code 721; or
 168

169 ii) An equivalent sampling method.
 170

171 D) How frequently the owner or operator will review or repeat the
 172 initial analysis of the waste to ensure that the analysis is accurate

173 and up to date.

- 174
175 E) Where applicable, the methods the owner or operator will use to
176 meet the additional waste analysis requirements for specific waste
177 management methods, as specified in 35 Ill. Adm. Code 724.117,
178 724.934(d), 724.963(d), and 724.983.
179

180 BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 267.13
181 ~~(2017)~~(2012).
182

183 e) Security requirements.
184

- 185 1) The facility owner or operator must prevent, and minimize the possibility
186 for, livestock and unauthorized people from entering the active portion of
187 its facility.
188
189 2) The facility must have either of the features listed in subsection (e)(2)(A)
190 ~~of this Section~~ or those listed in subsections (e)(2)(B) and (e)(2)(C) ~~of this~~
191 ~~Section~~:
192
193 A) A 24-hour surveillance system (for example, television monitoring
194 or surveillance by guards or facility personnel) that continuously
195 monitors and controls entry onto the active portion of the facility;
196 or
197
198 B) An artificial or natural barrier (for example, a fence in good repair
199 or a fence combined with a cliff) that completely surrounds the
200 active portion of the facility; and
201
202 C) A means to control entry, at all times, through the gates or other
203 entrances to the active portion of the facility (for example, an
204 attendant, television monitors, locked entrance, or controlled
205 roadway access to the facility).
206
207 3) The facility owner or operator must post a sign at each entrance to the
208 active portion of a facility, and at other prominent locations, in sufficient
209 numbers to be seen from any approach to this active portion. The sign
210 must bear the legend "Danger – Unauthorized Personnel Keep Out." The
211 legend must be in English and in any other language predominant in the
212 area surrounding the facility (for example, French or Spanish), and must
213 be legible from a distance of at least 25 feet. The owner or operator may
214 use existing signs with a legend other than "Danger – Unauthorized
215 Personnel Keep Out" if the legend on the sign indicates that only

216 authorized personnel are allowed to enter the active portion and entry onto
217 the active portion can be dangerous.

218
219 BOARD NOTE: Subsection (e) of this Section is derived from 40 CFR 267.14
220 (2017)(2012).

221
222 f) General inspection requirements.

223
224 1) The owner or operator must inspect its facility for malfunctions and
225 deterioration, operator errors, and discharges that may be causing, or may
226 lead to either of the conditions listed in subsection (f)(1)(A) or (f)(1)(B) of
227 this Section. The owner or operator must conduct these inspections often
228 enough to identify problems in time to correct them before they result in
229 harm to human health and the environment.

230
231 A) A release of hazardous waste constituents to the environment; or

232
233 B) A threat to human health.

234
235 2) The facility owner or operator must develop and follow a written schedule
236 for inspecting monitoring equipment, safety and emergency equipment,
237 security devices, and operating and structural equipment (such as dikes
238 and sump pumps) that are important to preventing, detecting, or
239 responding to environmental or human health hazards.

240
241 A) The owner or operator must keep this schedule at the facility.

242
243 B) The schedule must identify the equipment and devices that the
244 owner or operator will inspect and what problems it will look for,
245 such as malfunctions or deterioration of equipment (for example,
246 inoperative sump pump, leaking fitting, etc.).

247
248 C) The frequency of the owner's or operator's inspections may vary
249 for the items on the schedule. However, the frequency should be
250 based on the rate of deterioration of the equipment and the
251 probability of an environmental or human health incident if the
252 deterioration, malfunction, or any operator error goes undetected
253 between inspections. Areas subject to spills, such as loading and
254 unloading areas, must be inspected daily when in use. At a
255 minimum, the inspection schedule must include the items and
256 frequencies required in Sections 727.270(e), 727.290(d) and (f),
257 and 727.900(d) and 35 Ill. Adm. Code 724.933, 724.952, 724.953,
258 724.958, and 724.983 through 724.989, where applicable.

259
260 3) The facility owner or operator must remedy any deterioration or
261 malfunction of equipment or structures that the inspection reveals in time
262 to prevent any environmental or human health hazards. Where hazard is
263 imminent or has already occurred, the owner or operator must take
264 immediate remedial action.

265
266 4) The facility owner or operator must record all inspections. The owner or
267 operator must keep these records for at least three years from the date of
268 inspection. At a minimum, the owner or operator must include the date
269 and time of the inspection, the name of the inspector, a notation of the
270 observations made, and the date and nature of any repairs or other
271 remedial actions.

272
273 BOARD NOTE: Subsection (f) of this Section is derived from 40 CFR 267.15
274 (2017)(2012).

275
276 g) Employee training.

277
278 1) Facility personnel must successfully complete a program of classroom
279 instruction or on-the-job training that teaches them to perform their duties
280 in a way that ensures the facility's compliance with the requirements of
281 this Part. The facility owner or operator must ensure that this program
282 includes all the elements described in the documents that are required
283 pursuant to subsection (g)(4)(C) of this Section.

284
285 A) A person trained in hazardous waste management procedures must
286 direct this program, and must teach facility personnel hazardous
287 waste management procedures (including contingency plan
288 implementation) relevant to their employment positions.

289
290 B) At a minimum, the training program must be designed to ensure
291 that facility personnel are able to respond effectively to
292 emergencies by including instruction on emergency procedures,
293 emergency equipment, and emergency systems, including all of the
294 following, where applicable:

295
296 i) Procedures for using, inspecting, repairing, and replacing
297 facility emergency and monitoring equipment.

298
299 ii) Key parameters for automatic waste feed cut-off systems.

300
301 iii) Communications or alarm systems.

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- 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.
- 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.

345 BOARD NOTE: Subsection (g) of this Section is derived from 40 CFR 267.16
346 (2017)(2012).
347

348 h) Requirements for managing ignitable, reactive, or incompatible wastes.
349

350 1) The facility owner or operator must take precautions to prevent accidental
351 ignition or reaction of ignitable or reactive waste by following these
352 requirements:
353

354 A) The owner or operator must separate these wastes and protect them
355 from sources of ignition or reaction such as open flames, smoking,
356 cutting and welding, hot surfaces, frictional heat, sparks (static,
357 electrical, or mechanical), spontaneous ignition (for example, from
358 heat-producing chemical reactions), and radiant heat.
359

360 B) While ignitable or reactive waste is being handled, the owner or
361 operator must confine smoking and open flames to specially
362 designated locations.
363

364 C) "No Smoking" signs must be conspicuously placed wherever there
365 is a hazard from ignitable or reactive waste.
366

367 2) If it treats or stores ignitable or reactive waste, or mixes incompatible
368 waste or incompatible wastes and other materials, the owner or operator
369 must take precautions to prevent reactions that do the following:
370

371 A) Generate extreme heat or pressure, fire or explosions, or violent
372 reactions.
373

374 B) Produce uncontrolled toxic mists, fumes, dusts, or gases in
375 sufficient quantities to threaten human health or the environment.
376

377 C) Produce uncontrolled flammable fumes or gases in sufficient
378 quantities to pose a risk of fire or explosions.
379

380 D) Damage the structural integrity of the device or facility.
381

382 E) Threaten human health and the environment in any similar way.
383

384 3) The facility owner or operator must document compliance with subsection
385 (h)(1) or (h)(2) of this Section. The owner or operator may base this
386 documentation on references to published scientific or engineering
387 literature, data from trial tests (for example bench scale or pilot scale

388 tests), waste analyses (as specified in Section 727.110(d)), or the results of
389 the treatment of similar wastes by similar treatment processes and under
390 similar operating conditions.
391

392 BOARD NOTE: Subsection (h) of this Section is derived from 40 CFR 267.17
393 (2017)(2012).
394

395 i) Facility location standards.
396

397 1) The facility owner or operator may not locate any portion of a new facility
398 where hazardous waste will be treated or stored within 61 meters (200
399 feet) of a fault that has had displacement in Holocene time.
400

401 A) "Fault" means a fracture along which rocks on one side have been
402 displaced with respect to those on the other side.
403

404 B) "Displacement" means the relative movement of any two sides of a
405 fault measured in any direction.
406

407 C) "Holocene" means the most recent epoch of the Quaternary period,
408 extending from the end of the Pleistocene to the present.
409

410 BOARD NOTE: Under the note to corresponding 40 CFR
411 267.18(a)(3) and 40 CFR 270.14(b)(11), a facility that is located in
412 a political jurisdiction other than those listed in appendix VI of 40
413 CFR 264, incorporated by reference in 35 Ill. Adm. Code
414 720.111(b), is assumed to be in compliance with this requirement.
415 No area of Illinois is listed in appendix VI of 40 CFR 264.
416

417 2) If an owner's or operator's facility is located within a 100-year flood plain,
418 it must be designed, constructed, operated, and maintained to prevent
419 washout of any hazardous waste by a 100-year flood.
420

421 A) "100-year flood plain" means any land area that is subject to a one
422 percent or greater chance of flooding in any given year from any
423 source.
424

425 B) "Washout" means the movement of hazardous waste from the
426 active portion of the facility as a result of flooding.
427

428 C) "100-year flood" means a flood that has a one percent chance of
429 being equaled or exceeded in any given year.
430

431 BOARD NOTE: Subsection (i) of this Section is derived from 40 CFR 267.18
432 (2017)(2012).

433
434 (Source: Amended at 42 Ill. Reg. _____, effective _____)
435

436 **Section 727.150 Contingency Plan and Emergency Procedures**
437

- 438 a) Applicability of this Section. This Section applies to the owner or operator of a
439 facility that treats or stores hazardous waste under a RCRA standardized permit
440 pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section
441 727.100(a)(2).
442

443 BOARD NOTE: Subsection (a) of this Section is derived from 40 CFR 267.50
444 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
445

- 446 b) The purpose and use of the contingency plan.
447

448 1) The facility owner or operator must have a contingency plan for its
449 facility. The owner or operator must design the plan to minimize hazards
450 to human health or the environment from fires, explosions, or any
451 unplanned sudden or non-sudden release of hazardous waste or hazardous
452 waste constituents to air, soil, or surface water.
453

454 2) The owner or operator must implement the provisions of the plan
455 immediately whenever there is a fire, explosion, or release of hazardous
456 waste or hazardous waste constituents that could threaten human health or
457 the environment.
458

459 BOARD NOTE: Subsection (b) of this Section is derived from 40 CFR 267.51
460 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
461

- 462 c) Contents of the contingency plan.
463

464 1) The facility contingency plan must include the following information:
465

466 A) It must describe the actions facility personnel will take to comply
467 with subsections (b) and (g) of this Section in response to fires,
468 explosions, or any unplanned sudden or non-sudden release of
469 hazardous waste or hazardous waste constituents to air, soil, or
470 surface water at the facility;
471

472 B) It must describe all arrangements agreed upon pursuant to Section
473 727.130(g) by local police departments, fire departments,

474 hospitals, contractors, and State and local emergency response
475 teams to coordinate emergency services;

476
477 C) It must list names, addresses, and phone numbers (office and
478 home) of all persons qualified to act as emergency coordinator (see
479 subsection (f) of this Section), and the owner or operator must keep
480 the list up to date. Where more than one person is listed, one must
481 be named as primary emergency coordinator and others must be
482 listed in the order in which they will assume responsibility as
483 alternates;

484
485 D) It must include a current list of all emergency equipment at the
486 facility (such as fire extinguishing systems, spill control
487 equipment, communications and alarm systems (internal and
488 external), and decontamination equipment), where this equipment
489 is required. In addition, the facility owner or operator must include
490 the location and a physical description of each item on the list, and
491 a brief outline of its capabilities; and

492
493 E) It must include an evacuation plan for facility personnel where
494 there is a possibility that evacuation could be necessary. The plan
495 must describe signals to be used to begin evacuation, evacuation
496 routes, and alternate evacuation routes (in cases where the primary
497 routes could be blocked by releases of hazardous waste or fires).

498
499 2) If the facility owner or operator has already prepared a Spill Prevention,
500 Control, and Countermeasures (SPCC) Plan pursuant to federal 40 CFR
501 112, or some other emergency or contingency plan, the owner or operator
502 needs only to amend that plan to incorporate hazardous waste management
503 provisions that will comply with the requirements of this Part.

504
505 BOARD NOTE: Subsection (c) of this Section is derived from 40 CFR 267.52
506 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

507
508 d) Who must have copies of the contingency plan.

509
510 1) The facility owner or operator must maintain a copy of the plan with all
511 revisions at the facility; and

512
513 2) The owner or operator must submit a copy with all revisions to all local
514 police departments, fire departments, hospitals, and State and local
515 emergency response teams that may be called upon to provide emergency
516 services.

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BOARD NOTE: Subsection (d) of this Section is derived from 40 CFR 267.53 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- e) When the facility owner or operator must amend the contingency plan. The facility owner or operator must review, and immediately amend the contingency plan, if necessary, whenever any of the following occurs:
 - 1) The facility permit is revised;
 - 2) The plan fails in an emergency;
 - 3) The owner or operator changes the facility (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;
 - 4) The owner or operator changes the list of emergency coordinators; or
 - 5) The owner or operator changes the list of emergency equipment.

BOARD NOTE: Subsection (e) of this Section is derived from 40 CFR 267.54 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- f) The role of the emergency coordinator. At least one employee must be either on the facility premises or on call at all times (that is, available to respond to an emergency by reaching the facility within a short period of time) who has the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

BOARD NOTE: Subsection (f) of this Section is derived from 40 CFR 267.55 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- g) Required emergency procedures for the emergency coordinator.
 - 1) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately undertake the following actions:

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- A) He or she must activate internal facility alarm or communication systems, where applicable, to notify all facility personnel; and
 - B) He or she must notify appropriate State or local agencies with designated response roles if their help is needed.
- 2) Whenever there is a release, fire, or explosion, the emergency coordinator must undertake the following actions:
- A) He or she must immediately identify the character, exact source, amount, and areal extent of any released materials. He or she may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis; and
 - B) He or she must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion. For example, the assessment would consider the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions.
- 3) If the emergency coordinator determines that the facility has had a release, fire, or explosion that could threaten human health or the environment outside the facility, he or she must report his findings as follows:
- A) If his or her assessment indicates that evacuation of local areas may be advisable, he or she must immediately notify appropriate local authorities. He or she must be available to help appropriate officials decide whether local areas should be evacuated; and
 - B) He or she must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll-free number 800-424-8802). The report must include the following information:
 - i) The name and telephone number of the reporter;
 - ii) The name and address of facility;

646 BOARD NOTE: Subsection (h) of this Section is derived from 40 CFR 267.57
647 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- 648
- 649 i) Emergency notification and recordkeeping requirements.
- 650
- 651 1) The facility owner or operator must notify the Agency and other
652 appropriate State and local authorities that the facility is in compliance
653 with Section 727.150(h)(2) before operations are resumed in the affected
654 areas of the facility.
- 655
- 656 2) The facility owner or operator must note the time, date, and details of any
657 incident that requires implementing the contingency plan in the operating
658 record. Within 15 days after the incident, the owner or operator must
659 submit a written report on the incident to the Agency. The owner or
660 operator must include the following information in the report:
- 661
- 662 A) The name, address, and telephone number of the owner or
663 operator;
- 664
- 665 B) The name, address, and telephone number of the facility;
- 666
- 667 C) The date, time, and type of incident (e.g., fire, explosion);
- 668
- 669 D) The name and quantity of materials involved;
- 670
- 671 E) The extent of injuries, if any;
- 672
- 673 F) An assessment of actual or potential hazards to human health or
674 the environment, where this is applicable; and
- 675
- 676 G) The estimated quantity and disposition of recovered material that
677 resulted from the incident.

678

679 BOARD NOTE: Subsection (i) of this Section is derived from 40 CFR 267.58
680 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

681

682 (Source: Amended at 42 Ill. Reg. _____, effective _____)

683

684 **Section 727.170 Recordkeeping, Reporting, and Notifying**

- 685
- 686 a) Applicability of this Section. This Section applies to the owner and operator of a
687 facility that stores or non-thermally treats a hazardous waste under a RCRA
688 standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as

689 provided in Section 727.100(a)(2). In addition, the owner or operator must
690 comply with the manifest requirements of 35 Ill. Adm. Code 722 whenever a
691 shipment of hazardous waste is initiated from the facility.
692

693 BOARD NOTE: Subsection (a) of this Section is derived from 40 CFR 267.70
694 (2017)(2007).
695

696 b) Use of the manifest system.
697

698 1) If a facility receives hazardous waste accompanied by a manifest, the
699 owner or operator, or its agent, must do each of the following:
700

701 A) It must sign and date each copy of the manifest to certify that the
702 hazardous waste covered by the manifest was received;
703

704 B) It must note any significant discrepancies in the manifest (as
705 defined in Section 727.170(c)(1)) on each copy of the manifest;
706

707 C) It must immediately give the transporter at least one copy of the
708 signed manifest;
709

710 D) Within 30 days after the delivery, it must send a copy of the
711 manifest to the generator; ~~and~~
712

713 E) It must retain at the facility a copy of each manifest for at least
714 three years from the date of delivery; ~~and~~;
715

716 F) If a facility receives hazardous waste subject to Subpart H of 35 Ill.
717 Adm. Code 722 from a foreign source, the receiving facility must
718 do both of the following:
719

720 i) Additionally list the relevant consent number from consent
721 documentation supplied by USEPA to the facility for each
722 waste listed on the manifest, matched to the relevant list
723 number for the waste from block 9b of the hazardous waste
724 manifest (USEPA Form 8700-22). If additional space is
725 needed, the receiving facility should use Continuation
726 Sheets (USEPA Form 8700-22A); and
727

728 ii) Mail a copy of the hazardous waste manifest to USEPA
729 using the addresses listed in 35 Ill. Adm. Code 722.182(e)
730 within 30 days of delivery until the facility can submit such

a copy to the e-Manifest system per 35 Ill. Adm. Code 724.171(a)(2)(E) or 725.171(a)(2)(E).

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- 2) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste that is accompanied by a shipping paper containing all the information required on the manifest (excluding the USEPA identification numbers, generator's certification, and signatures), the owner or operator, or its agent, must do each of the following:
- A) It must sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;
- B) It must note any significant discrepancies (as defined in Section 727.170(c)(1)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;
- BOARD NOTE: USEPA does not intend that the owner or operator of a facility whose procedures pursuant to Section 727.110(d)(3) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 727.170(c)(2), however, requires reporting an unreconciled discrepancy discovered during later analysis.
- C) It must immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);
- D) Within 30 days after the delivery, it must send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or its agent, must send a copy of the shipping paper signed and dated to the generator; and
- BOARD NOTE: Section 722.123(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).
- E) It must retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

774 3) Whenever a shipment of hazardous waste is initiated from a facility, the
775 facility owner or operator must comply with the requirements of 35 Ill.
776 Adm. Code 722.
777

778 BOARD NOTE: The provisions of 35 Ill. Adm. Code 722.116 or
779 722.117724.134 are applicable to the on-site accumulation of hazardous
780 wastes by generators. Therefore, the provisions of 35 Ill. Adm. Code
781 722.116 or 722.117724.134 apply only to an owner or operator that is
782 shipping hazardous waste that it generated at that facility.
783

784 4) As required by 35 Ill. Adm. Code 722.184(d)(2)(O), within Within three
785 working days after the receipt of a shipment subject to Subpart H of 35 Ill.
786 Adm. Code 722 the owner or operator of the facility must provide a copy
787 of the movement~~tracking~~ document bearing all required signatures to the
788 foreign exporter; notifier, to the Agency, to the Office of Enforcement and
789 Compliance Assurance, Office of Compliance, Enforcement Planning,
790 Targeting and Data Division (2222A), U.S. Environmental Protection
791 Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and to
792 competent authorities of the all other concerned countries of export and
793 transit that control the shipment as an export or transit of hazardous waste.
794 On or after the electronic import-export reporting compliance date, to
795 USEPA electronically using USEPA's Waste Import Export Tracking
796 System (WIETS). The original copy of the movement~~tracking~~ document
797 must be maintained at the facility for at least three years from the date of
798 signature. The owner or operator of a facility may satisfy this
799 recordkeeping requirement by retaining electronically submitted
800 documents in the facility's account on USEPA's WIETS, provided that
801 copies are readily available for viewing and production if requested by any
802 USEPA or authorized state inspector. No owner or operator of a facility
803 may be held liable for the inability to produce the documents for
804 inspection under this section if the owner or operator of a facility can
805 demonstrate that the inability to produce the document is due exclusively
806 to technical difficulty with USEPA's WIETS for which the owner or
807 operator of a facility bears no responsibility.
808

809 BOARD NOTE: Subsection (b) ~~of this Section~~ is derived from 40 CFR 267.71
810 (2017)(2007).
811

812 c) Manifest discrepancies.
813

814 1) Manifest discrepancies are differences between the quantity or type of
815 hazardous waste designated on the manifest or shipping paper, and the
816 quantity or type of hazardous waste a facility actually receives.

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Significant discrepancies in quantity are either of the following:

- A) For bulk waste, variations greater than 10 percent in weight; or
 - B) For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences that can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.
- 2) Upon discovering a significant discrepancy, the facility owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Agency a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

BOARD NOTE: Subsection (c) of this Section is derived from 40 CFR 267.72 (2017)(2007).

d) Retention of information.

- 1) The facility owner or operator must keep a written operating record at its facility.
- 2) The facility owner or operator must record the following information, as it becomes available, and maintain the operating record until it closes the facility:
 - A) A description and the quantity of each type of hazardous waste generated, and the methods and dates of its storage or treatment at the facility as required by Appendix A of 35 Ill. Adm. Code 724;
 - B) The location of each hazardous waste within the facility and the quantity at each location;
 - C) Records and results of waste analyses and waste determinations performed as specified in Section 727.110(d) and (h) and 35 Ill. Adm. Code 724.934, 724.963, 724.983, and 728.107;
 - D) Summary reports and details of all incidents that require the owner

- 860 or operator to implement the contingency plan as specified in
 861 Section 727.150(i)(2));
 862
 863 E) Records and results of inspections as required by Section
 864 727.110(f)(4) (except that the facility owner or operator needs to
 865 keep these data for only three years);
 866
 867 F) Monitoring, testing or analytical data, and corrective action when
 868 required by Section 727.190, Section 727. 290(b), (d), and (f) and
 869 35 Ill. Adm. Code 724.934(c) through (f), 724.935, 724.963(d)
 870 through (i), 724.964, 724.988, 724.989, and 724.990;
 871
 872 G) All closure cost estimates pursuant to Section 727.240(c);
 873
 874 H) The facility owner or operator certification, executed at least
 875 annually, that the owner or operator has a program in place to
 876 reduce the volume and toxicity of hazardous waste that it generates
 877 to the degree that the owner or operator determines to be
 878 economically practicable; and that the proposed method of
 879 treatment or storage is that practicable method currently available
 880 to the owner or operator that minimizes the present and future
 881 threat to human health and the environment;
 882
 883 I) For an on-site treatment facility, the information contained in the
 884 notice (except the manifest number), and the certification and
 885 demonstration, if applicable, required by the facility owner or
 886 operator pursuant to 35 Ill. Adm. Code 728.107;
 887
 888 J) For an on-site storage facility, the information in the notice (except
 889 the manifest number), and the certification and demonstration, if
 890 applicable, required by the facility owner or operator pursuant to
 891 35 Ill. Adm. Code 728.107;
 892
 893 K) For an off-site treatment facility, a copy of the notice, and the
 894 certification and demonstration, if applicable, required by the
 895 generator or the facility owner or operator pursuant to 35 Ill. Adm.
 896 Code 728.107 or 728.108; and
 897
 898 L) For an off-site storage facility, a copy of the notice, and the
 899 certification and demonstration, if applicable, required by the
 900 generator or the owner or operator pursuant to 35 Ill. Adm. Code
 901 728.107 or 728.108.
 902

903 BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 267.73
904 (2017)(2007).

905
906 e) Availability of records.
907
908 1) The facility owner or operator must furnish all records, including plans,
909 required pursuant to this Part upon the request of any officer, employee, or
910 representative of the Agency or USEPA and make them available at all
911 reasonable times for inspection.

912
913 2) The retention period for all records required pursuant to this Part is
914 extended automatically during the course of any unresolved enforcement
915 action involving the facility or as requested in writing by the Agency.

916
917 BOARD NOTE: Any Agency request for extended records retention
918 under this subsection (e)(2) is subject to Board review pursuant to Section
919 40 of the Act.

920
921 BOARD NOTE: Subsection (e) ~~of this Section~~ is derived from 40 CFR 267.74
922 (2017)(2007).

923
924 f) Submission of reports. The facility owner or operator must prepare an annual
925 facility activities report and other reports listed in subsection (f)(2) ~~of this Section~~.

926
927 1) Annual facility activities report. The facility owner or operator must
928 prepare and submit a single copy of an annual facility activities report to
929 the Agency by March 1 of each year. The annual facility activities report
930 must be submitted on USEPA Form 8700-13B. The report must cover
931 facility activities during the previous calendar year and must include the
932 following information:

933
934 BOARD NOTE: Corresponding 40 CFR 267.75(a) (2006) requires
935 biennial reporting. The Board has required annual reporting, since Section
936 20.1 of the Act [415 ILCS 5/20.1 (2006)] requires the Agency to assemble
937 annual reports, and only annual facility activity reports will enable the
938 Agency to fulfill this mandate.

939
940 A) The USEPA identification number, name, and address of the
941 facility;

942
943 B) The calendar year covered by the report;

944
945 C) The method of treatment or storage for each hazardous waste;

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- D) The most recent closure cost estimate pursuant to Section 727.240(c);
 - E) A description of the efforts undertaken during the year to reduce the volume and toxicity of generated waste;
 - F) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984; and
 - G) The certification signed by the owner or operator.
- 2) Additional reports. In addition to submitting the ~~annual~~biennial reports, the owner or operator must also report the following information to the Agency:
- A) Releases, fires, and explosions as specified in Section 727.150(i)(2);
 - B) Facility closures specified in Section 727.210(h); and
 - C) Other information as otherwise required by Sections 727.270, 727.290, and 727.900 and Subparts AA, BB, and CC of 35 Ill. Adm. Code 724.
- 3) For off-site facilities, the USEPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator.
- 4) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by USEPA identification number of each generator.
- BOARD NOTE: Subsection (f) ~~of this Section~~ is derived from 40 CFR 267.75 (2017)(2007).
- g) Required notifications. Before transferring ownership or operation of a facility during its operating life, the facility owner or operator must notify the new owner or operator in writing of the requirements of this Part and Subpart J of 35 Ill. Adm. Code 703.

989
990 BOARD NOTE: Subsection (g) of this Section is derived from 40 CFR 267.76
991 (2017)(2007).
992

993 (Source: Amended at 42 Ill. Reg. _____, effective _____)
994

995 **Section 727.190 Releases from Solid Waste Management Units**
996

- 997 a) Applicability of this Section. This Section applies to the owner or operator of a
998 facility that treats or stores hazardous waste under a RCRA standardized permit
999 pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section
1000 727.100(a)(2), or unless its facility already has a permit that imposes requirements
1001 for corrective action pursuant to 35 Ill. Adm. Code 724.201.
1002

1003 BOARD NOTE: Subsection (a) of this Section is derived from 40 CFR 267.90
1004 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
1005

- 1006 b) This subsection (b) corresponds with 40 CFR 267.91, which USEPA has marked
1007 "Reserved:". This statement maintains structural consistency with the
1008 corresponding federal rules.
1009

- 1010 c) This subsection (c) corresponds with 40 CFR 267.92, which USEPA has marked
1011 "Reserved:". This statement maintains structural consistency with the
1012 corresponding federal rules.
1013

- 1014 d) This subsection (d) corresponds with 40 CFR 267.93, which USEPA has marked
1015 "Reserved:". This statement maintains structural consistency with the
1016 corresponding federal rules.
1017

- 1018 e) This subsection (e) corresponds with 40 CFR 267.94, which USEPA has marked
1019 "Reserved:". This statement maintains structural consistency with the
1020 corresponding federal rules.
1021

- 1022 f) This subsection (f) corresponds with 40 CFR 267.95, which USEPA has marked
1023 "Reserved:". This statement maintains structural consistency with the
1024 corresponding federal rules.
1025

- 1026 g) This subsection (g) corresponds with 40 CFR 267.96, which USEPA has marked
1027 "Reserved:". This statement maintains structural consistency with the
1028 corresponding federal rules.
1029

- 1030 h) This subsection (h) corresponds with 40 CFR 267.97, which USEPA has marked
1031 "Reserved:". This statement maintains structural consistency with the

- 1032 corresponding federal rules.
 1033
 1034 i) This subsection (i) corresponds with 40 CFR 267.98, which USEPA has marked
 1035 "Reserved:". This statement maintains structural consistency with the
 1036 corresponding federal rules.
 1037
 1038 j) This subsection (j) corresponds with 40 CFR 267.99, which USEPA has marked
 1039 "Reserved:". This statement maintains structural consistency with the
 1040 corresponding federal rules.
 1041
 1042 k) This subsection (k) corresponds with 40 CFR 267.100, which USEPA has marked
 1043 "Reserved:". This statement maintains structural consistency with the
 1044 corresponding federal rules.
 1045
 1046 l) Requirements for addressing corrective action for solid waste management units.
 1047
 1048 1) The facility owner or operator must institute corrective action as necessary
 1049 to protect human health and the environment for all releases of hazardous
 1050 waste or constituents from any solid waste management unit at the facility,
 1051 regardless of the time at which waste was placed in such unit.
 1052
 1053 2) The Agency must specify corrective action in the supplemental portion of
 1054 the facility owner's or operator's RCRA standardized permit in accordance
 1055 with this subsection (l) and Subpart S of 35 Ill. Adm. Code 724. The
 1056 Agency must include in the supplemental portion of the RCRA
 1057 standardized permit schedules of compliance for corrective action (where
 1058 corrective action cannot be completed prior to issuance of the permit) and
 1059 assurances of financial responsibility for completing corrective action.
 1060
 1061 3) The facility owner or operator must implement corrective action beyond
 1062 the facility property boundary, where necessary to protect human health
 1063 and the environment, unless the owner or operator demonstrates to the
 1064 satisfaction of the Agency that, despite its best efforts, the owner or
 1065 operator was unable to obtain the necessary permission to undertake such
 1066 actions. The owner or operator is not relieved of all responsibility to clean
 1067 up a release that has migrated beyond the facility boundary where off-site
 1068 access is denied. On-site measures to address such releases will be
 1069 determined on a case-by-case basis. The owner or operator must provide
 1070 assurances of financial responsibility for such corrective action.
 1071
 1072 4) The facility owner or operator of a remediation site does not have to
 1073 comply with this subsection (m) unless the site is part of a facility that is
 1074 subject to a permit for treating, storing, or disposing of hazardous wastes

1075 that are not remediation wastes.

1076
1077 BOARD NOTE: Subsection (l) of this Section is derived from 40 CFR 267.101
1078 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

1079
1080 (Source: Amended at 42 Ill. Reg. _____, effective _____)

1081
1082 **Section 727.210 Closure**

- 1083
1084 a) Applicability of this Section. This Section applies to the facility owner or
1085 operator of a facility that treats or stores hazardous waste under a RCRA
1086 standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as
1087 provided in Section 727.100(a)(2).
1088

1089 BOARD NOTE: Subsection (a) of this Section is derived from 40 CFR 267.110
1090 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- 1091
1092 b) Required general standards when operations cease. The facility owner or operator
1093 must close the storage and treatment units in a manner that fulfills the following
1094 conditions:

- 1095
1096 1) It minimizes the need for further maintenance;
1097
1098 2) It controls, minimizes, or eliminates, to the extent necessary to protect
1099 human health and the environment, the post-closure escape of hazardous
1100 waste, hazardous constituents, leachate, contaminated run-off, or
1101 hazardous waste decomposition products to the ground, to surface waters,
1102 or to the atmosphere; and
1103
1104 3) It meets the closure requirements of this Section and the requirements of
1105 Sections 727.270(g), 727.290(l), and 727.900(i). If the facility owner or
1106 operator determines that, when applicable, the closure requirements of
1107 Section 727.290(l) (tanks) or 727.900(i) (containment buildings) cannot be
1108 met, then the owner or operator must close the unit in accordance with the
1109 requirements that apply to landfills (35 Ill. Adm. Code 724.410). In
1110 addition, for the purposes of post-closure and financial responsibility, such
1111 a tank system or containment building is then considered to be a landfill,
1112 and the owner or operator must apply for a post-closure care permit in
1113 accordance with 35 Ill. Adm. Code 702 and 703.
1114

1115 BOARD NOTE: Subsection (b) of this Section is derived from 40 CFR 267.111
1116 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
1117

- 1118 c) Closure procedures.
 1119
 1120 1) To close a facility, the facility owner or operator must follow its approved
 1121 closure plan, and follow notification requirements.
 1122
 1123 A) The facility owner or operator must submit its closure plan at the
 1124 time it submits its Notice of Intent to operate under a RCRA
 1125 standardized permit. Final issuance of the RCRA standardized
 1126 permit constitutes approval of the closure plan, and the plan
 1127 becomes a condition of the RCRA standardized permit.
 1128
 1129 B) The Agency's approval of the plan must ensure that the approved
 1130 plan is consistent with Sections 727.210(b) through (f), 727.270(g),
 1131 727.290(l), and 727.900(i).
 1132
 1133 2) Content of closure plan. The closure plan must identify steps necessary to
 1134 perform partial or final closure of the facility. The closure plan must
 1135 include at least the following minimum information:
 1136
 1137 A) A description of how each hazardous waste management unit at the
 1138 facility subject to this Section will be closed following the
 1139 requirements of Section 727.210(b);
 1140
 1141 B) A description of how final closure of the facility will be conducted
 1142 in accordance with Section 727.210(b). The description must
 1143 identify the maximum extent of the operations that will be
 1144 unclosed during the active life of the facility;
 1145
 1146 C) An estimate of the maximum inventory of hazardous wastes ever
 1147 on site during the active life of the facility and a detailed
 1148 description of the methods that the facility owner or operator will
 1149 use during partial or final closure, such as methods for removing,
 1150 transporting, treating, storing, or disposing of all hazardous wastes,
 1151 and identification of the types of off-site hazardous waste
 1152 management units to be used, if applicable;
 1153
 1154 D) A detailed description of the steps needed to remove or
 1155 decontaminate all hazardous waste residues and contaminated
 1156 containment system components, equipment, structures, and soils
 1157 during partial or final closure. These might include procedures for
 1158 cleaning equipment and removing contaminated soils, methods for
 1159 sampling and testing surrounding soils, and criteria for determining
 1160 the extent of decontamination required to satisfy the closure

- 1161 performance standard;
- 1162
- 1163 E) A detailed description of other activities necessary during the
- 1164 closure period to ensure that partial or final closure satisfies the
- 1165 closure performance standards;
- 1166
- 1167 F) A schedule for closure of each hazardous waste management unit,
- 1168 and for final closure of the facility. The schedule must include, at
- 1169 a minimum, the total time required to close each hazardous waste
- 1170 management unit and the time required for intervening closure
- 1171 activities that allow tracking of progress of partial or final closure;
- 1172 and
- 1173
- 1174 G) For facilities that use trust funds to establish financial assurance
- 1175 pursuant to Section 727.240(d) and that are expected to close prior
- 1176 to the expiration of the permit, an estimate of the expected year of
- 1177 final closure.
- 1178
- 1179 3) The facility owner or operator may submit a written notification to the
- 1180 Agency for a permit modification to amend the closure plan at any time
- 1181 prior to the notification of partial or final closure of the facility, following
- 1182 the applicable procedures in 35 Ill. Adm. Code 705.304.
- 1183
- 1184 A) Events leading to a change in the closure plan, and therefore
- 1185 requiring a modification, may include the following:
- 1186
- 1187 i) A change in the operating plan or facility design;
- 1188
- 1189 ii) A change in the expected year of closure, if applicable; or
- 1190
- 1191 iii) In conducting partial or final closure activities, an
- 1192 unexpected event requiring a modification of the approved
- 1193 closure plan.
- 1194
- 1195 B) The written notification or request must include a copy of the
- 1196 amended closure plan for review or approval by the Agency. The
- 1197 Agency must approve, disapprove, or modify this amended plan in
- 1198 accordance with the procedures in 35 Ill. Adm. Code 703.353 and
- 1199 705.304.
- 1200
- 1201 4) Notification before final closure.
- 1202
- 1203 A) The facility owner or operator must notify the Agency in writing at

1204 least 45 days before the date that it expects to begin final closure of
1205 a treatment or storage tank, container storage area, or containment
1206 building.

1207
1208 B) The date when the owner or operator "expects to begin closure"
1209 must be no later than 30 days after the date that any hazardous
1210 waste management unit receives the known final volume of
1211 hazardous wastes.

1212
1213 C) If the facility's permit is terminated, or if the facility owner or
1214 operator is otherwise ordered, by a federal judicial decree or final
1215 order pursuant to section 3008 of RCRA (42 USC 6928), to cease
1216 receiving hazardous wastes or to close, then the requirements of
1217 this subsection (c)(4) do not apply. However, the owner or
1218 operator must close the facility following the deadlines established
1219 in subsection (f) of this Section.
1220

1221 BOARD NOTE: Subsection (c) of this Section is derived from 40 CFR 267.112
1222 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

1223
1224 d) Opportunity for public comment on the plan.

1225
1226 1) The Agency must provide the facility owner or operator and the public,
1227 when the draft RCRA standardized permit is public noticed, the
1228 opportunity to submit written comments on the plan and to the draft permit
1229 as allowed by 35 Ill. Adm. Code 705.303(b). The Agency must also, in
1230 response to a request or at its own discretion, hold a public hearing
1231 whenever it determines that such a hearing might clarify one or more
1232 issues concerning the closure plan, and the permit.
1233

1234 2) The Agency must give public notice of the hearing 30 days before it
1235 occurs. Public notice of the hearing may be given at the same time as
1236 notice of the opportunity for the public to submit written comments, and
1237 the two notices may be combined.
1238

1239 BOARD NOTE: Subsection (d) of this Section is derived from 40 CFR 267.113
1240 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

1241
1242 e) This subsection (e) corresponds with 40 CFR 267.114, which USEPA has marked
1243 "Reserved:". This statement maintains structural consistency with the
1244 corresponding federal rules.
1245

1246 f) Time allowed for closure.

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- 1) Within 90 days after the final volume of hazardous waste is sent to a unit, the facility owner or operator must treat or remove all hazardous wastes from the unit following the approved closure plan.
 - 2) The facility owner or operator must complete final closure activities in accordance with the approved closure plan within 180 days after the final volume of hazardous wastes is sent to the unit. The Agency may approve an extension of 180 days to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that the conditions of subsections (f)(2)(A) and (f)(2)(B) ~~of this Section~~ are fulfilled subject to the limitation of subsection (f)(2)(C) ~~of this Section~~:
 - A) The final closure activities will take longer than 180 days to complete due to circumstances beyond the control of the owner or operator, excluding groundwater contamination; ~~and~~
 - B) The facility owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed, but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements; ~~and-~~
 - C) The demonstration of subsections (f)(2)(A) and (f)(2)(B) ~~of this Section~~ must be made at least 30 days prior to the expiration of the initial 180-day period.
 - 3) Nothing in this subsection (f) precludes the facility owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved final closure plan at any time before or after notification of final closure.

1280 BOARD NOTE: Subsection (f) ~~of this Section~~ is derived from 40 CFR 267.115
1281 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
1282

- 1283 g) Disposition of contaminated equipment, structure, and soils. The facility owner
1284 or operator must properly dispose of or decontaminate all contaminated
1285 equipment, structures, and soils during the partial and final closure periods. By
1286 removing any hazardous wastes or hazardous constituents during partial and final
1287 closure, the owner or operator may become a generator of hazardous waste and
1288 must handle that waste following all applicable requirements of 35 Ill. Adm. Code
1289 722.

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BOARD NOTE: Subsection (g) of this Section is derived from 40 CFR 267.116 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- h) Certification of closure. Within 60 days after the completion of final closure of each unit under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 705, the facility owner or operator must submit to the Agency, by registered mail, a certification that each hazardous waste management unit or facility, as applicable, has been closed following the specifications in the closure plan. Both the owner or operator and an independent registered professional engineer must sign the certification. The owner or operator must furnish documentation supporting the independent registered professional engineer's certification to the Agency upon request until the Agency releases the owner or operator from the financial assurance requirements for closure pursuant to Section 727.240(d)(10).

BOARD NOTE: Subsection (h) of this Section is derived from 40 CFR 267.117 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

(Source: Amended at 42 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).

1333 4) States and the federal government are exempt from the requirements of
1334 this Section.
1335

1336 BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.140
1337 ~~(2017)~~(2013).
1338

1339 b) Definitions of terms as used in this Section.
1340

1341 1) "Closure plan" means the plan for closure prepared in accordance with the
1342 requirements of Section 727.210(c).
1343

1344 2) "Current closure cost estimate" means the most recent of the estimates
1345 prepared in accordance with subsections (c)(1), (c)(2), and (c)(3) ~~of this~~
1346 ~~Section~~.
1347

1348 3) This subsection (b)(3) corresponds with 40 CFR 267.141(c), which
1349 USEPA has marked "Reserved:". This statement maintains structural
1350 consistency with the corresponding federal rules.
1351

1352 4) "Parent corporation" means a corporation that directly owns at least 50
1353 percent of the voting stock of the corporation which is the facility owner
1354 or operator. In this instance, the owned corporation that is the facility
1355 owner or operator is deemed a "subsidiary" of the parent corporation.
1356

1357 5) This subsection (b)(5) corresponds with 40 CFR 267.141(e), which
1358 USEPA has marked "Reserved:". This statement maintains structural
1359 consistency with the corresponding federal rules.
1360

1361 6) The following terms are used in the specifications for the financial tests
1362 for closure and liability coverage. The definitions are intended to assist in
1363 the understanding of these regulations and are not intended to limit the
1364 meanings of terms in a way that conflicts with generally accepted
1365 accounting practices:
1366

1367 "Assets" means all existing and all probable future economic
1368 benefits obtained or controlled by a particular entity.
1369

1370 "Current plugging and abandonment cost estimate" means the most
1371 recent of the estimates prepared in accordance with 35 Ill. Adm.
1372 Code 704.212(a), (b), and (c).
1373

1374 "Independently audited" refers to an audit performed by an
1375 independent certified public accountant in accordance with

1376 generally accepted auditing standards.

1377
1378 "Liabilities" means probable future sacrifices of economic benefits
1379 arising from present obligations to transfer assets or provide
1380 services to other entities in the future as a result of past
1381 transactions or events.

1382
1383 "Tangible net worth" means the tangible assets that remain after
1384 deducting liabilities; such assets would not include intangibles
1385 such as goodwill and rights to patents or royalties.

- 1386
1387 7) In the liability insurance requirements, the terms "bodily injury" and
1388 "property damage" have the meanings given them by applicable State law.
1389 However, these terms do not include those liabilities that, consistent with
1390 standard industry practices, are excluded from coverage in liability
1391 insurance policies for bodily injury and property damage. The Agency
1392 intends the meanings of other terms used in the liability insurance
1393 requirements to be consistent with their common meanings within the
1394 insurance industry. The definitions given below of several of the terms
1395 are intended to assist in the understanding of these regulations and are not
1396 intended to limit their meanings in a way that conflicts with general
1397 insurance industry usage.

1398
1399 "Accidental occurrence" means an accident, including continuous
1400 or repeated exposure to conditions, that results in bodily injury or
1401 property damage neither expected nor intended from the standpoint
1402 of the insured.

1403
1404 "Legal defense costs" means any expenses that an insurer incurs in
1405 defending against claims of third parties brought under the terms
1406 and conditions of an insurance policy.

1407
1408 "Sudden accidental occurrence" means an occurrence that is not
1409 continuous or repeated in nature.

- 1410
1411 8) "Substantial business relationship" means the extent of a business
1412 relationship necessary under applicable state law to make a guarantee
1413 contract issued incident to that relationship valid and enforceable. A
1414 "substantial business relationship" must arise from a pattern of recent or
1415 ongoing business transactions, in addition to the guarantee itself, such that
1416 the Agency can reasonably determine that a substantial business
1417 relationship currently exists between the guarantor and the facility owner
1418 or operator that is adequate consideration to support the obligation of the

1419 guarantee relating to any liability towards a third-party. "Applicable state
 1420 law," as used in this subsection (b)(8), means the laws of the State of
 1421 Illinois and those of any sister state that govern the guarantee and the
 1422 adequacy of the consideration.
 1423

1424 BOARD NOTE: Subsection (b) of this Section is derived from 40 CFR 267.141
 1425 (2017)(2013). Subsection (b)(8) is also derived from the discussion at 53 Fed.
 1426 Reg. 33938, 41-43 (Sept. 1, 1988). The term "substantial business relationship" is
 1427 also independently defined in 35 Ill. Adm. Code 724.241(h) and 725.241(h). Any
 1428 Agency determination that a substantial business relationship exists is subject to
 1429 Board review pursuant to Section 40 of the Act [415 ILCS 5/40].
 1430

1431 c) Cost estimate for closure.
 1432

1433 1) The facility owner or operator must have at the facility a detailed written
 1434 estimate, in current dollars, of the cost of closing the facility in accordance
 1435 with the requirements in Section 727.210(b) through (f) and applicable
 1436 closure requirements in Sections 727.270(g), 727.290(l), and 727.900(i).
 1437

1438 A) The estimate must equal the cost of final closure at the point in the
 1439 facility's active life when the extent and manner of its operation
 1440 would make closure the most expensive, as indicated by the
 1441 closure plan (see Section 727.210(c)(2)).
 1442

1443 B) The closure cost estimate must be based on the costs to the owner
 1444 or operator of hiring a third party to close the facility. A third
 1445 party is a party who is neither a parent nor a subsidiary of the
 1446 owner or operator. (See the definition of parent corporation in
 1447 subsection (b)(4) of this Section.) The owner or operator may use
 1448 costs for on-site disposal if it can demonstrate that on-site disposal
 1449 capacity will exist at all times over the life of the facility.
 1450

1451 C) The closure cost estimate may not incorporate any salvage value
 1452 that may be realized with the sale of hazardous wastes, or non-
 1453 hazardous wastes, facility structures or equipment, land, or other
 1454 assets associated with the facility at the time of partial or final
 1455 closure.
 1456

1457 D) The facility owner or operator may not incorporate a zero cost for
 1458 hazardous wastes, or non-hazardous wastes that might have
 1459 economic value.
 1460

1461 2) During the active life of the facility, the facility owner or operator must

1462 adjust the closure cost estimate for inflation within 60 days prior to the
 1463 anniversary date of the establishment of the financial instruments used to
 1464 comply with subsection (d) of this Section. For an owner or operator
 1465 using the financial test or corporate guarantee, the closure cost estimate
 1466 must be updated for inflation within 30 days after the close of the
 1467 guarantor's fiscal year and before submission of updated information to
 1468 the Agency as specified in subsection (n)(3) of this Section. The
 1469 adjustment may be made by recalculating the maximum costs of closure in
 1470 current dollars, or by using an inflation factor derived from the most
 1471 recent Implicit Price Deflator for Gross Domestic Product (Deflator)
 1472 published by the U.S. Department of Commerce in its Survey of Current
 1473 Business, as specified in subsections (c)(2)(A) and (c)(2)(B) of this
 1474 Section. The inflation factor is the result of dividing the latest published
 1475 annual Deflator by the Deflator for the previous year.

1477 A) The first adjustment is made by multiplying the closure cost
 1478 estimate by the inflation factor. The result is the adjusted closure
 1479 cost estimate.

1481 B) Subsequent adjustments are made by multiplying the latest
 1482 adjusted closure cost estimate by the latest inflation factor.

1483
 1484 BOARD NOTE: The table of Deflators is available as Table 1.1.9. in the
 1485 National Income and Product Account Tables, published by U.S.
 1486 Department of Commerce, Bureau of Economic Analysis, National
 1487 Economic Accounts, available on-line at the following web address:
 1488 www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&903=13.
 1489

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 1491
 1492 3) During the active life of the facility, the facility owner or operator must
 1493 revise the closure cost estimate no later than 30 days after the Agency has
 1494 approved the request to modify the closure plan, if the change in the
 1495 closure plan increases the cost of closure. The revised closure cost
 1496 estimate must be adjusted for inflation as specified in subsection (c)(2) of
 1497 this Section.

1498
 1499 4) The facility owner or operator must keep the following at the facility
 1500 during the operating life of the facility: the latest closure cost estimate
 1501 prepared in accordance with subsections (c)(1) and (c)(3) of this Section
 1502 and, when this estimate has been adjusted in accordance with subsection
 1503 (c)(2) of this Section, the latest adjusted closure cost estimate.
 1504

1505 BOARD NOTE: Subsection (c) of this Section is derived from 40 CFR 267.142
 1506 (20172013).
 1507

1508 d) Financial assurance for closure. The facility owner or operator must establish
 1509 financial assurance for closure of each storage or treatment unit that it owns or
 1510 operates. In establishing financial assurance for closure, the owner or operator
 1511 must choose from among the financial assurance mechanisms in subsections
 1512 (d)(1) through (d)(7) of this Section. The owner or operator can also use a
 1513 combination of mechanisms for a single facility if the combination meets the
 1514 requirement in subsection (d)(8) of this Section, or it may use a single mechanism
 1515 for multiple facilities as in subsection (d)(9) of this Section. The Agency must
 1516 release the owner or operator from the requirements of this subsection (d) after
 1517 the owner or operator meets the criteria pursuant to subsection (d)(10) of this
 1518 Section.
 1519

1520 1) Closure trust fund. An owner or operator may use the "closure trust fund"
 1521 that is specified in 35 Ill. Adm. Code 724.243(a)(1), (a)(2), and (a)(6)
 1522 through (a)(11). For purposes of this subsection (d)(1), the following
 1523 provisions also apply:
 1524

1525 A) Payments into the trust fund for a new facility must be made
 1526 annually by the owner or operator over the remaining operating life
 1527 of the facility as estimated in the closure plan, or over three years,
 1528 whichever period is shorter. This period of time is hereafter
 1529 referred to as the "pay-in period".
 1530

1531 B) For a new facility, the facility owner or operator must make the
 1532 first payment into the closure trust fund before the facility may
 1533 accept the initial storage. A receipt from the trustee must be
 1534 submitted by the owner or operator to the Agency before this
 1535 initial storage of waste. The first payment must be at least equal to
 1536 the current closure cost estimate, divided by the number of years in
 1537 the pay-in period, except as provided in subsection (d)(8) of this
 1538 Section for multiple mechanisms. Subsequent payments must be
 1539 made no later than 30 days after each anniversary date of the first
 1540 payment. The owner or operator determines the amount of each
 1541 subsequent payment by subtracting the current value of the trust
 1542 fund from the current closure cost estimate, and dividing this
 1543 difference by the number of years remaining in the pay-in period.
 1544 Mathematically, the formula is as follows:
 1545

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

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.

- 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.
- 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 by the Agency pursuant to subsection (1)(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 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 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).

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- 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~~, 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~~.
 - 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.
 - 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

1632 must meet the requirements for owners or operators in subsection
 1633 ~~(d)(6) of this Section~~ and must comply with the terms of the
 1634 guarantee. The wording of the guarantee must be identical to the
 1635 wording designated by the Agency pursuant to subsection (1)(3) ~~of~~
 1636 ~~this Section~~. The certified copy of the guarantee must accompany
 1637 the letter from the guarantor's chief financial officer and
 1638 accountants' opinions. If the guarantor's parent corporation is also
 1639 the parent corporation of the owner or operator, the letter from the
 1640 guarantor's chief financial officer must describe the value received
 1641 in consideration of the guarantee. If the guarantor is a firm with a
 1642 "substantial business relationship" with the owner or operator, this
 1643 letter must describe this "substantial business relationship" and the
 1644 value received in consideration of the guarantee.
 1645

1646 B) For a new facility, the guarantee must be effective and the
 1647 guarantor must submit the items in subsection (d)(7)(A) ~~of this~~
 1648 ~~Section~~ and the items specified in subsection (n)(1) ~~of this Section~~
 1649 to the Agency at least 60 days before the owner or operator places
 1650 waste in the facility.
 1651

1652 C) The terms of the guarantee must provide as required by subsection
 1653 ~~(o) of this Section~~.
 1654

1655 BOARD NOTE: It was necessary for the Board to codify 40 CFR
 1656 267.143(g)(3) as subsection (o) ~~of this Section~~ to comport with
 1657 Illinois Administrative Code indent level codification
 1658 requirements. The Board intends that any citation to this
 1659 subsection (d), (d)(7), or (d)(7)(C) also include added subsection
 1660 ~~(o) of this Section~~, as applicable.
 1661

1662 D) If a corporate guarantor no longer meets the requirements of
 1663 subsection (d)(6)(A) ~~of this Section~~, the owner or operator must,
 1664 within 90 days, obtain alternative assurance, and submit the
 1665 assurance to the Agency for approval. If the owner or operator
 1666 fails to provide alternate financial assurance within the 90-day
 1667 period, the guarantor must provide that alternate assurance within
 1668 the next 30 days, and submit it to the Agency for approval.
 1669

1670 E) The guarantor is no longer required to meet the requirements of
 1671 this subsection (d)(7) when either of the following occurs:
 1672

1673 i) The facility owner or operator substitutes alternate financial
 1674 assurance as specified in this subsection (d); or

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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 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 (2017)(2013).

e) This subsection (e) corresponds with 40 CFR 267.144, which USEPA has marked "Reserved:". This statement maintains structural consistency with the

- 1718 corresponding federal rules.
 1719
 1720 f) This subsection (f) corresponds with 40 CFR 267.145, which USEPA has marked
 1721 "Reserved:". This statement maintains structural consistency with the
 1722 corresponding federal rules.
 1723
 1724 g) This subsection (g) corresponds with 40 CFR 267.146, which USEPA has marked
 1725 "Reserved:". This statement maintains structural consistency with the
 1726 corresponding federal rules.
 1727
 1728 h) Liability requirements.
 1729
 1730 1) Coverage for sudden accidental occurrences. The owner or operator of a
 1731 hazardous waste treatment or storage facility, or a group of such facilities,
 1732 must demonstrate financial responsibility for bodily injury and property
 1733 damage to third parties caused by sudden accidental occurrences arising
 1734 from operations of the facility or group of facilities. The owner or
 1735 operator must have and maintain liability coverage for sudden accidental
 1736 occurrences in the amount of at least \$1 million per occurrence with an
 1737 annual aggregate of at least \$2 million, exclusive of legal defense costs.
 1738 This liability coverage may be demonstrated as specified in
 1739 subsection (h)(1)(A) through (h)(1)(G) of this Section:
 1740
 1741 A) Trust fund for liability coverage. The owner or operator may meet
 1742 the requirements of this subsection (h) by obtaining a trust fund for
 1743 liability coverage as specified in 35 Ill. Adm. Code 724.247(j).
 1744
 1745 B) Surety bond for liability coverage. The owner or operator may
 1746 meet the requirements of this subsection (h) by obtaining a surety
 1747 bond for liability coverage as specified in 35 Ill. Adm. Code
 1748 724.247(i).
 1749
 1750 C) Letter of credit for liability coverage. The owner or operator may
 1751 meet the requirements of this subsection (h) by obtaining a letter of
 1752 credit for liability coverage as specified in 35 Ill. Adm. Code
 1753 724.247(h).
 1754
 1755 D) Insurance for liability coverage. The owner or operator may meet
 1756 the requirements of this subsection (h) by obtaining liability
 1757 insurance as specified in 35 Ill. Adm. Code 724.247(a)(1).
 1758
 1759 E) Financial test for liability coverage. The owner or operator may
 1760 meet the requirements of this subsection (h) by passing a financial

1761 test as specified in subsection (h)(6) ~~of this Section.~~

1762
1763 F) Guarantee for liability coverage. The owner or operator may meet
1764 the requirements of this subsection (h) by obtaining a guarantee as
1765 specified in subsection (h)(7) ~~of this Section.~~

1766
1767 G) Combination of mechanisms. The owner or operator may
1768 demonstrate the required liability coverage through the use of
1769 combinations of mechanisms as allowed by 35 Ill. Adm. Code
1770 724.247(a)(6).

1771
1772 H) An owner or operator must notify the Agency in writing within 30
1773 days whenever either of the following occurs:

1774
1775 i) A claim results in a reduction in the amount of financial
1776 assurance for liability coverage provided by a financial
1777 instrument authorized in subsections (h)(1)(A) through
1778 (h)(1)(G) ~~of this Section;~~ or

1779
1780 ii) A Certification of Valid Claim for bodily injury or property
1781 damages caused by a sudden accidental occurrence arising
1782 from the operation of a hazardous waste treatment, storage,
1783 or disposal facility is entered between the owner or
1784 operator and third-party claimant for liability coverage
1785 pursuant to subsections (h)(1)(A) through (h)(1)(G) ~~of this~~
1786 ~~Section;~~ or

1787
1788 iii) A final court order establishing a judgment for bodily
1789 injury or property damage caused by a sudden accidental
1790 occurrence arising from the operation of a hazardous waste
1791 treatment, storage, or disposal facility is issued against the
1792 owner or operator or an instrument that is providing
1793 financial assurance for liability coverage pursuant to
1794 subsections (h)(1)(A) through (h)(1)(G) ~~of this Section.~~

1795
1796 2) This subsection (h)(2) corresponds with 40 CFR 267.147(b), which
1797 USEPA has marked "Reserved-". This statement maintains structural
1798 consistency with the corresponding federal rules.

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1800 3) This subsection (h)(3) corresponds with 40 CFR 267.147(c), which
1801 USEPA has marked "Reserved-". This statement maintains structural
1802 consistency with the corresponding federal rules.

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- 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.
 - 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.

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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 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 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 (2017)(2013).

- 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 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 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 (2017)(2013).

- 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

1933 requirements, the owner or operator will be in compliance with the
 1934 requirements of subsection (d) or (h) ~~of this Section~~ if USEPA Region 5
 1935 determines that the State's assumption of responsibility is at least
 1936 equivalent to the financial mechanisms specified in this Section. USEPA
 1937 has stated that USEPA Region 5 will evaluate the equivalency of State
 1938 guarantees principally in terms of the following: the certainty of the
 1939 availability of funds for the required closure care activities or liability
 1940 coverage; and the amount of funds that will be made available. USEPA
 1941 has stated that USEPA Region 5 may also consider other factors as it
 1942 deems appropriate. The facility owner or operator must submit to USEPA
 1943 Region 5 a letter from the State describing the nature of the State's
 1944 assumption of responsibility together with a letter from the owner or
 1945 operator requesting that the State's assumption of responsibility be
 1946 considered acceptable for meeting the requirements of this Section. The
 1947 letter from the State must include, or have attached to it, the following
 1948 information: the facility's USEPA identification number, the facility name
 1949 and address, and the amount of funds for closure care or liability coverage
 1950 that are guaranteed by the State. USEPA has stated that USEPA Region 5
 1951 will notify the owner or operator of its determination regarding the
 1952 acceptability of the State's guarantee in lieu of financial mechanisms
 1953 specified in this Section. USEPA has stated that USEPA Region 5 may
 1954 require the owner or operator to submit additional information as is
 1955 deemed necessary to make this determination. Pending this determination,
 1956 the owner or operator will be deemed to be in compliance with the
 1957 requirements of subsection (d) or (h) ~~of this Section~~, as applicable.
 1958

- 1959 2) If a State's assumption of responsibility is found acceptable as specified in
- 1960 subsection (k)(1) of this Section except for the amount of funds available,
- 1961 the owner or operator may satisfy the requirements of this Section by use
- 1962 of both the State's assurance and additional financial mechanisms as
- 1963 specified in this Section. The amount of funds available through the State
- 1964 and federal mechanisms must at least equal the amount required by this
- 1965 Section.
- 1966

1967 BOARD NOTE: Subsection (k) ~~of this Section~~ is derived from 40 CFR 267.150
 1968 (2017) ~~(2013)~~.

- 1969
- 1970 1) Wording of the instruments.
- 1971

- 1972 1) Forms for using the corporate financial test to demonstrate financial
- 1973 assurance for closure. The chief financial officer of an owner or operator
- 1974 of a facility with a RCRA standardized permit who uses a financial test to
- 1975 demonstrate financial assurance for that facility must complete a letter as

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~~specified in subsection (d)(6) of this Section. The letter must be worded as designated by the Agency pursuant to subsection (1)(3) of this Section.~~

- 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 designated by the Agency pursuant to subsection (1)(3) ~~of this Section~~.
- 3) The Agency must designate standardized forms based on 40 CFR 264.151 and 40 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 ~~(2017)~~(2013).

- 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
 - 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:

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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 owner's or operator'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) (2017)(2013). 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 owner's or operator's chief financial officer that provides the following information:

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)

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as ~~subsection~~ 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 must 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

2105 comparison, and the reasons for any differences.
2106

2107 D) If the chief financial officer's letter provides a demonstration that
2108 the firm has assured for environmental obligations as provided in
2109 subsection (m)(2)(B) ~~of this Section~~, then the letter must include a
2110 report from the independent certified public accountant that
2111 verifies that all of the environmental obligations covered by a
2112 financial test have been recognized as liabilities on the audited
2113 financial statements, how these obligations have been measured
2114 and reported, and that the tangible net worth of the firm is at least
2115 \$10 million plus the amount of any guarantees provided.
2116

2117 E) Contents of the letter signed by the chief financial officer (for the
2118 purposes of subsection (n)(1)(A)(i) ~~of this Section~~):
2119

2120 i) The liability, closure, post-closure and corrective action
2121 cost estimates required for hazardous waste treatment,
2122 storage, and disposal facilities pursuant to the applicable
2123 provisions of 35 Ill. Adm. Code 724.201, 724.242, 724.244,
2124 724.247, 725.242, 725.244, and 725.247;
2125

2126 ii) The cost estimates required for municipal solid waste
2127 management facilities pursuant to the applicable provisions
2128 of Subpart G of 35 Ill. Adm. Code 811;
2129

2130 iii) The current plugging cost estimates required for UIC
2131 facilities pursuant to 35 Ill. Adm. Code 704.212;
2132

2133 iv) The federally required cost estimates required for
2134 petroleum underground storage tank facilities pursuant to
2135 40 CFR 280.93;
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2137 v) The federally required cost estimates required for PCB
2138 storage facilities pursuant to 40 CFR 761.65;
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2140 vi) Any federally required financial assurance required by or as
2141 part of an action undertaken pursuant to the Comprehensive
2142 Environmental Response, Compensation, and Liability Act
2143 (42 USC 9601 et seq.); and
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2145 vii) Any other environmental obligations that are assured
2146 through a financial test.
2147

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) ~~(2017)(2013)~~. 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's 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:
 - 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 of the owner's or operator's fiscal year for which the year-end financial data show that the owner or operator

2191 no longer meets the requirements of this subsection (n) and
 2192 subsections (d), (m), and (o) ~~of this Section~~; and

2193
 2194 B) It must provide alternative financial assurance within 120 days
 2195 after the end of such fiscal year.

2196
 2197 6) The Agency may, based on a reasonable belief that the owner or operator
 2198 may no longer meet the requirements of subsection (m) ~~of this Section~~,
 2199 require at any time the owner or operator to provide reports of its financial
 2200 condition in addition to or including current financial test documentation
 2201 as specified in this subsection (n). If the Agency finds that the owner or
 2202 operator no longer meets the requirements of subsection (m) ~~of this~~
 2203 ~~Section~~, the owner or operator must provide alternate financial assurance
 2204 that meets the requirements of subsection (d) ~~of this Section~~.

2205
 2206 BOARD NOTE: Subsection (n) ~~of this Section~~ is derived from 40 CFR
 2207 267.143(f)(2) ~~(2017)~~(2013). The Board moved the corresponding federal
 2208 provision to comport with Illinois Administrative Code indent level codification
 2209 requirements. The Board intends that any citation to subsection (d), (d)(6), or
 2210 (d)(6)(B) ~~of this Section~~ also include this added subsection (n), as applicable.

2211
 2212 o) The terms of the guarantee for using the corporate guarantee to demonstrate
 2213 financial assurance for closure must provide as follows:

2214
 2215 1) If the facility owner or operator fails to perform closure at a facility
 2216 covered by the guarantee, the guarantor will accomplish the following:

2217
 2218 A) It will perform, or pay a third party to perform closure
 2219 (performance guarantee); or

2220
 2221 B) It will establish a fully funded trust fund as specified in subsection
 2222 (d)(1) ~~of this Section~~ in the name of the owner or operator
 2223 (payment guarantee).

2224
 2225 2) The guarantee will remain in force for as long as the facility owner or
 2226 operator must comply with the applicable financial assurance requirements
 2227 of this Section unless the guarantor sends prior notice of cancellation by
 2228 certified mail to the owner or operator and to the Agency. Cancellation
 2229 may not occur, however, during the 120 days beginning on the date of
 2230 receipt of the notice of cancellation by both the owner or operator and the
 2231 Agency as evidenced by the return receipts.

2232
 2233 3) If notice of cancellation is given, the facility owner or operator must,

2234 within 90 days following receipt of the cancellation notice by the owner or
 2235 operator and the Agency, obtain alternate financial assurance, and submit
 2236 documentation for that alternate financial assurance to the Agency. If the
 2237 owner or operator fails to provide alternate financial assurance and obtain
 2238 the written approval of such alternative assurance from the Agency within
 2239 the 90-day period, the guarantor must provide that alternate assurance in
 2240 the name of the owner or operator and submit the necessary
 2241 documentation for the alternative assurance to the Agency within 120 days
 2242 after the cancellation notice.
 2243

2244 BOARD NOTE: Subsection (o) of this Section is derived from 40 CFR
 2245 267.143(g)(3) (2017)(2013). The Board moved the corresponding federal
 2246 provision to comport with Illinois Administrative Code indent level codification
 2247 requirements. The Board intends that any citation to subsection (d), (d)(7), or
 2248 (d)(7)(C) of this Section also include this added subsection (o), as applicable.
 2249

2250 p) Recordkeeping and reporting requirements.

2251
 2252 1) The owner or operator must submit the following items to the Agency:
 2253

2254 A) A letter signed by the owner's or operator's chief financial officer
 2255 that provides evidence demonstrating that the firm meets the
 2256 conditions of subsections (h)(6)(A)(i) and (h)(6)(A)(ii) of this
 2257 Section. If the firm is providing only liability coverage through a
 2258 financial test for a facility or facilities with a permit pursuant to
 2259 this Part 727, the letter should use the wording in subsection (l)(2)
 2260 of this Section. If the firm is providing only liability coverage
 2261 through a financial test for facilities regulated pursuant to this Part
 2262 727, it should use the letter designated by the Agency pursuant to
 2263 subsection (l)(3) of this Section. If the firm is providing liability
 2264 coverage through a financial test for a facility or facilities with a
 2265 permit pursuant to this Part 727, and it assures closure costs or any
 2266 other environmental obligations through a financial test, it must
 2267 use the letter in subsection (l)(1) of this Section for the facilities
 2268 issued a permit pursuant to this Part 727.
 2269

2270 B) A copy of the independent certified public accountant's unqualified
 2271 opinion of the owner's or operator's financial statements for the
 2272 latest completed fiscal year. To be eligible to use the financial test,
 2273 the owner's or operator's financial statements must receive an
 2274 unqualified opinion from the independent certified public
 2275 accountant. An adverse opinion, disclaimer of opinion, or other
 2276 qualified opinion will be cause for disallowance, with the potential

- 2277 exception for qualified opinions provided in the next sentence.
 2278 The Agency may evaluate qualified opinions on a case-by-case
 2279 basis and allow use of the financial test in cases where the Agency
 2280 deems that the matters that form the basis for the qualification are
 2281 insufficient to warrant disallowance of the test. If the Agency does
 2282 not allow use of the test, the owner or operator must provide
 2283 alternate financial assurance that meets the requirements of this
 2284 subsection (h) within 30 days after the notification of disallowance.
 2285
- 2286 C) If the chief financial officer's letter providing evidence of financial
 2287 assurance includes financial data showing that the owner or
 2288 operator satisfies subsections (h)(6)(A)(i) and (h)(6)(A)(ii) ~~of this~~
 2289 ~~Section~~ that are different from data in the audited financial
 2290 statements referred to in subsection (p)(1)(B) ~~of this Section~~ or any
 2291 other audited financial statement or data filed with the SEC, then a
 2292 special report from the owner's or operator's independent certified
 2293 public accountant to the owner or operator is required. The special
 2294 report must be based upon an agreed upon procedures engagement
 2295 in accordance with professional auditing standards and must
 2296 describe the procedures performed in comparing the data in the
 2297 chief financial officer's letter derived from the independently
 2298 audited, year-end financial statements for the latest fiscal year with
 2299 the amounts in such financial statements, the findings of that
 2300 comparison, and the reasons for any differences.
 2301
- 2302 2) The owner or operator of a new facility must submit the items specified in
 2303 subsection (p)(1) ~~of this Section~~ to the Agency at least 60 days before
 2304 placing waste in the facility.
 2305
- 2306 3) After the initial submission of items specified in subsection (p)(1) ~~of this~~
 2307 ~~Section~~, the facility owner or operator must send updated information to
 2308 the Agency within 90 days following the close of the owner's or operator's
 2309 fiscal year. The Agency may provide up to an additional 45 days for an
 2310 owner or operator who can demonstrate that 90 days is insufficient time to
 2311 acquire audited financial statements. The updated information must
 2312 consist of all items specified in subsection (p)(1) ~~of this Section~~.
 2313
- 2314 4) The owner or operator is no longer required to submit the items specified
 2315 in this subsection (p) or comply with the requirements of subsection (h)(6)
 2316 ~~of this Section~~ when either of the following occurs:
 2317
- 2318 A) The facility owner or operator substitutes alternate financial
 2319 assurance as specified in subsection (h) ~~of this Section~~ that is not

2320 subject to these recordkeeping and reporting requirements; or
 2321

2322 B) The Agency releases the facility owner or operator from the
 2323 requirements of subsection (h) ~~of this Section~~ in accordance with
 2324 subsection (d)(10) ~~of this Section~~.
 2325

2326 5) An owner or operator that no longer meets the requirements of subsection
 2327 (h)(6)(A) ~~of this Section~~ cannot use the financial test to demonstrate
 2328 financial assurance. An owner or operator who no longer meets the
 2329 requirements of subsection (h)(6)(A) ~~of this Section~~, must do the
 2330 following:
 2331

2332 A) Send notice to the Agency of intent to establish alternate financial
 2333 assurance as specified in this section. The facility owner or
 2334 operator must send this notice by certified mail within 90 days
 2335 following the close of the owner's or operator's fiscal year for
 2336 which the year-end financial data show that the owner or operator
 2337 no longer meets the requirements of this Section.
 2338

2339 B) Provide alternative financial assurance within 120 days after the
 2340 end of that fiscal year.
 2341

2342 6) The Agency may, based on a reasonable belief that the owner or operator
 2343 may no longer meet the requirements of subsection (h)(6)(A) ~~of this~~
 2344 ~~Section~~, require at any time the owner or operator to provide reports of its
 2345 financial condition in addition to or including current financial test
 2346 documentation as specified in this subsection (p) ~~of this Section~~. If the
 2347 Agency finds that the owner or operator no longer meets the requirements
 2348 of subsection (h)(6)(A) ~~of this Section~~, the owner or operator must provide
 2349 alternate financial assurance that meets the requirements of subsection (h)
 2350 ~~of this Section~~.
 2351

2352 BOARD NOTE: Subsection (p) ~~of this Section~~ is derived from 40 CFR
 2353 267.147(f)(2) (2017)(2013). The Board moved the corresponding federal
 2354 provision to comport with Illinois Administrative Code indent level codification
 2355 requirements. The Board intends that any citation to subsection (h), (h)(6), or
 2356 (h)(6)(B) ~~of this Section~~ also include this added subsection (p), as applicable.
 2357

2358 q) Foreign corporations.
 2359

2360 1) The guarantor must execute the guarantee in Illinois. The guarantee must
 2361 be accompanied by a letter signed by the guarantor that states as follows:
 2362

- 2363 A) The guarantee was signed in Illinois by an authorized agent of the
2364 guarantor;
2365
2366 B) The guarantee is governed by Illinois law; and
2367
2368 C) The name and address of the guarantor's registered agent for
2369 service of process.
2370
2371 2) The guarantor must have a registered agent pursuant to Section 5.05 of the
2372 Business Corporation Act of 1983 [805 ILCS 5/5.05] or Section 105.05 of
2373 the General Not-for-Profit Corporation Act of 1986 [805 ILCS
2374 105/105.05].
2375

2376 BOARD NOTE: Subsection (q) ~~of this Section~~ is derived from 40 CFR
2377 267.147(g)(2) (2017)(2013). The Board moved the corresponding federal
2378 provision to comport with Illinois Administrative Code indent level codification
2379 requirements. The Board intends that any citation to subsection (h), (h)(7), or
2380 (h)(7)(B) ~~of this Section~~ also ~~includes~~ include this added subsection (q), as
2381 applicable. The text of 40 CFR 267.147(g)(2) is substantially identical to that of
2382 40 CFR 264.147(g)(2). The Board has substituted the language of 35 Ill. Adm.
2383 Code 724.247(g)(2), which corresponds with 40 CFR 264.147(g)(2), for that of 40
2384 CFR 267.147(g)(2).
2385

2386 (Source: Amended at 42 Ill. Reg. _____, effective _____)
2387

2388 **Section 727.270 Use and Management of Containers**
2389

- 2390 a) Applicability of this Section. This Section applies to the owner or operator of a
2391 facility that treats or stores hazardous waste in containers under a RCRA
2392 standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as
2393 provided in Section 727.100(a)(2).
2394

2395 BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.170
2396 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
2397

- 2398 b) Standards applicable to containers. Standards apply to the condition of
2399 containers, to the compatibility of waste with containers, and to the management
2400 of containers holding hazardous waste.
2401

- 2402 1) Condition of containers. If a container holding hazardous waste is not in
2403 good condition (for example, it exhibits severe rusting or apparent
2404 structural defects) or if it begins to leak, the facility owner or operator
2405 must undertake either of the following actions:

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- A) It must transfer the hazardous waste from the defective container to a container that is in good condition; or
 - B) It must manage the waste in some other way that complies with the requirements of this Part.
- 2) Compatibility of waste with containers. To ensure that the ability of the container to contain the waste is not impaired, the facility owner or operator must use a container made of or lined with materials that are compatible and will not react with the hazardous waste to be stored.
- 3) Management of containers.
- A) The facility owner or operator must always keep a container holding hazardous waste closed during storage, except when it adds or removes waste.
 - B) The facility owner or operator must never open, handle, or store a container holding hazardous waste in a manner that may rupture the container or cause it to leak.

2428 BOARD NOTE: Subsection (b) of this Section is derived from 40 CFR 267.171
2429 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

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- c) Inspection requirements. At least weekly, the facility owner or operator must inspect areas where it stores containers, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

2436 BOARD NOTE: Subsection (c) of this Section is derived from 40 CFR 267.172
2437 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

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- d) Standards applicable to the container storage areas.
 - 1) The facility owner or operator must design and operate a containment system for its container storage areas according to the requirements in subsection (d)(2) of this Section, except as otherwise provided by subsection (d)(3) of this Section.
 - 2) The design and operating requirements for a containment system are the following:

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- A) A base must underlie the containers that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;
 - B) The base must be sloped, or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;
 - C) The containment system must have sufficient capacity to contain 10 percent of the volume of all containers placed in it, or the volume of the largest container, whichever is greater. This requirement does not apply to containers that do not contain free liquids;
 - D) The owner or operator must prevent run-on into the containment system, unless the collection system has sufficient excess capacity to contain the liquid, in addition to that required by subsection (d)(2)(C) of this Section; and
 - E) The owner or operator must remove any spilled or leaked waste and accumulated precipitation from the sump or collection area as promptly as is necessary to prevent overflow of the collection system.
- 3) Except as provided in subsection (d)(4) of this Section, the owner or operator does not need a containment system, as defined in subsection (d)(2) of this Section, for storage areas that store containers holding only wastes with no free liquids if either of the following conditions are fulfilled:
- A) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or
 - B) The containers are elevated or are otherwise protected from contact with accumulated liquid.
- 4) The facility owner or operator must have a containment system defined by subsection (d)(2) of this Section for storage areas that store containers holding F020, F021, F022, F023, F026, and F027 wastes, even if the wastes do not contain free liquids.

2492
2493 BOARD NOTE: Subsection (d) of this Section is derived from 40 CFR 267.173
2494 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
2495

2496 e) Special requirements for ignitable or reactive waste. The facility owner or
2497 operator must locate containers holding ignitable or reactive waste at least 15
2498 meters (50 feet) from its facility property line. The owner or operator must also
2499 follow the general requirements for ignitable or reactive wastes that are specified
2500 in Section 727.110(h)(1).
2501

2502 BOARD NOTE: Subsection (e) of this Section is derived from 40 CFR 267.174
2503 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
2504

2505 f) Special requirements for incompatible wastes.
2506

2507 1) The facility owner or operator must not place incompatible wastes or
2508 incompatible wastes and materials (see appendix V to 40 CFR 264,
2509 incorporated by reference in 35 Ill. Adm. Code 720.111(b), for examples)
2510 in the same container, unless it complies with Section 727.110(h)(2).
2511

2512 2) The facility owner or operator must not place hazardous waste in an
2513 unwashed container that previously held an incompatible waste or
2514 material.
2515

2516 3) The facility owner or operator must separate a storage container holding a
2517 hazardous waste that is incompatible with any waste or with other
2518 materials stored nearby in other containers, piles, open tanks, or surface
2519 impoundments from the other materials, or protect the containers by
2520 means of a dike, berm, wall, or other device.
2521

2522 BOARD NOTE: Subsection (f) of this Section is derived from 40 CFR 267.175
2523 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
2524

2525 g) Requirements for stopping the use of containers. The facility owner or operator
2526 must remove all hazardous waste and hazardous waste residues from the
2527 containment system. The owner or operator must decontaminate or remove
2528 remaining containers, liners, bases, and soil containing, or contaminated with,
2529 hazardous waste or hazardous waste residues.
2530

2531 BOARD NOTE: Subsection (g) of this Section is derived from 40 CFR 267.176
2532 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
2533

2534 h) Air emission standards. The facility owner or operator must manage all

2535 hazardous waste placed in a container according to the requirements of Subparts
2536 AA, BB, and CC of 35 Ill. Adm. Code 724. Under a RCRA standardized permit,
2537 the following control devices are permissible: a thermal vapor incinerator, a
2538 catalytic vapor incinerator, a flame, a boiler, a process heater, a condenser, or a
2539 carbon absorption unit.

2540
2541 BOARD NOTE: Subsection (h) of this Section is derived from 40 CFR 267.177
2542 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

2543
2544 (Source: Amended at 42 Ill. Reg. _____, effective _____)
2545

2546 **Section 727.290 Tank Systems**
2547

2548 a) Applicability of this Section. This Section applies to the owner or operator of a
2549 facility that treats or stores hazardous waste in above-ground or on-ground tanks
2550 under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code
2551 703, except as provided in Section 727.100(a)(2).
2552

2553 1) A facility owner or operator does not have to meet the secondary
2554 containment requirements in subsection (f) if its tank systems do not
2555 contain free liquids and are situated inside a building with an impermeable
2556 floor. The owner or operator must demonstrate the absence or presence of
2557 free liquids in the stored or treated waste, using Method 9095B (Paint
2558 Filter Liquids Test) as described in "Test Methods for Evaluating Solid
2559 Waste, Physical/Chemical Methods," USEPA Publication SW-846,
2560 incorporated by reference in 35 Ill. Adm. Code 720.111(a).
2561

2562 2) The facility owner or operator does not have to meet the secondary
2563 containment requirements of subsection (f)(1) if its tank system, including
2564 sumps, as defined in 35 Ill. Adm. Code 720.110, is part of a secondary
2565 containment system to collect or contain releases of hazardous wastes.
2566

2567 BOARD NOTE: Subsection (a) is derived from 40 CFR 267.190 (2017)(2015).
2568

2569 b) Required Design and Construction Standards for New Tank Systems or
2570 Components. The facility owner or operator must ensure that the foundation,
2571 structural support, seams, connections, and pressure controls (if applicable) are
2572 adequately designed and that the tank system has sufficient structural strength,
2573 compatibility with the wastes to be stored or treated, and corrosion protection to
2574 ensure that it will not collapse, rupture, or fail. The owner or operator must obtain
2575 a written assessment, reviewed and certified by an independent, qualified
2576 registered professional engineer, following 35 Ill. Adm. Code 702.126(d),
2577 attesting that the tank system has sufficient structural integrity and is acceptable

2578 for the storing and treating of hazardous waste. This assessment must include, at
2579 a minimum, the following information:

- 2580
- 2581 1) Design standards for the construction of tanks or the ancillary equipment.
 - 2582
 - 2583 2) Hazardous characteristics of the wastes to be handled.
 - 2584
 - 2585 3) For new tank systems or components in which the external shell of a metal
2586 tank or any external metal component of the tank system will be in contact
2587 with the soil or with water, a determination by a corrosion expert of the
2588 following:
 - 2589
 - 2590 A) Factors affecting the potential for corrosion, such as the following:
 - 2591
 - 2592 i) Soil moisture content;
 - 2593
 - 2594 ii) Soil pH;
 - 2595
 - 2596 iii) Soil sulfides level;
 - 2597
 - 2598 iv) Soil resistivity;
 - 2599
 - 2600 v) Structure to soil potential;
 - 2601
 - 2602 vi) Existence of stray electric current; and
 - 2603
 - 2604 vii) Existing corrosion-protection measures (for example,
2605 coating, cathodic protection, etc.).
 - 2606
 - 2607 B) The type and degree of external corrosion protection needed to
2608 ensure the integrity of the tank system during the use of the tank
2609 system or component, consisting of one or more of the following:
 - 2610
 - 2611 i) Corrosion-resistant materials of construction (such as
2612 special alloys, fiberglass reinforced plastic, etc.);
 - 2613
 - 2614 ii) Corrosion-resistant coating (such as epoxy, fiberglass, etc.)
2615 with cathodic protection (for example, impressed current or
2616 sacrificial anodes); and
 - 2617
 - 2618 iii) Electrical isolation devices (such as insulating joints,
2619 flanges, etc.).
 - 2620

- 2621 4) Design considerations to ensure that the following will occur:
2622
2623 A) Tank foundations will maintain the load of a full tank;
2624
2625 B) Tank systems will be anchored to prevent flotation or dislodgment
2626 where the tank system is placed in a saturated zone, or is located
2627 within a seismic fault zone subject to the standards of Section
2628 727.110(i)(1); and
2629
2630 C) Tank systems will withstand the effects of frost heave.
2631

2632 BOARD NOTE: Subsection (b) is derived from 40 CFR 267.191 (2017)(~~2015~~).
2633

2634 c) Handling and Inspection Procedures During Installation of New Tank Systems.
2635

- 2636 1) The facility owner or operator must ensure that it follows proper handling
2637 procedures to prevent damage to a new tank system during installation.
2638 Before placing a new tank system or component in use, an independent,
2639 qualified installation inspector or an independent, qualified, registered
2640 professional engineer, either of whom is trained and experienced in the
2641 proper installation of tank systems or components, must inspect the system
2642 for the presence of any of the following items:
2643
2644 A) Weld breaks;
2645
2646 B) Punctures;
2647
2648 C) Scrapes of protective coatings;
2649
2650 D) Cracks;
2651
2652 E) Corrosion; or
2653
2654 F) Other structural damage or inadequate construction or installation.
2655
2656 2) The facility owner or operator must remedy all discrepancies before the
2657 tank system is placed in use.
2658

2659 BOARD NOTE: Subsection (c) is derived from 40 CFR 267.192 (2017)(~~2015~~).
2660

- 2661 d) Testing Requirements. The facility owner or operator must test all new tanks and
2662 ancillary equipment for tightness before you place them in use. If the owner or
2663 operator finds a tank system that is not tight, it must perform all repairs necessary

2664 to remedy the leaks in the system before it covers, encloses, or places the tank
2665 system into use.

2666
2667 BOARD NOTE: Subsection (d) is derived from 40 CFR 267.193 (2017)~~(2015)~~.
2668

2669 e) Installation Requirements.
2670

2671 1) The facility owner or operator must support and protect ancillary
2672 equipment against physical damage and excessive stress due to settlement,
2673 vibration, expansion, or contraction.
2674

2675 2) The facility owner or operator must provide the type and degree of
2676 corrosion protection recommended by an independent corrosion expert,
2677 based on the information provided pursuant to subsection (b)(3), to ensure
2678 the integrity of the tank system during use of the tank system. An
2679 independent corrosion expert must supervise the installation of a corrosion
2680 protection system that is field fabricated to ensure proper installation.
2681

2682 3) The facility owner or operator must obtain, and keep at the facility, written
2683 statements by those persons required to certify the design of the tank
2684 system and to supervise the installation of the tank system as required in
2685 subsections (c), (d), (e)(1), and (e)(2). The written statement must attest
2686 that the tank system was properly designed and installed and that the
2687 owner or operator made repairs pursuant to subsections (c) and (d). These
2688 written statements must also include the certification statement as required
2689 in 35 Ill. Adm. Code 702.126(d).
2690

2691 BOARD NOTE: Subsection (e) is derived from 40 CFR 267.194 (2017)~~(2015)~~.
2692

2693 f) Secondary Containment Requirements. To prevent the release of hazardous waste
2694 or hazardous constituents to the environment, the owner or operator must provide
2695 secondary containment that meets the requirements of this subsection (f) for all
2696 new and existing tank systems.
2697

2698 1) Secondary containment systems must meet both of the following
2699 requirements:
2700

2701 A) It must be designed, installed, and operated to prevent any
2702 migration of wastes or accumulated liquid out of the system to any
2703 soil, groundwater, or surface water at any time during the use of
2704 the tank system; and
2705

2706 B) It must be capable of detecting and collecting releases and

2707 accumulated liquids until the collected material is removed.
2708

- 2709 2) To meet the requirements of subsection (f)(1), secondary containment
2710 systems must meet all of the following minimum requirements:
2711
- 2712 A) It must be constructed of or lined with materials that are
2713 compatible with the wastes to be placed in the tank system and
2714 must have sufficient strength and thickness to prevent failure
2715 owing to pressure gradients (including static head and external
2716 hydrological forces), physical contact with the waste to which it is
2717 exposed, climatic conditions, and the stress of daily operation
2718 (including stresses from nearby vehicular traffic);
2719
 - 2720 B) It must be placed on a foundation or base capable of providing
2721 support to the secondary containment system, resistance to
2722 pressure gradients above and below the system, and capable of
2723 preventing failure due to settlement, compression, or uplift;
2724
 - 2725 C) It must be provided with a leak-detection system that is designed
2726 and operated so that it will detect the failure of either the primary
2727 or secondary containment structure or the presence of any release
2728 of hazardous waste or accumulated liquid in the secondary
2729 containment system within 24 hours; and
2730
 - 2731 D) It must be sloped or otherwise designed or operated to drain and
2732 remove liquids resulting from leaks, spills, or precipitation. The
2733 facility owner or operator must remove spilled or leaked waste and
2734 accumulated precipitation from the secondary containment system
2735 within 24 hours, or as promptly as possible, to prevent harm to
2736 human health and the environment.
2737

2738 BOARD NOTE: Subsection (f) is derived from 40 CFR 267.195 (2017)~~(2015)~~.
2739

2740 g) Required Devices for Secondary Containment and Their Design, Operating, and
2741 Installation Requirements.
2742

- 2743 1) Secondary containment for tanks must include one or more of the
2744 following features:
2745
- 2746 A) A liner (external to the tank);
2747
 - 2748 B) A double-walled tank; and
2749

- 2750 C) An equivalent device; the owner or operator must maintain
 2751 documentation of equivalency at the facility.
 2752
 2753 2) An external liner system must fulfill the following requirements:
 2754
 2755 A) It must be designed or operated to contain 100 percent of the
 2756 capacity of the largest tank within its boundary;
 2757
 2758 B) It must be designed or operated to prevent run-on or infiltration of
 2759 precipitation into the secondary containment system unless the
 2760 collection system has sufficient excess capacity to contain run-on
 2761 or infiltration. The additional capacity must be sufficient to
 2762 contain precipitation from a 25-year, 24-hour rainfall event;
 2763
 2764 C) It must be free of cracks or gaps; and
 2765
 2766 D) It must be designed and installed to surround the tank completely
 2767 and to cover all surrounding earth likely to come into contact with
 2768 the waste if the waste is released from the tanks (that is, it must be
 2769 capable of preventing lateral as well as vertical migration of the
 2770 waste).
 2771
 2772 3) A double-walled tank must fulfill the following requirements:
 2773
 2774 A) It must be designed as an integral structure (that is, it must be an
 2775 inner tank completely enveloped within an outer shell) so that any
 2776 release from the inner tank is contained by the outer shell;
 2777
 2778 B) It must be protected, if constructed of metal, from both corrosion
 2779 of the primary tank interior and of the external surface of the outer
 2780 shell; and
 2781
 2782 C) It must be provided with a built-in continuous leak detection
 2783 system capable of detecting a release within 24 hours.
 2784

2785 BOARD NOTE: Subsection (g) is derived from 40 CFR 267.196 (2017)(~~2015~~).
 2786

- 2787 h) Requirements for Ancillary Equipment. The facility owner or operator must
 2788 provide ancillary equipment with secondary containment (for example, trench,
 2789 jacketing, double-walled piping, etc.) that meets the requirements of subsections
 2790 (f)(1) and (f)(2), except for the following:
 2791
 2792 1) Above ground piping (exclusive of flanges, joints, valves, and other

- 2793 connections) that are visually inspected for leaks on a daily basis;
2794
2795 2) Welded flanges, welded joints, and welded connections, that are visually
2796 inspected for leaks on a daily basis;
2797
2798 3) Sealless or magnetic coupling pumps and sealless valves, that are visually
2799 inspected for leaks on a daily basis; and
2800
2801 4) Pressurized above ground piping systems with automatic shut-off devices
2802 (for example, excess flow check valves, flow metering shutdown devices,
2803 loss of pressure actuated shut-off devices, etc.) that are visually inspected
2804 for leaks on a daily basis.
2805

2806 BOARD NOTE: Subsection (h) is derived from 40 CFR 267.197 (2017)(~~2015~~).
2807

2808 i) General Operating Requirements for Tank Systems.
2809

- 2810 1) The facility owner or operator must not place hazardous wastes or
2811 treatment reagents in a tank system if the substances could cause the tank,
2812 its ancillary equipment, or the containment system to rupture, leak,
2813 corrode, or otherwise fail.
2814
2815 2) The facility owner or operator must use appropriate controls and practices
2816 to prevent spills and overflows from tank or containment systems. These
2817 include the following minimum requirements:
2818
2819 A) Spill prevention controls (for example, check valves, dry
2820 disconnect couplings, etc.);
2821
2822 B) Overfill prevention controls (for example, level sensing devices,
2823 high level alarms, automatic feed cutoff, or bypass to a standby
2824 tank, etc.); and
2825
2826 C) Sufficient freeboard in uncovered tanks to prevent overtopping by
2827 wave or wind action or by precipitation.
2828
2829 3) The facility owner or operator must comply with the requirements of
2830 subsection (k) if a leak or spill occurs in the tank system.
2831

2832 BOARD NOTE: Subsection (i) is derived from 40 CFR 267.198 (2017)(~~2015~~).
2833

2834 j) Inspection Requirements. The facility owner or operator must comply with the
2835 following requirements for scheduling, conducting, and documenting inspections:

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- 1) It must develop and follow a schedule and procedure for inspecting overfill controls;
 - 2) It must inspect the following at least once each operating day:
 - A) Aboveground portions of the tank system to detect corrosion or releases of waste;
 - B) Data gathered from monitoring and leak detection equipment (for example, pressure or temperature gauges, monitoring wells, etc.) to ensure that the tank system is being operated according to its design; and
 - C) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (for example, dikes) to detect erosion or signs of releases of hazardous waste (for example, wet spots, dead vegetation, etc.);
 - 3) It must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:
 - A) It must confirm that the cathodic protection system is operating properly within six months after initial installation and annually thereafter; and
 - B) It must inspect or test all sources of impressed current, as appropriate, at least every other month; and
 - 4) It must document, in the operating record of the facility, an inspection of those items in subsections (j)(1) through (j)(3).

2870 BOARD NOTE: Subsection (j) is derived from 40 CFR 267.199 ~~(2017)~~(2015).

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- k) Required Actions in Case of a Leak or a Spill. If there has been a leak or a spill from a tank system or secondary containment system, or if either system is unfit for use, the facility owner or operator must remove the system from service immediately, and it must satisfy the following requirements:
 - 1) It must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the

- 2879 cause of the release;
 2880
 2881 2) It must remove the waste from the tank system or secondary containment
 2882 system, as follows:
 2883
 2884 A) If the release was from the tank system, the owner or operator
 2885 must, within 24 hours after detecting the leak, remove as much of
 2886 the waste as is necessary to prevent further release of hazardous
 2887 waste to the environment and to allow inspection and repair of the
 2888 tank system to be performed; or
 2889
 2890 B) If the material released was to a secondary containment system, the
 2891 owner or operator must remove all released materials within 24
 2892 hours or as quickly as possible to prevent harm to human health
 2893 and the environment;
 2894
 2895 3) It must immediately conduct a visual inspection of the release and, based
 2896 on that inspection, undertake the following actions:
 2897
 2898 A) It must prevent further migration of the leak or spill to soils or
 2899 surface water; and
 2900
 2901 B) It must remove, and properly dispose of, any visible contamination
 2902 of the soil or surface water;
 2903
 2904 4) It must report any release to the environment, except as provided in
 2905 subsection (k)(4)(A), to the Agency within 24 hours after its detection. If
 2906 the owner or operator has reported the release to USEPA pursuant to
 2907 federal 40 CFR 302, that report will satisfy this requirement, subject to the
 2908 following exceptions:
 2909
 2910 A) The facility owner or operator does not need to report on a leak or
 2911 spill of hazardous waste if it fulfills the following conditions:
 2912
 2913 i) The spill was less than or equal to a quantity of one pound
 2914 (2.2 kg); and
 2915
 2916 ii) The facility owner or operator immediately contained and
 2917 cleaned up the spill; and
 2918
 2919 B) Within 30 days of detection of a release to the environment, the
 2920 owner or operator must submit a report to the Agency that contains
 2921 the following information:

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- i) The likely route of migration of the release;
 - ii) The characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate, etc.);
 - iii) The results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, the owner or operator must submit these data to the Agency as soon as they become available;
 - iv) The proximity to downgradient drinking water, surface water, and populated areas; and
 - v) A description of response actions taken or planned;
- 5) It must either close the system or make necessary repairs, as follows:
- A) Unless the owner or operator satisfies the requirements of subsections (k)(5)(B) and (k)(5)(C), it must close the tank system according to subsection (l);
 - B) If the cause of the release was a spill that has not damaged the integrity of the system, the owner or operator may return the system to service as soon as it removes the released waste and makes any necessary repairs; or
 - C) If the cause of the release was a leak from the primary tank system into the secondary containment system, the owner or operator must repair the system before returning the tank system to service; and
- 6) If the owner or operator has made extensive repairs to a tank system in accordance with subsection (k)(5) (for example, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel, etc.), it may not return the tank system to service unless the repair is certified by an independent, qualified, registered, professional engineer in accordance with 35 Ill. Adm. Code 702.126(d), as follows:
- A) The engineer must certify that the repaired system is capable of handling hazardous wastes without release for the intended life of the system; and

2965 B) The facility owner or operator must submit this certification to the
2966 Agency within seven days after returning the tank system to use.
2967

2968 BOARD NOTE: Subsection (k) is derived from 40 CFR 267.200 (2017)~~(2015)~~.
2969

2970 l) Requirements When the Owner or Operator Stops Operating the Tank System.
2971 When the facility owner or operator close a tank system, it must remove or
2972 decontaminate all waste residues, contaminated containment system components
2973 (liners, etc.), contaminated soils, and structures and equipment contaminated with
2974 waste, and manage them as hazardous waste, unless 35 Ill. Adm. Code 721.103(d)
2975 applies. The closure plan, closure activities, cost estimates for closure, and
2976 financial responsibility for tank systems must meet all of the requirements
2977 specified in Sections 727.210 and 727.240.
2978

2979 BOARD NOTE: Subsection (l) is derived from 40 CFR 267.201 (2017)~~(2015)~~.
2980

2981 m) Special Requirements for Ignitable or Reactive Wastes.
2982

2983 1) The facility owner or operator may not place ignitable or reactive waste in
2984 tank systems, unless any of the following three conditions are fulfilled:
2985

2986 A) The owner or operator treats, renders, or mixes the waste before or
2987 immediately after placement in the tank system so that the
2988 following is true:
2989

2990 i) The owner or operator complies with Section
2991 727.110(h)(2); and
2992

2993 ii) The resulting waste, mixture, or dissolved material no
2994 longer meets the definition of ignitable or reactive waste
2995 pursuant to 35 Ill. Adm. Code 721.121 or 721.123;
2996

2997 B) The owner or operator stores or treats the waste in such a way that
2998 it is protected from any material or conditions that may cause the
2999 waste to ignite or react; or
3000

3001 C) The facility owner or operator uses the tank system solely for
3002 emergencies.
3003

3004 2) If the facility owner or operator stores or treats ignitable or reactive waste
3005 in a tank, it must comply with the requirements for the maintenance of
3006 protective distances between the waste management area and any public
3007 ways, streets, alleys, or an adjoining property line that can be built on, as

3008 required in Tables 2-1 through 2-6 of "Flammable and Combustible
3009 Liquids Code", NFPA 30, incorporated by reference in 35 Ill. Adm. Code
3010 720.111(a)).
3011

3012 BOARD NOTE: Subsection (m) is derived from 40 CFR 267.202 (2017)(2015).
3013

3014 n) Special Requirements for Incompatible Wastes.
3015

3016 1) A facility owner or operator may not place incompatible wastes or
3017 incompatible wastes and materials in the same tank system, unless it
3018 complies with Section 727.110(h)(2).
3019

3020 2) A facility owner or operator may not place hazardous waste in a tank
3021 system that has not been decontaminated and that previously held an
3022 incompatible waste or material, unless it complies with Section
3023 727.110(h)(2).
3024

3025 BOARD NOTE: Subsection (n) is derived from 40 CFR 267.203 (2017)(2015).
3026

3027 o) Air Emission Standards. The facility owner or operator must manage all
3028 hazardous waste placed in a tank following the requirements of Subparts AA, BB,
3029 and CC of 35 Ill. Adm. Code 724. Under a RCRA standardized permit, the
3030 following control devices are permissible: a thermal vapor incinerator, a catalytic
3031 vapor incinerator, a flame, a boiler, a process heater, a condenser, or a carbon
3032 absorption unit.
3033

3034 BOARD NOTE: Subsection (o) is derived from 40 CFR 267.204 (2017)(2015).
3035

3036 (Source: Amended at 42 Ill. Reg. _____, effective _____)
3037

3038 **Section 727.900 Containment Buildings**
3039

3040 a) Applicability of this Section. This Section applies to the owner or operator of a
3041 facility that treats or stores hazardous waste in containment buildings under a
3042 RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703,
3043 except as provided in Section 727.100(a)(2). Storage or treatment in a
3044 containment building is not land disposal, as defined in 35 Ill. Adm. Code
3045 728.102, if the unit meets the requirements of subsections (b), (c), and (d) of this
3046 Section.
3047

3048 BOARD NOTE: Subsection (a) of this Section is derived from 40 CFR 267.1100
3049 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
3050

- 3051 b) Design and operating standards for containment buildings. A containment
 3052 building must comply with the design and operating standards in this subsection
 3053 (b). The Agency may consider standards established by professional
 3054 organizations generally recognized by the industry, such as the American
 3055 Concrete Institute (ACI) or the American Society of Testing Materials (ASTM),
 3056 in judging the structural integrity requirements of this subsection (b).
 3057
- 3058 1) The containment building must be completely enclosed with a floor, walls,
 3059 and a roof to prevent exposure to the elements (e.g., precipitation, wind,
 3060 runon, etc.), and to assure containment of managed wastes.
 3061
- 3062 2) The floor and containment walls of the unit, including the secondary
 3063 containment system, if required pursuant to subsection (d) ~~of this Section~~,
 3064 must be designed and constructed of manmade materials of sufficient
 3065 strength and thickness to accomplish the following:
 3066
- 3067 A) They must support themselves, the waste contents, and any
 3068 personnel and heavy equipment that operates within the unit;
 3069
- 3070 B) They must prevent failure due to any of the following causes:
 3071
- 3072 i) Pressure gradients, settlement, compression, or uplift;
 3073
- 3074 ii) Physical contact with the hazardous wastes to which they
 3075 are exposed;
 3076
- 3077 iii) Climatic conditions;
 3078
- 3079 iv) Stresses of daily operation, including the movement of
 3080 heavy equipment within the unit and contact of such
 3081 equipment with containment walls; or
 3082
- 3083 v) Collapse or other failure.
 3084
- 3085 3) All surfaces to be in contact with hazardous wastes must be chemically
 3086 compatible with those wastes.
 3087
- 3088 4) The facility owner or operator must not place incompatible hazardous
 3089 wastes or treatment reagents in the unit or its secondary containment
 3090 system if they could cause the unit or secondary containment system to
 3091 leak, corrode, or otherwise fail.
 3092
- 3093 5) A containment building must have a primary barrier designed to withstand

3094 the movement of personnel, waste, and handling equipment in the unit
3095 during the operating life of the unit and appropriate for the physical and
3096 chemical characteristics of the waste to be managed.

- 3097
- 3098 6) If appropriate to the nature of the waste management operation to take
3099 place in the unit, an exception to the structural strength requirement may
3100 be made for light-weight doors and windows that meet these criteria:
- 3101
- 3102 A) The doors and windows provide an effective barrier against
3103 fugitive dust emissions pursuant to subsection (c)(4) ~~of this~~
3104 ~~Section~~; and
- 3105
- 3106 B) The unit is designed and operated in a fashion that assures that
3107 wastes will not actually come in contact with these openings.
- 3108
- 3109 7) The facility owner or operator must inspect and record in the facility's
3110 operating record, at least once every seven days, data gathered from
3111 monitoring equipment and leak detection equipment, as well as the
3112 containment building and the area immediately surrounding the
3113 containment building to detect signs of releases of hazardous waste.
- 3114
- 3115 8) The facility owner or operator must obtain certification by a qualified
3116 registered professional engineer that the containment building design
3117 meets the requirements of subsections (b)(1) through (b)(6), (c), and (d) ~~of~~
3118 ~~this Section~~.

3119

3120 BOARD NOTE: Subsection (b) ~~of this Section~~ is derived from 40 CFR 267.1101
3121 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- 3122
- 3123 c) Other requirements for preventing releases. The facility owner or operator must
3124 use controls and practices to ensure containment of the hazardous waste within
3125 the unit and must meet the following minimum requirements:
- 3126
- 3127 1) It must maintain the primary barrier to be free of significant cracks, gaps,
3128 corrosion, or other deterioration that could cause hazardous waste to be
3129 released from the primary barrier;
- 3130
- 3131 2) It must maintain the level of the stored or treated hazardous waste within
3132 the containment walls of the unit so that the height of any containment
3133 wall is not exceeded;
- 3134
- 3135 3) It must take measures to prevent personnel or by equipment used in
3136 handling the waste from tracking hazardous waste out of the unit. The

3137 owner or operator must designate an area to decontaminate equipment,
3138 and it must collect and properly manage any rinsate; and
3139

3140 4) It must take measures to control fugitive dust emissions such that any
3141 openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions
3142 (see Method 22 of appendix A to 40 CFR 60 (Visual Determination of
3143 Fugitive Emissions from Material Sources and Smoke Emissions from
3144 Flares), incorporated by reference in 35 Ill. Adm. Code 720.111(b)). In
3145 addition, the owner or operator must operate and maintain all associated
3146 particulate collection devices (for example, fabric filter, electrostatic
3147 precipitator, etc.) with sound air pollution control practices. The owner or
3148 operator must effectively maintain this state of no visible emissions at all
3149 times during routine operating and maintenance conditions, including
3150 when vehicles and personnel are entering and exiting the unit.
3151

3152 BOARD NOTE: Subsection (c) of this Section is derived from 40 CFR 267.1102
3153 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
3154

3155 d) Additional design and operating standards when liquids are in the containment
3156 building. If a containment building will be used to manage hazardous wastes
3157 containing free liquids or treated with free liquids, as determined by the paint
3158 filter test, by a visual examination, or by other appropriate means, the facility
3159 owner or operator must include the following:
3160

3161 1) A primary barrier designed and constructed of materials to prevent the
3162 migration of hazardous constituents into the barrier (for example, a
3163 geomembrane covered by a concrete wear surface);
3164

3165 2) A liquid collection and removal system to minimize the accumulation of
3166 liquid on the primary barrier of the containment building, as follows:
3167

3168 A) The primary barrier must be sloped to drain liquids to the
3169 associated collection system; and
3170

3171 B) The facility owner or operator must collect and remove liquids and
3172 waste to minimize hydraulic head on the containment system at the
3173 earliest practicable time;
3174

3175 3) A secondary containment system, including a secondary barrier designed
3176 and constructed to prevent migration of hazardous constituents into the
3177 barrier, and a leak detection system capable of detecting failure of the
3178 primary barrier and collecting accumulated hazardous wastes and liquids
3179 at the earliest practical time, as follows:

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- A) The facility owner or operator may meet the requirements of the leak detection component of the secondary containment system by installing a system that meets the following minimum construction requirements:
 - i) It is constructed with a bottom slope of one percent or more; and
 - ii) It is constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m²/sec or more;

- B) If the facility owner or operator will be conducting treatment in the building, it must design the area in which the treatment will be conducted to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building; and

- C) The facility owner or operator must construct the secondary containment system using materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building.

BOARD NOTE: Subsection (d) of this Section is derived from 40 CFR 267.1103 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- e) Alternatives to secondary containment requirements. Notwithstanding any other provision of this Section, the Agency must, in writing, allow the use of alternatives to the requirements for secondary containment for a permitted containment building where the Agency has determined that the facility owner or operator has adequately demonstrated both of the following:
 - 1) The only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and
 - 2) The containment of managed wastes and dust suppression liquids can be assured without a secondary containment system.

BOARD NOTE: Subsection (e) of this Section is derived from 40 CFR 267.1104

(2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

f) Requirements where the containment building contains areas both with and without secondary containment. For a containment building that contains both areas that have secondary containment and areas that do not have secondary containment, the facility owner or operator must fulfill the following requirements:

- 1) It must design and operate each area in accordance with the requirements enumerated in subsections (b) through (d) of this Section;
- 2) It must take measures to prevent the release of liquids or wet materials into areas without secondary containment; and
- 3) It must maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

BOARD NOTE: Subsection (f) of this Section is derived from 40 CFR 267.1105 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

g) Requirements in the event of a release. Throughout the active life of the containment building, if the facility owner or operator detects a condition that could lead to or has caused a release of hazardous waste, it must repair the condition promptly, in accordance with the following procedures.

- 1) Upon detection of a condition that has lead to a release of hazardous waste (for example, upon detection of leakage from the primary barrier), the owner or operator must undertake each of the following actions:
 - A) It must enter a record of the discovery in the facility operating record;
 - B) It must immediately remove the portion of the containment building affected by the condition from service;
 - C) It must determine what steps it will need to take to repair the containment building, to remove any leakage from the secondary collection system, and to establish a schedule for accomplishing the cleanup and repairs; and
 - D) Within seven days after the discovery of the condition, it must notify the Agency of the condition, and within 14 working days,

3266 provide a written notice to the Agency with a description of the
 3267 steps taken to repair the containment building, and the schedule for
 3268 accomplishing the work.
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3270 2) The Agency must review the information submitted, make a determination
 3271 regarding whether the containment building must be removed from service
 3272 completely or partially until repairs and cleanup are complete, and notify
 3273 the owner or operator of the determination and the underlying rationale in
 3274 writing.
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3276 3) Upon completing all repairs and cleanup, the facility owner or operator
 3277 must notify the Agency in writing and provide a verification, signed by a
 3278 qualified, registered professional engineer, that the repairs and cleanup
 3279 have been completed according to the written plan submitted in
 3280 accordance with subsection (g)(1)(D) of this Section.
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3282 BOARD NOTE: Subsection (g) of this Section is derived from 40 CFR 267.1106
 3283 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
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3285 h) A containment building that can be considered secondary containment. A
 3286 containment building can serve as an acceptable secondary containment system
 3287 for tanks placed within the building if both of the following conditions are
 3288 fulfilled:
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3290 1) The containment building can serve as an external liner system for a tank
 3291 if it meets the requirements of Section 727.290(g)(2); and
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3293 2) The containment building also meets the requirements of Sections
 3294 727.290(f)(1), (f)(2)(A), and (f)(2)(B).
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3296 BOARD NOTE: Subsection (h) of this Section is derived from 40 CFR 267.1107
 3297 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).
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3299 i) Requirements when the owner or operator stops operating the containment
 3300 building. When the facility owner or operator close a containment building, it
 3301 must remove or decontaminate all waste residues, contaminated containment
 3302 system components (liners, etc.), contaminated subsoils, and structures and
 3303 equipment contaminated with waste and leachate and manage them as hazardous
 3304 waste unless 35 Ill. Adm. Code 721.103(d) applies. The closure plan, closure
 3305 activities, cost estimates for closure, and financial responsibility for containment
 3306 buildings must meet all of the requirements specified in Sections 727.210 and
 3307 727.240.
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3309 BOARD NOTE: Subsection (i) of this Section is derived from 40 CFR 267.1108
3310 ~~(2017)~~, as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

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3312 (Source: Amended at 42 Ill. Reg. _____, effective _____)