

ILLINOIS POLLUTION CONTROL BOARD
August 7, 1997

IN THE MATTER OF:)
)
RCRA SUBTITLE D UPDATE, USEPA) R97-20
REGULATIONS (July 1, 1996 through) (Identical-in-Substance - Rulemaking
December 31, 1996)) Solid Waste - Landfill

Proposed Rule. Proposal for Public Comment.

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

Pursuant to Sections 7.2 and 22.40(a) of the Environmental Protection Act (Act), 415 ILCS 5/7.2 and 22.40(a) (1996), the Board proposes to amend the Resource Conservation and Recovery Act of 1976 Subtitle D municipal solid waste landfill (RCRA Subtitle D) regulations. As discussed more fully below, the amendments incorporate revisions to the federal financial assurance requirements applicable to units of local government that own or operate municipal solid waste landfills (MSWLFs). They also incorporate a very recent federal amendment that essentially allows the states to relax certain requirements for small landfills. The amendments also follow up on the amendments adopted August 3, 1995, in RCRA Subtitle D Update, Delayed Effective Date of USEPA Financial Assurance Regulations (4-7-95) (Aug. 3, 1995), R95-13, by making further revisions in partial response to P.A. 89-200, which was effective January 1, 1996.

Section 22.40(a) provides for quick adoption of regulations that are identical-in-substance to federal RCRA Subtitle D regulations adopted by the United States Environmental Protection Agency (USEPA) to implement Sections 4004 and 4010 of the RCRA, 42 U.S.C. §§ 6944 and 6949a, and it provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA), 5 ILCS 100/5-35 and 5-40 (1996), shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal RCRA Subtitle D regulations are found at 40 CFR 258.

Section 7.2(b) of the Act requires the Board to complete its identical-in-substance rulemaking actions within one year of the date of the earliest federal amendments involved in a docket. In this docket, the earliest federal action requiring Board action was that of November 27, 1996. That means that the Board must complete its rulemaking activity in this docket prior to November 27, 1997.

FEDERAL ACTIONS CONSIDERED IN THIS RULEMAKING

This proposal includes certain federal amendments that occurred in the period of July 1, 1996 through December 31, 1996. USEPA amended its RCRA Subtitle D regulations three times during that period. The federal amendments during the period are as follows:

Federal ActionSummary

July 1, 1996
(61 Fed. Reg. 34251)

Amendments to Classification Criteria for Solid Waste Disposal Facilities. USEPA amended its RCRA Subtitle C hazardous waste rules and its RCRA Subtitle D rules at 40 CFR 257 to require that conditionally exempt small quantity generator waste be disposed in facilities that meet certain minimum criteria.

September 25, 1996
(61 Fed. Reg. 50409)

Re-Establishment of the Groundwater Monitoring Exemption for Certain Small MSWLFs. USEPA amended its RCRA Subtitle D MSWLF rules to re-establish the groundwater monitoring exemption for certain small landfills in dry or remote areas that accept less than 20 tons of waste for disposal per day.

November 27, 1996
(61 Fed. Reg. 60327)

Additional Financial Assurance Mechanisms for Local Government MSWLF Owners and Operators. USEPA amended its RCRA Subtitle D MSWLF rules to allow alternative mechanisms for demonstrating financial assurance.

In addition to the above actions that occurred in the nominal time-frame of this docket, the Board has included a very recent action that would normally come under the docket for the period of July 1 through December 31, 1997, which has not even been reserved as yet. The Board has made this inclusion because the federal action at issue allows the relaxation of certain MSWLF requirements for certain small landfills. Where possible, the Board tries to include such regulatory relief, even if it appears out of the normal sequence. The later federal action included is as follows:

July 29, 1997
(62 Fed. Reg. 40707)

Amendments That Allow the States to Relax Certain Operating Requirements for Small MSWLFs. USEPA amended its RCRA Subtitle D MSWLF rules by a direct final rule to allow the states to grant relief to certain MSWLF facilities that accept less than 20 tons of waste for disposal per day. The amendments allow the state to establish alternative requirements for daily cover, methane monitoring frequencies, infiltration layers for closure, and demonstrating financial assurance.

DISCUSSION

Conditionally Exempt Small Quantity Generator Waste Disposal Facility Standards: No Action Needed

USEPA amended its RCRA Subtitle D regulations on July 1, 1996. Those amendments essentially require a facility accepting conditionally exempt small quantity generator waste for disposal to meet certain minimum requirements. The standards do not apply if the facility is a RCRA Subtitle C hazardous waste disposal facility or a RCRA Subtitle D MSWLF. The standards include location restrictions, groundwater monitoring requirements, and corrective action requirements. Since RCRA Subtitle C hazardous waste and MSWLF facilities (under RCRA Subtitle D) are not included in the requirements, the principal facilities that the federal amendments affect are certain on-site landfills.

The Board has not included amendments based on this federal action in this proposal. We included those aspects of the federal amendments that affected the RCRA Subtitle C hazardous waste regulations in the consolidated RCRA Subtitle C hazardous waste update docket, R96-10/R97-3/ R97-5, proposed for public comment on July 24, 1997. The rest of the federal amendments affected 40 CFR 257, which is the federal criteria for classification of solid waste facilities. We have not included those requirements in the landfill rules of 35 Ill. Adm. Code 807, 810 through 815, and 817. Our identical-in-substance mandate under Section 22.40 of the Act, 415 ILCS 5/22.40, clearly focuses on the federal rules of 40 CFR 258, not 40 CFR 257 or RCRA Subtitle D. We view the 40 CFR 257 requirements as outside the scope of our mandate.

Groundwater Monitoring Exemption for Certain Small Landfills in Dry and Remote Areas: No Action Needed

USEPA acted on September 25, 1996 to re-establish the groundwater monitoring exemption for certain small landfills located in dry and remote areas. The Board does not need to take action on these federal amendments. As noted in our dismissal of reserved docket R96-9, on March 7, 1996, the Board never incorporated the exemption in adopting the original RCRA Subtitle D MSWLF amendments on September 15, 1993, in docket R93-10. The record in R93-10 indicated that there are no facilities in Illinois to which the exemptions would apply.

Financial Assurance Mechanisms for Units of Local Government: Amendments Explained

USEPA amended its regulations governing the acceptable forms of financial assurance applicable to MSWLF owners and operators on November 27, 1996. Specifically, those amendments expanded the acceptable means for local governmental entities to demonstrate financial assurance. USEPA now provides that these entities may apply a financial test for self-assurance, and that they may guarantee the costs of corrective action, closure, and/or post-closure care on behalf of an owner or operator of a MSWLF. The Board must incorporate these amendments into the Illinois landfill regulations in this docket.

Specifically, the November 27, 1996 amendments affected three federal financial assurance provisions. They amended 40 CFR 258.70(c), which sets forth the effective date for the financial assurance requirements. They amended 40 CFR 258.74, which constitutes the

substantive financial assurance mechanism requirements. USEPA essentially added subsections (f) and (h), which it had previously marked as “reserved”, and amended subsection (k). The November 27, 1996 amendments also added 40 CFR 258.75, which permits the states to allow discounting the corrective action and post-closure care cost estimates by the rate of return on risk-free investments, less inflation.

The Board has included the November 27, 1996 federal amendments in the financial assurance provisions of 35 Ill. Adm. Code 811.Subpart G. We have amended Section 811.700 to correspond with the amendments to 40 CFR 258.70(c). We added Section 811.716 to correspond with new 40 CFR 258.74(f), Section 811.717 to correspond with new 40 CFR 258.74(h), and 811.718 to correspond with new 40 CFR 258.75. The Board has also amended Section 811.707 to correspond with the amendments to 40 CFR 258.74(k).

“Good Cause” Extensions: Section 811.700

The addition of 40 CFR 258.70(c) allows the state to extend the deadline for financial assurance for a facility up to April 9, 1998. The owner or operator must demonstrate that it could not timely comply because it could not obtain financial assurance for the site by the April 9, 1997 compliance deadline. The owner or operator must also demonstrate that the lack of financial assurance would not adversely affect human health or the environment.

The Board added this extension as 35 Ill. Adm. Code 811.700(g). We chose a Sections 35 through 38 variance mechanism of the Act whereby an owner or operator may obtain an extension. The Board chose this mechanism because of the temporary nature of the allowable relief and the fact that compliance is required at the end of the allowable one-year extension period. We note that although this extension was part of the rulemaking relating to financial assurance mechanisms for local government-owned landfills, nothing in the federal language limits the relief to those entities. For this reason, the Board did not add any limiting language to the federal text.

The Use of Multiple Mechanisms: Section 811.707

As part of the local government financial assurance mechanism amendments, USEPA amended 40 CFR 258.74(k), which relates to the use of multiple mechanisms. The principal amendments are the addition of references to the new mechanisms of 40 CFR 258.74(f) and (h) and a limitation on the ability to combine mechanisms. The addition of the local government mechanisms is inherently limited to the subject matter. The addition of the limitation on combining mechanisms does not appear limited. Owners or operators may not combine mechanisms that guarantee performance with mechanisms that guarantee payment of costs.

The Board has incorporated the federal amendments on combining mechanisms into the Illinois rules. We did not add anything to the limitation on combining mechanisms that would restrict the limitation to local government financial assurance.

Allowable Mechanisms of Local Government-Owned Facilities: Sections 810.104, 811.706(a), 811.716, and 811.717

USEPA added 40 CFR 258.74(f) and (h) to allow local government owners and operators to self-assure the costs of closure, post-closure care, and corrective action and to

allow local government owners to guarantee the costs for a private operator using self-assurance. These two new provisions include several financial tests gauging the ability of the local government to guarantee the costs.

The Board incorporated these federal provisions as new Sections 811.716 and 811.717. We further amended Section 811.706(a) to reflect the additions. The Board incorporated the document “Government Accounting Standards Board Statement 18” in our central incorporations provision, Section 810.104. In adding the new provisions, the Board has substituted “unit of local government” for references to “local government”, since this is the proper designation for these entities in Illinois. We have further substituted references to the Comptroller of the State of Illinois and added references to the Governmental Account Audit Act, 50 ILCS 310 (1996), where USEPA referred to the “appropriate State agency”. Under that statute, units of local government must submit their audits to the Comptroller. The Comptroller' office can itself cause an audit of a unit of local government if the unit fails to properly submit the required audit. Our chosen usage accounts for these facts. We further split the text of 40 CFR 258.74(f)(2) into several subsections at Section 811.716(b) for greater clarity and emphasis, due to the length of that provision. In rendering 40 CFR 258.74(h) as Section 811.717, the Board has substituted the more grammatically accurate “alternative” wherever “alternate” appears in the federal text.

One area of concern to the Board in incorporating 40 CFR 258.74(f) relates to the requirements of units of local government when self-assurance is used under several programs. 40 CFR 258.74(f)(4)(ii), corresponding with Section 811.716(d), contains the requirement. USEPA lists several federal programs for which this type of financial assurance is required. Some of the programs have counterparts in Illinois, including the underground injection control (UIC) program and the RCRA Subtitle C hazardous waste program. For these programs, the Board has substituted citations to the appropriate corresponding state regulations. Others of the programs have no counterpart in Illinois, including the petroleum underground storage tank (UST) program, and the polychlorinated biphenyls (PCBs) storage rules. For these we have retained the references to the appropriate federal regulations. The Board has retained the references to the federal UST program because the Illinois UST program does not presently require or allow self-assurance by owners or operators and because USEPA has not yet approved the Illinois UST program. The Board specifically requests comments on this point.

Discounting: Section 811.718

USEPA added 40 CFR 258.75, a provision that allows the discounting of the closure, post-closure care, and corrective action cost estimates to account for the return on “risk-free” investments. The Board notes that although USEPA adopted this new provision as part of its financial assurance rules for units of local government, there is no limitation in this provision as to its use by others than those entities. The Board did not add such a limitation to the federal text.

In adapting the federal text into new Section 811.718, the Board has altered the federal text slightly. The Board used “cost estimates” in place of “costs” in the preamble, since it is the estimates and not the costs that are being discounted. We have used “professional engineer” and added a reference to Section 810.103, where that term is defined. The Board has modified the structure slightly by rendering subsections (a) through (c) as a series and subsection (d) as independent. USEPA had rendered them all as a series, and subsection (d)

appears to apply independently of the other three subsections.

Alternative Requirements for Certain Small Landfills:
Sections 811.106, 811.310, and 811.314

In our ongoing effort to become aware of federal regulatory changes that could benefit regulatory entities in Illinois, the Board has included a single federal action from outside the nominal time-frame of this docket. On July 29, 1997, USEPA amended the federal MSWLF rules to allow greater flexibility to certain small landfills. USEPA made these amendments by a direct final rule that becomes effective October 27, 1997, unless USEPA affirmatively withdraws them before that time. The amendments permit the states to allow landfills accepting less than 20 tons of municipal solid waste per day to demonstrate compliance using alternative means in certain regards. Specifically, USEPA added 40 CFR 258.21(d), so that the state could allow a small landfill to permit alternative frequencies for application of cover to daily receipts of waste; 258.23(e), to allow alternative frequencies for monitoring landfill gases; and 258.60(b)(3), to allow alternative requirements for the infiltration barrier upon final closure. The federal amendments would have the state consider the same three factors in all three instances: the “unique character of small communities,” the “climatic and hydrogeologic conditions”, and that the alternative protect human health and the environment.

The Board has added the new alternative requirements provisions of 40 CFR 258.21(d), 258.23(e), and 258.60(b)(3) as Sections 811.106(c), 811.310(e), and 811.314(c), respectively. In rendering these provisions, the Board considered the option of allowing the Agency to grant the requested relief by permit, as it presently does under Sections 811.106(b) and 811.310(c)(6), but the Board chose the use of an adjusted standard as the avenue to relief. The primary reason for this is the inclusion of a “public review and comment” requirement in all three federal provisions. The permitting procedural rules of 35 Ill. Adm. Code 813 and Section 39 of the Act do not include any requirements for public review and comment in permit proceedings. The adjusted standard procedure of Section 28.1 requires the publication of a public notice, which would allow third-party participation in the proceeding before the Board. The Board specifically requests public comments on our incorporation of these small landfill alternative requirements provisions into the Illinois rules.

Additional Amendments in Response to P.A. 89-200:
Sections 811.700, 811.706, 811.711 through 811.714, and
811.Appendix A, Illustrations C and D

One aspect added to the Board's August 3, 1995 adoption of the last RCRA Subtitle D municipal solid waste landfill update related to P.A. 89-200, 1995 Ill. Leg. Serv. (West) 2502. Governor Jim Edgar signed P.A. 89-200 in to law on July 21, 1995, and it became effective on January 1, 1996. Among other things, P.A. 89-200 included amendments relating to the federal deadline for landfill financial assurance and a revision relating to the qualifications for an insurer providing financial assurance.

The Board has included in this docket a small number of amendments intended to clarify and fully implement P.A. 89-200. One aspect of P.A. 89-200 was the allowance of insurers regulated by sister states. The former landfill rules, adopted in 1990 in Development, Operating, Reporting Requirements For Non-Hazardous Waste Landfills (Aug. 17, 1990), R88-7, required regulation by the Illinois Department of Insurance. The present amendments make corresponding revisions at Sections 811.711(b), 811.712(b), and 811.714(b), by adding

the statutory language. In the financial insurance forms of Sections 811. Appendix A, Illustrations C and D, the Board added appropriate language referring to regulation by sister states. The Board notes that P.A. 89-200 did not affect entities providing financial assurance that are regulated by the Illinois Commissioner of Banks and Trust Companies. This means that we did not remove a similar requirement for regulation as to letters of credit and trust agreements in Sections 811.710, 811.713, and 811. Appendix A, Illustrations A and E.

Another series of amendments relating to P.A. 89-200 clarify the deadline for financial assurance. The actual deadline in Illinois was the federal deadline, which happened to be April 9, 1997, it was not April 9, 1997 itself. In fact, the “good faith” extension included in this docket can push that date as late as April 9, 1998. For this reason, the Board has amended Sections 811.706(c)(1), 811.711(a), 811.712(a), and 811.713(a) to more accurately reflect the actual deadline as April 9, 1997 or the date of any extension under Section 811.700(g). To the “Board Notes” at the ends of these Sections 811.700, 811.706, 811.711, 811.712, and 811.713, we have more accurately described P.A. 89-200 as extending the deadline until the federal effective date, and the Board added references to the “good faith” extension, now codified as Section 811.700(g).

ORDER

The complete text of the proposed amendments follows:

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE G: WASTE DISPOSAL
 CHAPTER I: POLLUTION CONTROL BOARD
 SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 810
 SOLID WASTE DISPOSAL: GENERAL PROVISIONS

Section	
810.101	Scope and Applicability
810.102	Severability
810.103	Definitions
810.104	Incorporations by Reference

AUTHORITY: Implementing Sections 5, 21, 21.1, 22 and 22.17, and authorized by Section 27 of the Environmental Protection Act (~~Ill. Rev. Stat. 1991, ch. 111½, pars. 1005, 1021, 1021.1, 1022, 1022.17 and 1027~~)-[415 ILCS 5/5, 21, 21.1, 22, 22.17, 28.1 and 27].

SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15838, effective September 18, 1990; amended in R93-10 at 18 Ill. Reg. 1268, effective January 13, 1994; amended in R90-26 at 18 Ill. Reg. 12457, effective August 1, 1994; amended in R95-96 at 19 Ill. Reg. 14427, effective September 29, 1995; amended in R97-20 at 21 Ill. Reg. _____, effective _____.

NOTE: Capitalization indicates statutory language.

Section 810.104 Incorporations by Reference

a) The Board incorporates the following material by reference:

1) Code of Federal Regulations:

40 CFR 141.40 (~~1988~~1996).

40 CFR 258.Appendix II (~~1992~~1996).

2) American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York NY 10036:

Auditing Standards--Current Text, August 1, 1990 Edition.

3) ASTM. American Society for Testing and Materials, 1976 Race Street, Philadelphia PA 19103 (215) 299-5585:

Method D2234-76, Test Method for Collection of Gross Samples

of Coal.

Method D3987-85, Standard Test Method for Shake Extraction of Solid Waste with Water.

- 4) GASB. Government Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk CT 06856-5116:

Statement 18

- 4) U.S. Government Printing Office, Washington, D.C. 20402, Ph: (202) 783-3238:

Test Methods for Evaluating Solid Waste, Physical/Chemical methods, EPA Publication SW-846 (Third Edition, 1986 as amended by Update I (November, 1990):

- b) This incorporation includes no later amendments or editions.

(Source: Amended at 21 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE G: WASTE DISPOSAL
 CHAPTER I: POLLUTION CONTROL BOARD
 SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 811
 STANDARDS FOR NEW SOLID WASTE LANDFILLS

SUBPART A: GENERAL STANDARDS FOR ALL LANDFILLS

- Section
- 811.101 Scope and Applicability
- 811.102 Location Standards
- 811.103 Surface Water Drainage
- 811.104 Survey Controls
- 811.105 Compaction
- 811.106 Daily Cover
- 811.107 Operating Standards
- 811.108 Salvaging
- 811.109 Boundary Control
- 811.110 Closure and Written Closure Plan
- 811.111 Postclosure Maintenance

SUBPART B: INERT WASTE LANDFILLS

- Section
- 811.201 Scope and Applicability
- 811.202 Determination of Contaminated Leachate
- 811.203 Design Period
- 811.204 Final Cover

811.205	Final Slope and Stabilization
811.206	Leachate Sampling
811.207	Load Checking

SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS

Section	
811.301	Scope and Applicability
811.302	Facility Location
811.303	Design Period
811.304	Foundation and Mass Stability Analysis
811.305	Foundation Construction
811.306	Liner Systems
811.307	Leachate Drainage System
811.308	Leachate Collection System
811.309	Leachate Treatment and Disposal System
811.310	Landfill Gas Monitoring
811.311	Landfill Gas Management System
811.312	Landfill Gas Processing and Disposal System
811.313	Intermediate Cover
811.314	Final Cover System
811.315	Hydrogeological Site Investigations
811.316	Plugging and Sealing of Drill Holes
811.317	Groundwater Impact Assessment
811.318	Design, Construction, and Operation of Groundwater Monitoring Systems
811.319	Groundwater Monitoring Programs
811.320	Groundwater Quality Standards
811.321	Waste Placement
811.322	Final Slope and Stabilization
811.323	Load Checking Program
811.324	Corrective Action Measures for MSWLF Units
811.325	Selection of remedy for MSWLF Units
811.326	Implementation of the corrective action program at MSWLF Units

SUBPART D: MANAGEMENT OF SPECIAL WASTES AT LANDFILLS

Section	
811.401	Scope and Applicability
811.402	Notice to Generators and Transporters
811.403	Special Waste Manifests
811.404	Identification Record
811.405	Recordkeeping Requirements
811.406	Procedures for Excluding Regulated Hazardous Wastes

SUBPART E: CONSTRUCTION QUALITY ASSURANCE PROGRAMS

Section	
811.501	Scope and Applicability
811.502	Duties and Qualifications of Key Personnel
811.503	Inspection Activities
811.504	Sampling Requirements
811.505	Documentation
811.506	Foundations and Subbases

- 811.507 Compacted Earth Liners
- 811.508 Geomembranes
- 811.509 Leachate Collection Systems

SUBPART G: FINANCIAL ASSURANCE

Section

- 811.700 Scope, Applicability and Definitions
- 811.701 Upgrading Financial Assurance
- 811.702 Release of Financial Institution
- 811.703 Application of Proceeds and Appeals
- 811.704 Closure and Postclosure Care Cost Estimates
- 811.705 Revision of Cost Estimate
- 811.706 Mechanisms for Financial Assurance
- 811.707 Use of Multiple Financial Mechanisms
- 811.708 Use of a Financial Mechanism for Multiple Sites
- 811.709 Trust Fund for Unrelated Sites
- 811.710 Trust Fund
- 811.711 Surety Bond Guaranteeing Payment
- 811.712 Surety Bond Guaranteeing Performance
- 811.713 Letter of Credit
- 811.714 Closure Insurance
- 811.715 Self-Insurance for Non-commercial Sites
- 811.716 Local Government Financial Test
- 811.717 Local Government Guarantee
- 811.718 Discounting

- 811.Appendix A Financial Assurance Forms
 - Illustration A Trust Agreement
 - Illustration B Certificate of Acknowledgment
 - Illustration C Forfeiture Bond
 - Illustration D Performance Bond
 - Illustration E Irrevocable Standby Letter of Credit
 - Illustration F Certificate of Insurance for Closure and/or Postclosure Care
 - Illustration G Operator's Bond Without Surety
 - Illustration H Operator's Bond With Parent Surety
 - Illustration I Letter from Chief Financial Officer

- 811.Appendix B Section-by-Section Correlation Between the Requirements of the Federal MSWLF Regulations at 40 CFR 258 (~~1992~~) and the Requirements of Parts 810 through 814.

AUTHORITY: Implementing Sections 5, 21, 21.1, 22, 22.17 and 28.1 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/5, 21, 21.1, 22, 22.17, 28.1 and 27].

SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15861, effective September 18, 1990; amended in R92-19 at 17 Ill. Reg. 12413, effective July 19, 1993; amended in R93-10 at 18 Ill. Reg. 1308, effective January 13, 1994; expedited correction at 18 Ill. Reg. 7504, effective July 19, 1993; amended in R90-26 at 18 Ill. Reg. 12481, effective August 1, 1994; amended in R95-13 at 19 Ill. Reg. 12257, effective August 8, 1995; amended in R97-20 at 21 Ill. Reg. _____.

effective _____.

NOTE: Capitalization indicates statutory language.

SUBPART A: GENERAL STANDARDS FOR ALL LANDFILLS

Section 811.106 Daily Cover

- a) A uniform layer of at least 0.15 meter (six inches) of clean soil material shall be placed on all exposed waste by the end of each day of operation.
- b) Alternative materials or procedures, including the removal of daily cover prior to additional waste placement, may be used, provided that the alternative materials or procedures achieve equivalent or superior performance to the requirements of subsection (a) above in the following areas:
 - 1) Prevention of blowing debris;
 - 2) Minimization of access to the waste by vectors;
 - 3) Minimization of the threat of fires at the open face; and
 - 4) Minimization of odors.
- c) Any alternative frequencies for cover requirements to those set forth in subsections (a) and (b) above for any owner or operator of a MSWLF that disposes of 20 tons of municipal solid waste per day or less, based on an annual average, must be established by an adjusted standard pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 106. Any alternative requirements established under this subsection will:
 - 1) Consider the unique characteristics of small communities;
 - 2) Take into account climatic and hydrogeologic conditions; and
 - 3) Be protective of human health and the environment.

BOARD NOTE: Subsection (c) is derived from 40 CFR 258.21(d), as added at 62 Fed. Reg. 40707 (July 29, 1997)

(Source: Amended at 21 Ill. Reg. _____, effective _____)

SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS

Section 811.310 Landfill Gas Monitoring

- a) This Section applies to all units that dispose putrescible wastes.

b) Location and Design of Monitoring Wells

- 1) Gas monitoring devices shall be placed at intervals and elevations within the waste to provide a representative sampling of the composition and buildup of gases within the unit.
- 2) Gas monitoring devices shall be placed around the unit at locations and elevations capable of detecting migrating gas from the ground surface to the lowest elevation of the liner system or the top elevation of the groundwater, whichever is higher.
- 3) A predictive gas flow model may be utilized to determine the optimum placement of monitoring points required for making observations and tracing the movement of gas.
- 4) Gas monitoring devices shall be constructed from materials that will not react with or be corroded by the landfill gas.
- 5) Gas monitoring devices shall be designed and constructed to measure pressure and allow collection of a representative sample of gas.
- 6) Gas monitoring devices shall be constructed and maintained to minimize gas leakage.
- 7) The gas monitoring system shall not interfere with the operation of the liner, leachate collection system or delay the construction of the final cover system.
- 8) At least three ambient air monitoring locations shall be chosen and samples shall be taken no higher than 0.025 meter (1 inch) above the ground and 30.49m (100 feet) downwind from the edge of the unit or at the property boundary, whichever is closer to the unit.

c) Monitoring Frequency

- 1) All gas monitoring devices, including the ambient air monitors shall be operated to obtain samples on a monthly basis for the entire operating period and for a minimum of five years after closure.
- 2) After a minimum of five years after closure, monitoring frequency may be reduced to quarterly sampling intervals.
- 3) The sampling frequency may be reduced to yearly sampling intervals upon the installation and operation of a gas collection system equipped with a mechanical device such as a compressor to withdraw gas.
- 4) Monitoring shall be continued for a minimum period of: thirty years after closure at MSWLF units, except as otherwise provided by subsections (c)(5) and (c)(6), below; five years after closure at landfills, other than MSWLF units, which are used exclusively for disposing of

wastes generated at the site; or fifteen years after closure at all other landfills regulated under this Part. Monitoring, beyond the minimum period, may be discontinued if the following conditions have been met for at least one year:

- A) The concentration of methane is less than five percent of the lower explosive limit in air for four consecutive quarters at all monitoring points outside the unit; and
 - B) Monitoring points within the unit indicate that methane is no longer being produced in quantities that would result in migration from the unit and exceed the standards of subsection (a)(1).
- 5) The operator shall include in the permit, a list of air toxics to be monitored in accordance with subsection (d). The Agency shall determine the monitoring frequency of the listed compounds based upon their emission rates and ambient levels in the atmosphere.
 - 6) The Agency may reduce the gas monitoring period at a MSWLF unit upon a demonstration by the owner or operator that the reduced period is sufficient to protect human health and environment.
 - 7) The owner or operator of a MSWLF unit shall petition the Board for an adjusted standard in accordance with Section 811.303, if the owner or operator seeks a reduction of the postclosure care monitoring period for all of the following requirements:
 - i) Inspection and maintenance (Section 811.111);
 - ii) Leachate collection (Section 811.309);
 - iii) Gas monitoring (Section 811.310); and
 - iv) Groundwater monitoring (Section 811.319).

BOARD NOTE: Changes to subsections (c) are derived from 40 CFR 258.61 (~~1992~~1996).

- d) Parameters to be Monitored
 - 1) All below ground monitoring devices shall be monitored for the following parameters at each sampling interval:
 - A) Methane;
 - B) Pressure;
 - C) Nitrogen;
 - D) Oxygen;

- E) Carbon dioxide; and
 - F) Any compound on the list of air toxics, adopted by the Board pursuant to Section 9.5 of the Act, which is expected to be produced in the landfill unit.
- 2) Ambient air monitors shall be sampled for methane only when the average wind velocity is less than 8 kilometers (five miles) per hour at a minimum of three downwind locations 30.49 meters (100 feet) from the edge of the unit or the property boundary, whichever is closer to the unit.
 - 3) All buildings within a facility shall be monitored for methane by utilizing continuous detection devices located at likely points where methane might enter the building.
- e) Any alternative frequencies for the monitoring requirement of subsection (c) above for any owner or operator of a MSWLF that disposes of 20 tons of municipal solid waste per day or less, based on an annual average, must be established by an adjusted standard pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 106. Any alternative monitoring frequencies established under this paragraph will:
- 1) Consider the unique characteristics of small communities;
 - 2) Take into account climatic and hydrogeologic conditions; and
 - 3) Be protective of human health and the environment.

BOARD NOTE: Subsection (d) is derived from 40 CFR 258.23(e), as added at 62 Fed. Reg. 40707 (July 29, 1997)

(Source: Amended at 21 Ill. Reg. _____, effective _____)

Section 811.314 Final Cover System

- a) The unit shall be covered by a final cover consisting of a low permeability layer overlain by a final protective layer constructed in accordance with the requirements of this Section.
- b) Standards for the Low Permeability Layer
 - 1) Not later than 60 days after placement of the final lift of solid waste, a low permeability layer shall be constructed.
 - 2) The low permeability layer shall cover the entire unit and connect with the liner system.
 - 3) The low permeability layer shall consist of any one of the following:

- A) A compacted earth layer constructed in accordance with the following standards:
 - i) The minimum allowable thickness shall be 0.91 meter (3 feet);
 - ii) The layer shall be compacted to achieve a permeability of 1×10^{-7} centimeters per second and minimize void spaces.
 - iii) Alternative specifications may be utilized provided that the performance of the low permeability layer is equal to or superior to the performance of a layer meeting the requirements of subsections (b)(3)(A)(i) and (b)(3)(A)(ii).
 - B) A geomembrane constructed in accordance with the following standards:
 - i) The geomembrane shall provide performance equal or superior to the compacted earth layer described in subsection (b)(3)(A).
 - ii) The geomembrane shall have strength to withstand the normal stresses imposed by the waste stabilization process.
 - iii) The geomembrane shall be placed over a prepared base free from sharp objects and other materials which may cause damage.
 - C) Any other low permeability layer construction techniques or materials, provided that they provide equivalent or superior performance to the requirements of this subsection.
- 4) For a MSWLF unit, subsection (b)(3) notwithstanding, if the bottom liner system permeability is lower than 1×10^{-7} cm/sec, the permeability of the low permeability layer of the final cover system shall be less than or equal to the permeability of the bottom liner system.
- c) Standards for the Final Protective Layer
- 1) The final protective layer shall cover the entire low permeability layer.
 - 2) The thickness of the final protective layer shall be sufficient to protect the low permeability layer from freezing and minimize root penetration of the low permeability layer, but shall not be less than 0.91 meter (3 feet).
 - 3) The final protective layer shall consist of soil material capable of supporting vegetation.

- 4) The final protective layer shall be placed as soon as possible after placement of the low permeability layer to prevent desiccation, cracking, freezing or other damage to the low permeability layer.
- d) Any alternative requirements for the infiltration barrier in subsection (b) above for any owner or operator of a MSWLF that disposes of 20 tons of municipal solid waste per day or less, based on an annual average, must be established by an adjusted standard pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 106. Any alternative requirements established under this subsection must will:
- 1) Consider the unique characteristics of small communities;
 - 2) Take into account climatic and hydrogeologic conditions; and
 - 3) Be protective of human health and the environment.

BOARD NOTE: sSubsection (b)(4) is derived from 40 CFR 258.60(a) (19921996). Subsection (d) is derived from 40 CFR 258.60(b)(3), as added at 62 Fed. Reg. 40707 (July 29, 1997)

(Source: Amended at 21 Ill. Reg. _____, effective _____)

SUBPART G: FINANCIAL ASSURANCE

Section 811.700 Scope, Applicability and Definitions

- a) This Subpart provides procedures by which the owner or operator of a permitted waste disposal facility provides financial assurance satisfying the requirements of Section 21.1(a) of the Act.
- b) Financial assurance may be provided, as specified in Section 811.706, by a trust agreement, a bond guaranteeing payment, a bond guaranteeing payment or performance, a letter of credit, insurance or self-insurance. The owner or operator shall provide financial assurance to the Agency before the receipt of the waste.
- c) Except as provided in subsection (f) below, this Subpart does not apply to the State of Illinois, its agencies and institutions, or to any unit of local government; provided, however, that any other persons who conduct such a waste disposal operation on a site that is owned or operated by such a governmental entity shall provide financial assurance for closure and postclosure care of the site.
- d) The owner or operator is not required to provide financial assurance pursuant to this Subpart if the owner or operator demonstrates:
 - 1) That closure and postclosure care plans filed pursuant to 35 Ill. Adm. Code 724 or 725 will result in closure and postclosure care of the site in accordance with the requirements of this Part; and

- 2) That the owner or operator has provided financial assurance adequate to provide for such closure and postclosure care pursuant to 35 Ill. Adm. Code 724 or 725.
- e) Definition: "Assumed closure date" means the date during the next permit term on which the costs of premature final closure of the facility, in accordance with the standards of this Part, will be greatest.
- f) On or after April 9, 1997, no person, other than the State of Illinois, its agencies and institutions, shall conduct any disposal operation at a MSWLF unit that requires a permit under subsection (d) of section 21.1 of the Act, unless that person ~~comply~~complies with the financial assurance requirements of this Part.
- g) ~~The standards adopted in this subpart that are identical in substance to the federal Subtitle D regulations that are individually indicated as applicable to MSWL units shall not apply to such units until April 9, 1997. The Board will grant a variance pursuant to Sections 35 through 38 of the Act and 35 Ill. Adm. Code 104 that allows a facility to operate not in compliance with the otherwise applicable requirements of this Section for up to one year, until April 9, 1998, for good cause, if it determines that an owner or operator has demonstrated that the prior April 9, 1997 effective date for the requirements of this Section did not provide sufficient time to comply and that operating not in compliance with the otherwise applicable provisions of this Section would not adversely affect human health or the environment.~~

BOARD NOTE: Subsection (f) clarifies the applicability of the financial assurance requirements to units of local governments, since the Subtitle D regulations exempt only federal and state governments from financial assurance requirements. (See 40 CFR 258.70 (1994/1996), as amended at 60 Fed. Reg. 17652 (Apr. 7, 1995)). P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60327), USEPA added 40 CFR 258.70(c) (1996), codified here as subsection (g), to allow states to waive the compliance deadline until April 9, 1998.

(Source: Amended at 21 Ill. Reg. _____, effective _____)

Section 811.706 Mechanisms for Financial Assurance

- a) The owner or operator of a waste disposal site may utilize any of the mechanisms listed in subsections (a)(1) through (a)(6) to provide financial assurance for closure and postclosure care, and for corrective action at a MSWLF unit. An owner or operator of a MSWLF unit shall also meet the requirements of subsections (b), (c), and (d). The mechanisms are as follows:
- 1) A trust Fund (see Section 811.710);

- 2) A surety Bond Guaranteeing Payment (see Section 811.711);
 - 3) A surety Bond Guaranteeing Performance (see Section 811.712);
 - 4) A letter of Credit (see Section 811.713);
 - 5) Closure Insurance (see Section 811.714);~~or~~
 - 6) Self-insurance (see Section 811.715);~~;~~
 - 7) Local Government Financial Test (see Section 811.716); or
 - 8) Local Government Guarantee (see Section 811.717).
- b) The owner or operator of a MSWLF unit shall ensure that the language of the mechanisms listed in subsection (a), when used for providing financial assurance for closure, postclosure, and corrective action, satisfies the following:
- 1) The amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action; and
 - 2) The funds will be available in a timely fashion when needed.
- c) The owner or operator of a MSWLF unit shall provide financial assurance utilizing one or more of the mechanisms listed in subsection (a) within the following dates:
- 1) By April 9, 1997, or such later date granted pursuant to Section 811.700(g), or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care; or
 - 2) No later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325, in the case of corrective action.
- d) The owner or operator shall provide continuous coverage until the owner or operator is released from the financial assurance requirements pursuant to 35 Ill. Adm. Code 813.403(b) or Section 811.326.

BOARD NOTE: Subsections (b) and (c) are derived from 40 CFR 258.74(l) (~~1994~~1996). Amendments prompted by amendments to 40 CFR 258.74(a)(5) (~~1994~~1996), as amended at 60 Fed. Reg. 17652 (Apr. 7, 1995). P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60327), USEPA added 40 CFR 258.70(c) (1996), codified here as subsection (g), to allow states to waive the compliance deadline until April 9, 1998.

(Source: Amended at 21 Ill. Reg. _____, effective _____)

Section 811.707 Use of Multiple Financial Mechanisms

An owner or operator may satisfy the requirements of this Subpart by establishing more than one financial mechanism per site. These mechanisms are limited to trust funds, surety bonds guaranteeing payment, letters of credit and insurance. The mechanisms must be as specified in 35 Ill. Adm. Code 811.710, 811.711, 811.713, ~~and 811.714~~, 811.715, 811.716, and 811.717, as applicable respectively, except that it is the combination of mechanisms, rather than the single mechanism, ~~which that~~ must provide financial assurance for an aggregate amount at least equal to the current cost estimate for closure, post-closure care or corrective action, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments. The owner or operator may use any or all of the mechanisms to provide for closure and postclosure care of the site or corrective action.

(Source: Amended at 21 Ill. Reg. _____, effective _____)

Section 811.711 Surety Bond Guaranteeing Payment

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining a surety bond which conforms to the requirements of this Section and submitting the bond to the Agency. A surety bond obtained by an owner or operator of a MSWLF unit must be effective before the initial receipt of waste or before April 9, 1997, or such later date granted pursuant to Section 811.700(g), (the effective date of the financial assurance requirements under RCRA Subtitle D regulations), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.
- b) ~~The surety company issuing the bond shall be licensed by the Illinois Department of Insurance.~~ LICENSED TO TRANSACT THE BUSINESS OF INSURANCE BY THE DEPARTMENT OF INSURANCE, pursuant to the Illinois Insurance Code [215 ILCS 5], OR AT A MINIMUM THE INSURER MUST BE LICENSED TO TRANSACT THE BUSINESS OF INSURANCE OR APPROVED TO PROVIDE INSURANCE AS AN EXCESS OR SURPLUS LINES INSURER BY THE INSURANCE DEPARTMENT IN ONE OR MORE STATES, and approved by the U.S. Department of the Treasury as an acceptable surety. Section 21.1(a.5) of the Act [415 ILCS 5/21.1(a.5)].

BOARD NOTE: The U.S. Department of the Treasury lists acceptable sureties in its Circular 570.

- c) The surety bond must be on the forms specified in Appendix A, Illustration C, D, or H.
- d) Any payments made under the bond will be placed in the landfill closure and postclosure fund within the State Treasury.
- e) Conditions:

- 1) The bond must guarantee that the owner or operator will provide closure and postclosure care in accordance with the approved closure and postclosure care plans. If the facility is a MSWLF unit, then the corrective action bond must guarantee that the owner or operator will implement corrective action in accordance with Section 811.326.
 - 2) The surety will become liable on the bond obligation when, during the term of the bond, the owner or operator fails to perform as guaranteed by the bond. The owner or operator fails to perform when the owner or operator:
 - A) Abandons the site;
 - B) Is adjudicated bankrupt;
 - C) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board pursuant to Title VII of the Act, or when ordered to do so by a court of competent jurisdiction;
 - D) Notifies the Agency that it has initiated closure or corrective action, or initiates closure or corrective action, but fails to close the site or provide postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans; or
 - E) For a corrective action bond, fails to implement corrective action at a MSWLF unit in accordance with Section 811.326
- f) Penal sum:
- 1) The penal sum of the bond must be in an amount at least equal to the current cost estimate.
 - 2) The Agency shall approve a reduction in the penal sum whenever the current cost estimate decreases.
- g) Term:
- 1) The bond must be issued for a term of at least five years and must not be cancelable during that term.
 - 2) If the owner or operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond must be automatically extended for one twelve-month period starting with the date of expiration of the bond. During such extension the bond will cease to serve as financial assurance satisfying the requirements of this Part, and will not excuse the owner or operator from the duty to provide substitute financial assurance.

- 3) The Agency shall release the surety if, after the surety becomes liable on the bond, the owner or operator or another person provides financial assurance for closure and postclosure care of the site or corrective action at a MSWLF unit, unless the Agency determines that the closure or postclosure care plan, corrective action program at a MSWLF unit, or the amount of substituted financial assurance is inadequate to provide closure and postclosure care or implement corrective action in compliance with this Part.
- h) Cure of default and refunds:
- 1) The Agency shall release the surety if, after the surety becomes liable on the bond, the owner or operator or another person provides financial assurance for closure and postclosure care of the site or corrective action at a MSWLF unit, unless the Agency determines that the closure or postclosure care plan, corrective action at a MSWLF unit or the amount of substituted financial assurance is inadequate to provide closure and postclosure care or implement corrective action in compliance with this Part.
- 2) After closure and postclosure care have been completed in accordance with the plans and requirements of this Part or after the completion of corrective action at a MSWLF unit in accordance Section 811.326, the Agency shall refund any unspent money which was paid into the "Landfill Closure and Postclosure Fund" by the surety.

BOARD NOTE: MSWLF corrective action language at subsection (a) is derived from 40 CFR 258.74(b)(1) (1994/1996), ~~as amended at 60 Fed. Reg. 17652 (Apr. 7, 1995)~~. P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60337), USEPA added 40 CFR 258.70(c) (1996), codified here as Section 811.700(g), to allow states to waive the compliance deadline until April 9, 1998. The other clarifying changes reflect the inclusion of financial assurance requirements for implementing corrective action at MSWLF units under this Section.

(Source: Amended at 21 Ill. Reg. _____, effective _____)

Section 811.712 Surety Bond Guaranteeing Performance

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining a surety bond which conforms to the requirements of this Section and submitting the bond to the Agency. A surety bond obtained by an owner or operator of a MSWLF unit must be effective before the initial receipt of waste or before April 9, 1997, or such later date granted pursuant to Section 811.700(g), (the effective date of the financial assurance requirements under RCRA Subtitle D

regulations), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.

- b) The surety company issuing the bond shall be ~~licensed by the Illinois Department of Insurance~~ LICENSED TO TRANSACT THE BUSINESS OF INSURANCE BY THE DEPARTMENT OF INSURANCE, pursuant to the Illinois Insurance Code [215 ILCS 5], OR AT A MINIMUM THE INSURER MUST BE LICENSED TO TRANSACT THE BUSINESS OF INSURANCE OR APPROVED TO PROVIDE INSURANCE AS AN EXCESS OR SURPLUS LINES INSURER BY THE INSURANCE DEPARTMENT IN ONE OR MORE STATES, and approved by the U.S. Department of the Treasury as an acceptable surety. Section 21.1(a.5) of the Act [415 ILCS 5/21.1(a.5)].

BOARD NOTE: The U.S. Department of the Treasury lists acceptable sureties in its Circular 570.

- c) The surety bond must be on the forms as specified in Appendix A, Illustration C, D, or H.
- d) Any payments made under the bond will be placed in the landfill closure and postclosure fund within the State Treasury.
- e) Conditions:
- 1) The bond must guarantee that the owner or operator will provide closure and postclosure care in accordance with the closure and postclosure care plans in the permit. If the facility is a MSWLF unit, then a corrective action bond must guarantee that the owner or operator will implement corrective action in accordance with Section 811.326. The surety shall have the option of providing closure and postclosure care or carrying out corrective action, or of paying the penal sum.
 - 2) The surety will become liable on the bond obligation when, during the term of the bond, the owner or operator fails to perform as guaranteed by the bond. The owner or operator fails to perform when the owner or operator:
 - A) Abandons the site;
 - B) Is adjudicated bankrupt;
 - C) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board pursuant to Title VII of the Act, or when ordered to do so by a court of competent jurisdiction; or
 - D) Notifies the Agency that it has initiated closure or corrective action, or initiates closure or corrective action, but fails to close

the site or provide postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans.

- E) For a corrective action bond, fails to implement corrective action at a MSWLF unit in accordance with Section 811.326
- f) Penal sum:
- 1) The penal sum of the bond must be in an amount at least equal to the current cost estimate.
 - 2) The Agency shall approve a reduction in the penal sum whenever the current cost estimate decreases.
- g) Term:
- 1) The bond must be issued for a term of at least five years and must not be cancelable during that term.
 - 2) If the owner or operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond must be automatically extended for one twelve-month period starting with the date of expiration of the bond. During such extension, the bond will cease to serve as financial assurance satisfying the requirements of this Part, and will not excuse the owner or operator from the duty to provide substitute financial assurance.
- h) Cure of default and refunds:
- 1) The Agency shall release the surety if, after the surety becomes liable on the bond, the owner or operator or another person provides financial assurance for closure and postclosure care of the site or corrective action at a MSWLF unit, unless the Agency determines that the closure or postclosure care plan, corrective action at a MSWLF unit, or the amount of substituted financial assurance is inadequate to provide closure and postclosure care or implement corrective action at a MSWLF unit in compliance with this Part.
 - 2) After closure and postclosure care have been completed in accordance with the closure and postclosure care plans and the requirements of this Part or after the completion of corrective action at a MSWLF unit in accordance with Section 811.326, the Agency shall refund any unspent money which was paid into the "Landfill Closure and Postclosure Fund" by the surety.
- i) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the Agency releases the owner or operator from the requirements of this Subpart.

BOARD NOTE: MSWLF corrective action language at subsection (a) is derived from 40 CFR 258.74 (b)(1) (1994/1996), ~~as amended at 60 Fed. Reg. 17652 (Apr. 7, 1995)~~. P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60337), USEPA added 40 CFR 258.70(c) (1996), codified here as Section 811.700(g), to allow states to waive the compliance deadline until April 9, 1998. The other clarifying changes reflect the inclusion of financial assurance requirements for implementing corrective action at MSWLF units under this Section.

(Source: Amended at 21 Ill. Reg. _____, effective _____)

Section 811.713 Letter of Credit

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining an irrevocable standby letter of credit which conforms to the requirements of this Section and submitting the letter to the Agency. A letter of credit obtained by an owner or operator of a MSWLF unit must be effective before the initial receipt of waste or before April 9, 1997, or such later date granted pursuant to Section 811.700(g), (the effective date of the financial assurance requirements under RCRA Subtitle D regulations), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.
- b) The issuing institution shall be an entity which has the authority to issue letters of credit and:
 - 1) Whose letter-of-credit operations are regulated by the Illinois Commissioner of Banks and Trust Companies pursuant to the Illinois Banking Act [205 ILCS 5]; or,
 - 2) Whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- c) Forms:
 - 1) The letter of credit must be on the forms specified in Appendix A, Illustration E.
 - 2) The letter of credit must be accompanied by a letter from the owner or operator, referring to the letter of credit by number, the name and address of the issuing institution, and the effective date of the letter, and providing the following information: the name and address of the site and the amount of funds assured for closure and postclosure care of the site, or for corrective action at a MSWLF unit by the letter of credit.
- d) Any amounts drawn by the Agency pursuant to the letter of credit will be

deposited in the landfill closure and postclosure fund within the State Treasury.

- e) Conditions on which the Agency may draw on the letter of credit:
- 1) The Agency shall draw on the letter of credit if the owner or operator fails to perform closure or postclosure care in accordance with the closure and postclosure care plans, or fails to implement corrective action at a MSWLF unit in accordance with Section 811.326.
 - 2) The Agency shall draw on the letter of credit when the owner or operator:
 - A) Abandons the site;
 - B) Is adjudicated bankrupt;
 - C) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board pursuant to Title VII of the Act, or when ordered to do so by a court of competent jurisdiction; or
 - D) Notifies the Agency that it has initiated closure or corrective action, or initiates closure or corrective action, but fails to Provide closure and postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans.
 - E) For a corrective action bond, fails to implement corrective action at a MSWLF unit in accordance with Section 811.326
- f) Amount:
- 1) The letter of credit must be issued in an amount at least equal to the current cost estimate.
 - 2) The Agency shall approve a reduction in the amount whenever the current cost estimate decreases.
- g) Term:
- 1) The letter of credit must be issued for a term of at least five years and must be irrevocable during that term.
 - 2) If the owner or operator fails to substitute alternative financial assurance prior to expiration of a letter of credit, the term of the letter of credit must be automatically extended for one twelve-month period starting with the date of expiration. During such extension, the letter of credit will cease to serve as financial assurance satisfying the requirements of this Part, and will not excuse the owner or operator from the duty to provide substitute financial assurance.

h) Cure of default and refunds:

- 1) The Agency shall release the financial institution if, after the Agency is allowed to draw on the letter of credit, the owner or operator or another person provides financial assurance for closure and postclosure care of the site or corrective action at a MSWLF unit, unless the Agency determines that a plan or the amount of substituted financial assurance is inadequate to provide closure and postclosure care, or implement corrective action at a MSWLF unit, as required by this Part.
- 2) After closure and postclosure care have been completed in accordance with the closure and postclosure care plans and the requirements of this Part or after the completion of corrective action at a MSWLF unit in accordance with Section 811.326, the Agency shall refund any unspent money which was paid into the "Landfill Closure and Postclosure Fund" by the financial institution.

BOARD NOTE: MSWLF corrective action language at subsection (a) is derived from 40 CFR 258.74 (c)(1) (1994/1996), as amended at 60 Fed. Reg. 17652 (Apr. 7, 1995). P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60337), USEPA added 40 CFR 258.70(c) (1996), codified here as Section 811.700(g), to allow states to waive the compliance deadline until April 9, 1998. The other clarifying changes reflect the inclusion of financial assurance requirements for implementing corrective action at MSWLF units under this Section.

(Source: Amended at 21 Ill. Reg. _____, effective _____)

Section 811.714 Closure Insurance

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining closure and postclosure care insurance which conforms to the requirements of this Section and submitting an executed duplicate original of such insurance policy to the Agency.
- b) ~~The insurer shall be licensed to transact the business of insurance by the Illinois Department of Insurance~~ LICENSED TO TRANSACT THE BUSINESS OF INSURANCE BY THE DEPARTMENT OF INSURANCE, pursuant to the Illinois Insurance Code (Ill. Rev. Stat. 1991, ch. 73, pars. 613 et seq. [215 ILCS 5/4 et seq.]), OR AT A MINIMUM THE INSURER MUST BE LICENSED TO TRANSACT THE BUSINESS OF INSURANCE OR APPROVED TO PROVIDE INSURANCE AS AN EXCESS OR SURPLUS LINES INSURER BY THE INSURANCE DEPARTMENT IN ONE OR MORE STATES. Section 21.1(a.5) of the Act [415 ILCS 5/21.1(a.5)].

- c) The policy must be on forms approved by the Illinois Department of Insurance pursuant to the Illinois Insurance Code or on forms approved by the insurance department of one or more states.
- d) Face amount:
 - 1) The closure and postclosure care insurance policy must be issued for a face amount at least equal to the current cost estimate. The term “face amount” means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
 - 2) The Agency shall approve a reduction in the amount of the policy whenever the current cost estimate decreases.
- e) The closure and postclosure care insurance policy must guarantee that funds will be available to close the site and to provide postclosure care thereafter. The policy must also guarantee that, once closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Agency to such party or parties as the Agency specifies. The insurer will be liable when:
 - 1) The owner or operator abandons the site;
 - 2) The owner or operator is adjudicated bankrupt;
 - 3) The Board, pursuant to Title VIII of the Act, or a court of competent jurisdiction orders the site closed;
 - 4) The owner or operator notifies the Agency that it is initiating closure; or
 - 5) Any person initiates closure with approval of the Agency.
- f) Reimbursement for closure and postclosure care expenses:
 - 1) After initiating closure, an owner or operator or any other person authorized to perform closure or postclosure care may request reimbursement for closure and postclosure care expenditures by submitting itemized bills to the Agency.
 - 2) Within 60 days after receiving bills for closure or postclosure care activities, the Agency shall determine whether the expenditures are in accordance with the closure or postclosure care plan. The Agency shall direct the insurer to make reimbursement in such amounts as the Agency specifies in writing as expenditures in accordance with the closure and postclosure care plans.
 - 3) If the Agency determines based on such information as is available to it that the cost of closure and postclosure care will be greater than the face

amount of the policy, it shall withhold reimbursement of such amounts as it deems prudent until it determines that the owner or operator is no longer required to maintain financial assurance. In the event the face amount of the policy is inadequate to pay all claims, the Agency shall pay claims according to the following priorities:

- A) Persons with whom the Agency has contracted to perform closure or postclosure care activities (first priority);
- B) Persons who have completed closure or postclosure care authorized by the Agency (second priority);
- C) Persons who have completed work which furthered the closure or postclosure care (third priority);
- D) The owner or operator and related business entities (last priority).

g) Cancellation:

- 1) The owner or operator shall maintain the policy in full force and effect until the Agency releases the insurer pursuant to Section 811.702.
- 2) The policy must provide that the insurer may not cancel, terminate or fail to renew the policy, except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the owner or operator and the Agency. Cancellation, termination or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Agency and the owner or operator, as evidenced by the return receipts. Cancellation, termination or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration the premium due is paid.

- h) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(Source: Amended at 21 Ill. Reg. _____, effective _____)

Section 811.716 Local Government Financial Test

A unit of local government owner or operator that satisfies the requirements of subsections (a) through (c) below may demonstrate financial assurance up to the amount specified in subsection (d) below.

- a) Financial component.

- 1) The unit of local government owner or operator shall satisfy subsection (a)(1)(A) or (a)(1)(B) below, as applicable:
 - A) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or
 - B) The owner or operator shall satisfy each of the following financial ratios based on the owner or operator's most recent audited annual financial statement:
 - A) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and
 - B) A ratio of annual debt service to total expenditures less than or equal to 0.20.
- 2) The unit of local government owner or operator shall prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant or the Comptroller of the State of Illinois pursuant to the Governmental Account Audit Act [50 ILCS 310].
- 3) A unit of local government is not eligible to assure its obligations under this Section if any of the following is true:
 - A) It is currently in default on any outstanding general obligation bonds;
 - B) It has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's;
 - C) It operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or
 - D) It receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant or the Comptroller of the State of Illinois pursuant to the Governmental Account Audit Act [50 ILCS 310] auditing its financial statement as required under subsection (a)(2) below. However, the Agency shall evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Agency deems the qualification insufficient to warrant disallowance of use of the test.

4) The following terms used in this Section are defined as follows:

“Deficit” equals total annual revenues minus total annual expenditures;

“Total revenues” include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by a unit of local government on behalf of a specific third party;

“Total expenditures” include all expenditures excluding capital outlays and debt repayment;

“Cash plus marketable securities” is all the cash plus marketable securities held by the unit of local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions; and

“Debt service” is the amount of principal and interest due on a loan in a given time period, typically the current year.

b) Public notice component.

- 1) The unit of local government owner or operator shall place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this section or prior to the initial receipt of waste at the facility, whichever is later.
- 2) Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years.
- 3) A reference to corrective action costs must be placed in the CAFR not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Sections 811.319(d) and 811.325.
- 4) For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget.
- 5) For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18, incorporated by reference in 35 Ill. Adm. Code 810.104, assures compliance with this public notice component.

- c) Recordkeeping and reporting requirements.
- 1) The unit of local government owner or operator must place the following items in the facility's operating record:
- A) A letter signed by the unit of local government's chief financial officer that:
- i) Lists all the current cost estimates covered by a financial test, as described in subsection (d) below;
- ii) Provides evidence and certifies that the unit of local government meets the conditions of subsections (a)(1), (a)(2), and (a)(3) above; and
- iii) Certifies that the unit of local government meets the conditions of subsections (b) above and (f)(4) below.
- B) The unit of local government's independently audited year-end financial statements for the latest fiscal year (except for a unit of local government where audits are required every two years where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent, certified public accountant or the Comptroller of the State of Illinois pursuant to the Governmental Account Audit Act [50 ILCS 310];
- C) A report to the unit of local government from the unit of local government's independent certified public accountant (CPA) or the Comptroller of the State of Illinois pursuant to the Governmental Account Audit Act [50 ILCS 310] based on performing an agreed upon procedures engagement relative to the financial ratios required by subsection (a)(1)(B) above, if applicable, and the requirements of subsections (a)(2), (a)(3)(C), and (a)(3)(D) above. The CPA or Comptroller's report should state the procedures performed and the CPA or Comptroller's findings; and
- D) A copy of the comprehensive annual financial report (CAFR) used to comply with subsection (b) above or certification that the requirements of General Accounting Standards Board Statement 18, incorporated by reference in Section 810.104, have been met.
- 2) The items required in subsection (c)(1) above must be placed in the facility operating record as follows:
- A) In the case of closure and post-closure care, either before the effective date of this Section, which is November 15, 1997, or prior to the initial receipt of waste at the facility, whichever is later, or

- B) In the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of Sections 811.319(d) and 811.325.
- 3) After the initial placement of the items in the facility operating record, the unit of local government owner or operator shall update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.
- 4) The unit of local government owner or operator is no longer required to meet the requirements of subsection (c) above when:
- A) The owner or operator substitutes alternative financial assurance as specified in this Section; or
- B) The owner or operator is released from the requirements of this Section in accordance with Section 811.326(g), 811.702(b), or 811.704(j) or (k)(6).
- 5) A unit of local government must satisfy the requirements of the financial test at the close of each fiscal year. If the unit of local government owner or operator no longer meets the requirements of the local government financial test it shall, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this Subpart, place the required submissions for that assurance in the operating record, and notify the Agency that the owner or operator no longer meets the criteria of the financial test and that alternative assurance has been obtained.
- 6) The Agency, based on a reasonable belief that the unit of local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the unit of local government at any time. If the Agency, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the unit of local government must provide alternative financial assurance in accordance with this Subpart.
- d) Calculation of Costs to be Assured. The portion of the closure, post-closure, and corrective action costs that an owner or operator may assure under this Section is determined as follows:
- 1) If the unit of local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the unit of local government's total annual revenue.
- 2) If the unit of local government assures other environmental obligations

through a financial test, including those associated with UIC facilities under 35 Ill. Adm. Code 704.213, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR 761, and hazardous waste treatment, storage, and disposal facilities under 35 Ill. Adm. Code 724 and 725, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure under this Section. The total that may be assured must not exceed 43 percent of the unit of local government's total annual revenue.

- 3) The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in subsections (d)(1) and (d)(2) above.

BOARD NOTE: Derived from 40 CFR 258.74(f), added at 61 Fed. Reg. 60327 (Nov. 27, 1996).

(Source: Added at 21 Ill. Reg. _____, effective _____)

Section 811.717 Local Government Guarantee

Local Government Guarantee. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by Section 21.1(a) of the Act and 811. Subpart G, by obtaining a written guarantee provided by a unit of local government. The guarantor shall meet the requirements of the local government financial test in Section 811.716, and shall comply with the terms of a written guarantee.

- a) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the effective date of this section, whichever is later, in the case of closure, post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Sections 811.319(d) and 811.325. The guarantee must provide that:
- 1) If the owner or operator fails to perform closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor must:
- A) Perform, or pay a third party to perform, closure, post-closure care, or corrective action as required; or
- B) Establish a fully funded trust fund, as specified in Section 811.710, in the name of the owner or operator.
- 2) The guarantee must remain in force unless the guarantor sends 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 a guarantee is cancelled, the owner or operator shall, within 90 days

following receipt of the cancellation notice by the owner or operator and the Agency, obtain alternative financial assurance, place evidence of that alternative financial assurance in the facility operating record, and notify the Agency. If the owner or operator fails to provide alternative financial assurance within the 90-day period, the guarantor must provide that alternative assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternative assurance in the facility operating record, and notify the Agency.

b) Recordkeeping and reporting.

- 1) The owner or operator shall place a certified copy of the guarantee along with the items required under Section 811.716(c) into the facility's operating record before the initial receipt of waste or before the effective date of this section, whichever is later, in the case of closure, post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Section 811.319(d) and 811.325.
- 2) The owner or operator is no longer required to maintain the items specified in subsection (b) above when:
 - A) The owner or operator substitutes alternative financial assurance, as specified in this Subpart; or
 - B) The owner or operator is released from the requirements of this section in accordance with Sections 811.326(g), 811.702(b), or 811.704(j) or (k)(6).
- 3) If a unit of local government guarantor no longer meets the requirements of Section 811.716, the owner or operator shall, within 90 days, obtain alternative assurance, place evidence of the alternative assurance in the facility operating record, and notify the Agency. If the owner or operator fails to obtain alternative financial assurance within that 90-day period, the guarantor shall provide that alternative assurance within the next 30 days.

BOARD NOTE: Derived from 40 CFR 258.74(h), added at 61 Fed. Reg. 60327 (Nov. 27, 1996).

(Source: Added at 21 Ill. Reg. _____, effective _____)

Section 811.718 Discounting

The Agency shall allow discounting of closure cost estimates, post-closure cost estimates, and corrective action cost estimates in Section 811.704 up to the rate of return for essentially risk free investments, net of inflation, under the following conditions:

- a) The Agency determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a professional engineer, as

defined in Section 810.103, so stating;

- b) The Agency finds the facility in compliance with applicable and appropriate permit conditions; and
- c) The Agency determines that the closure date is certain, and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life.
- d) Discounted cost estimates must be adjusted annually to reflect inflation and the anticipated years of remaining life.

BOARD NOTE: Derived from 40 CFR 258.75, added at 61 Fed. Reg. 60327 (Nov. 27, 1996).

(Source: Added at 21 Ill. Reg. _____, effective _____)

Section 811.Appendix A Financial Assurance Forms
Illustration C Forfeiture Bond

FORFEITURE BOND

Date bond executed: _____

Effective date: _____

Principal: _____

Type of organization: _____

State of incorporation: _____

Surety: _____

Sites:

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

Please attach a separate page if more space is needed for all sites.

Total penal sum of bond: \$ _____

Surety's bond number: _____

The Principal and the Surety promise to pay the Illinois Environmental Protection Agency ("IEPA") the above penal sum unless the Principal provides closure and postclosure care or corrective action for each site in accordance with the closure and postclosure care or corrective action plans for that site. To the payment of this obligation the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

Whereas the Principal is required, under Section 21(d) of the Environmental Protection Act (~~Ill. Rev. Stat. 1991, ch. 111½, par. 1021(d)~~ [415 ILCS 5/21(d)]) to have a permit to conduct a waste disposal operation;

Whereas the Principal is required, under Section 21.1 of the Environmental Protection Act to provide financial assurance for closure and postclosure care or corrective action; and

Whereas the Surety is licensed by the Illinois Department of Insurance or is licensed to transact the business of insurance or approved to provide insurance as an excess or surplus lines insurer by the insurance department in one or more states;

Whereas the Principal and Surety agree that this bond shall be governed by the laws of the State of Illinois;

The Surety shall pay the penal sum to the IEPA if, during the term of the bond, the Principal fails to provide closure and postclosure care or corrective action for any site in accordance with the closure and postclosure care or corrective action plans for that site as guaranteed by this bond. The Principal fails to so provide when the Principal:

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board or a court of competent jurisdiction;
- d) Notifies the Agency that it has initiated closure, or initiates closure, but fails to close the site or provide postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans; or
- e) For corrective action, fails to implement corrective action at a municipal solid waste landfill unit in accordance with 35 Ill. Adm. Code 811.326.

The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails notice to the Surety that the Principal has failed to so provide closure and postclosure

care or corrective action. Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Postclosure Fund.

The liability of the Surety shall not be discharged by any payment or succession of payments unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

This bond shall expire on the _____ day of _____, _____; provided, however, that if the Principal fails to provide substitute financial assurance prior to the expiration date, and the IEPA mails notice of such failure to the Surety within 30 days after such date, the term of this bond shall be automatically extended for one twelve-month period starting with the date of expiration of the bond.

The Principal may terminate this bond by sending written notice to the Surety; provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond from the IEPA.

In Witness Whereof, the Principal and Surety have executed this Forfeiture Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below certify that they are authorized to execute this surety bond on behalf of the Principal and Surety.

PRINCIPAL

Signature Name _____

Typed Name _____

Address _____

Title _____

State of Incorporation _____

Date _____

Corporate seal

CORPORATE SURETY

Signature _____

Typed Name _____

Title _____

Corporate seal

Bond premium: \$ _____

(Source: Amended at 21 Ill. Reg. _____, effective _____)

Section 811. Appendix A Financial Assurance Forms
Illustration D Performance Bond

PERFORMANCE BOND

Date bond executed: _____

Effective date: _____

Principal: _____

Type of organization: _____

State of incorporation: _____

Surety: _____

Sites:

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

Please attach a separate page if more space is needed for all sites.

Total penal sum of bond: \$ _____

Surety's bond number: _____

The Principal and the Surety promise to pay the Illinois Environmental Protection Agency ("IEPA") the above penal sum unless the Principal or Surety provides closure and postclosure care or corrective action for each site in accordance with the closure and postclosure care or corrective action plans for that site. To the payment of this obligation the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

Whereas the Principal is required, under Section 21(d) of the Environmental Protection Act (~~Ill. Rev. Stat. 1991, ch. 111½, par. 1021(d)~~ [415 ILCS 5/21(d)]) to have a permit to conduct a waste disposal operation;

Whereas the Principal is required, under Section 21.1 of the Environmental Protection Act, to provide financial assurance for closure and postclosure care or corrective action; and

Whereas the Surety is licensed by the Illinois Department of Insurance or is licensed to transact the business of insurance or approved to provide insurance as an excess or surplus lines insurer by the insurance department in one or more states;

Whereas the Principal and Surety agree that this bond shall be governed by the laws of the State of Illinois;

The Surety shall pay the penal sum to the IEPA or provide closure and postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans for the site if, during the term of the bond, the Principal fails to provide closure and postclosure care or corrective action for any site in accordance with the closure and postclosure care or corrective action plans for that site as guaranteed by this bond. The Principal fails to so provide when the Principal:

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board or a court of competent jurisdiction;
- d) Notifies the Agency that it has initiated closure, or initiates closure, but fails to close the site or provide postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans; or
- e) For corrective action, fails to implement corrective action at a municipal solid waste landfill unit in accordance with 35 Ill. Adm. Code 811.326.

The Surety shall pay the penal sum of the bond to the IEPA or notify the IEPA that it intends to provide closure and postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans for the site within 30 days after the IEPA mails notice to the Surety that the Principal has failed to so provide closure and postclosure care or corrective action. Payment shall be made by check or draft payable to the State of Illinois,

Landfill Closure and Postclosure Fund.

If the Surety notifies the Agency that it intends to provide closure and postclosure care or corrective action, then the Surety must initiate closure and postclosure care or corrective action within 60 days after the IEPA mailed notice to the Surety that the Principal failed to provide closure and postclosure care or corrective action. The Surety must complete closure and postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans, or pay the penal sum.

The liability of the Surety shall not be discharged by any payment or succession of payments unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

This bond shall expire on the _____ day of _____, _____; provided, however, that if the Principal fails to provide substitute financial assurance prior to the expiration date, and the IEPA mails notice of such failure to the Surety within 30 days after such date, the term of this bond shall be automatically extended for one twelve-month period starting with the date of expiration of the bond.

The Principal may terminate this bond by sending written notice to the Surety; provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond from the IEPA.

In Witness Whereof, the Principal and Surety have executed this Forfeiture Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below certify that they are authorized to execute this surety bond on behalf of the Principal and Surety.

PRINCIPAL

Signature Name _____

Typed Name _____

Address _____

Title _____

State of Incorporation _____

Date _____

Corporate seal

CORPORATE SURETY

Signature _____

Typed Name _____

Title _____

Corporate seal

Bond premium: \$ _____

(Source: Amended at 21 Ill. Reg. _____, effective _____)

Section 811.Appendix B Section-by-Section correlation between the Standards of the RCRA Subtitle D MSWLF regulations and the Board's nonhazardous waste landfill regulations.

RCRA SUBTITLE D REGULATIONS	ILLINOIS LANDFILL REGULATIONS
I. SUBPART A: General	
1) Purpose, Scope, and Applicability (40 CFR 258.1)	1) NL ¹ : Sections 811.101, 811.301, 811.401, 811.501, and 811.700. EL ² : Section 814.101.
2) Definitions (40 CFR 258.2)	2) Section 810.103.
II. SUBPART B: Location Restrictions	
1) Airport safety (40 CFR 258.10)	1) NL ¹ : Section 811.302(e). EL ² : Section 814.302(c) and 814.402(c).
2) Floodplains. (40 CFR 258.11)	2) NL ¹ : Section 811.102(b). EL ² : Section 814.302 and 814.402.
3) Wetlands. (40 CFR 258.12)	3) NL ¹ : Sections 811.102(d), 811.102(e), and 811.103. EL ² : Section 814.302 and 814.402.
4) Fault areas. (40 CFR 258.13)	4-5) NL ¹ : Sections 811.304 and 811.305. EL ² : Section 814.302 and 814.402.
5) Seismic impact zones. (40 CFR 258.14)	<u>See above.</u>

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|------------------------------------|--|-----|--|
| 6) | Unstable areas. (40 CFR 258.15) | 6) | NL ¹ : Sections 811.304 and 811.305.
EL ² : Sections 811.302(c) and 811.402(c). |
| 7) | Closure of existing MSWL units. (40 CFR 258.16) | 7) | EL ² : Sections 814.301 and 814.401. |
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 | | | |
| III. SUBPART C: Operating Criteria | | | |
| 1) | Procedures for excluding the receipt of hazardous waste. (40 CFR 258.20) | 1) | NL ¹ : Section 811.323. EL ² : Sections 814.302 and 814.402. |
| 2) | Cover material requirements. (40 CFR 258.21) | 2) | NL ¹ : Section 811.106. EL ² : Sections 814.302 and 814.402. |
| 3) | Disease vector control. (40 CFR 258.22) | 3) | NL ¹ : Section 811.107(i). EL ² : Sections 814.302 and 814.402. |
| 4) | Explosive gas control. (40 CFR 258.23) | 4) | NL ¹ : Sections 811.310, 811.311, and 811.312. EL ² : Sections 814.302 and 814.402. |
| 5) | Air criteria. (40 CFR 258.24) | 5) | NL ¹ : Sections 811.107(b), 811.310, and 811.311. EL ² : Sections 814.302 and 814.402. |
| 6) | Access requirements. (40 CFR 258.25) | 6) | NL ¹ : Section 811.109. EL ² : Sections 814.302 and 814.402. |
| 7) | Run-on/run-off control system. (40 CFR 258.26) | 7) | NL ¹ : Section 811.103. EL ² : Sections 814.302 and 814.402. |
| 8) | Surface water requirements. (40 CFR 258.27) | 8) | same as above. |
| 9) | Liquids restrictions. (40 CFR 258.28) | 9) | NL ¹ : Section 811.107(m). EL ² : Sections 814.302 and 814.402. |
| 10) | Recordkeeping requirements. (40 CFR 258.29) | 10) | NL ¹ : Sections 811.112, and Parts 812 and 813. EL ² : Sections 814.302 and 814.402. |
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 | | | |
| IV. | SUBPART D: Design criteria (40 CFR 258.40) | IV) | NL ¹ : 811.303, 811.304, 811.305, 811.306, 811.307, 811.308, 811.309, 811.315, 811.316, 811.317, and 811.Subpart E. EL ² : Sections 814.302 and 814.402. |
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 | | | |
| V. | SUBPART E: Groundwater Monitoring and Corrective Action | | |

- | | | | |
|------|--|-------------|---|
| 1) | Applicability. | 1) | NL ¹ : 35 Section 811.319(a)(1). EL ² : Sections 814.302 and 814.402. |
| 2) | Groundwater monitoring systems. (40 CFR 258.51) | 2) | NL ¹ : Sections 811.318 and 811.320(d). EL ² : Sections 814.302 and 814.402. |
| 3) | Groundwater sampling and analysis. (40 CFR 258.53) | 3) | NL ¹ : Section 811.318(e), 811.320(d), 811.320(e). EL ² : Sections 814.302 and 814.402. |
| 4) | Detection monitoring program. (40 CFR 258.54) | 4) | NL ¹ : Section 811.319(a). EL ² : Sections 814.302 and 814.402. |
| 5) | Assessment monitoring program. (40 CFR 258.55) | 5) | NL ¹ : Section 811.319(b). EL ² : Sections 814.302 and 814.402. |
| 6) | Assessment of corrective measures. (40 CFR 258.56) | 6) | NL ¹ : Sections 811.319(d) and 811.324. EL ² : Sections 814.302 and 814.402. |
| 7) | Selection of remedy. (40 CFR 258.57) | 7) | NL ¹ : Sections 811.319(d) and 811.325. EL ² : Sections 814.302 and 814.402. |
| 8) | Implementation of the corrective action program. (40 CFR 258.58) | 8) | NL ¹ : Sections 811.319(d) and 811.325. EL ² : Sections 814.302 and 814.402. |
| VI. | SUBPART F: Closure and Post-Closure Care | | |
| 1) | Closure criteria. (40 CFR 258.60) | 1) | NL ¹ : Sections 811.110, 811.315 and 811.322. EL ² : Sections 814.302 and 814.402. |
| 2) | Post-closure care requirements. (40 CFR 258.61) | 2) | NL ¹ : Section 811.111. EL ² : Sections 814.302 and 814.402. |
| VII. | SUBPART G: Financial Assurance Criteria | | |
| 1) | Applicability and effective date. (40 CFR 258.70) | 1) | NL ¹ : Section 811.700. EL ² : Sections 814.302 and 814.402. |
| 2) | Financial assurance for closure. (40 CFR 258.71) | 2, 3 and 4) | NL ¹ : Sections 811.701 through 811.705. EL ² : Sections 814.302 and 814.402. |

- 3) Financial assurance for post-closure. (40 CFR 258.72) See above.
- 4) Financial assurance for corrective action. (40 CFR 258.73) See above.
- 5) Allowable mechanisms. (40 CFR ~~258.73~~258.74 and 258.75) 5) NL¹: Section 811.706 through ~~811.715~~811.717. EL²: Sections 814.302 and 814.402.

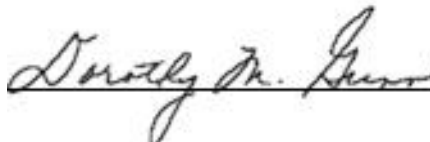
1 - NL: New Landfill; 2 - EL: Existing Landfill and Lateral Expansions.

(Source: Amended at 21 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

Chairman C.A. Manning abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above opinion and order was adopted on the 7th day of August 1997, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board