

ILLINOIS POLLUTION CONTROL BOARD  
September 17, 1998

IN THE MATTER OF: )  
 )  
LIVESTOCK WASTE REGULATIONS: ) R97-15(B)  
35 ILL. ADM. CODE 506 ) (Rulemaking - Land)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by M. McFawn):

In 1996, the Illinois General Assembly enacted the Livestock Management Facilities Act (LMFA) (510 ILCS 77/1 *et seq.*) to address concerns arising from changes sweeping the livestock industry, including larger concentrations of animals at livestock facilities and the resulting impact on surrounding areas. See 510 ILCS 77/5(5), (6). Section 17 of the LMFA (510 ILCS 77/17) requires owners of new or modified livestock waste lagoons to provide evidence of financial responsibility for lagoon closure. On May 21, 1998, the Board sent to first notice proposed rules to implement Section 17 of the LMFA, which requires owners of livestock waste lagoons to provide evidence of financial responsibility for lagoon closure.

STATUTES IMPLEMENTED BY RULES

Section 17 of the LMFA provides:

Owners of new or modified lagoons registered under the provisions of this Act shall establish and maintain evidence of financial responsibility to provide for the closure of the lagoons and the proper disposal of their contents within the time provisions outlined in this Act. Financial responsibility may be evidenced by any combination of the following:

- 1) Commercial or private insurance;
- 2) Guarantee;
- 3) Surety bond;
- 4) Letter of credit;
- 5) Certificate of Deposit or designated savings account;
- 6) Participation in a livestock waste lagoon closure fund managed by the Illinois Farm Development Authority.

The level of surety required shall be determined by rule and be based upon the volumetric capacity of the lagoon. Surety instruments required under this Section shall be required after the effective date of rules adopted for the implementation of this Act.

The “closure of the lagoons and the proper disposal of their contents within the time provisions outlined in this Act” is governed by Section 15(e) of the LMFA (510 ILCS 77/15(e)), which provides:

When any earthen livestock waste lagoon is removed from service, it shall be completely emptied. Appropriate closure procedures shall be followed as determined by rule. The remaining hole must be filled. The closure requirements shall be completed within two years from the date of cessation of operation unless the lagoon is maintained or serviced. The Department may grant a waiver to the before-stated closure requirements that will permit the lagoon to be used for an alternative purpose.

Upon a change in ownership of a registered earthen livestock lagoon, the owner shall notify the Department of the change within 30 working days of the closing of the transaction.

### DEVELOPMENT OF RULES

The Illinois Department of Agriculture (Department) filed a rulemaking proposal with the Board on July 22, 1997. The Board held three public hearings, at which representatives of the Department, the Illinois Environmental Protection Agency (Agency), and the Illinois Beef Association, Illinois Pork Producers Association (Pork Producers), and the Illinois Farm Bureau (collectively, Farm Groups) testified. In its order at first notice, the Board adopted proposed rules based upon the Department’s proposal, with a number of changes.

### Summary of Proposed Rules

The proposed rules require lagoon owners to have financial assurance in place either by June 1, 1999, or before the lagoon is placed in service. Section 506.601. The proposed rules set forth criteria for each of the six surety instruments, as well as the procedures by which such instruments are called upon. The initial term of the surety instrument must be at least three years, and the term of coverage may never be less than two years. Section 506.602. This requirement is to ensure that the lagoon can be closed within the statutory time period. Under Section 15(e) of the LMFA, a lagoon must be closed within two years of being removed from service. The proposed rules also establish that the level of surety required is equal to the volumetric capacity of the lagoon multiplied by a cost factor, plus an engineering contingency factor. The initial cost factor is ten cents per cubic foot of lagoon volume. The engineering contingency factor is ten percent. Section 506.603.

The proposed rules include conditions under which a lagoon is considered removed from service. Removal from service triggers the lagoon owner's obligation under Section 506.209 to submit a closure plan to the Department. Additionally, the Department sends a notice to the financial institution when it determines that a lagoon has been removed from service. If the owner does not file a plan, and cannot be found or fails to cure the omission within 30 days after notice from the Department, then surety liability is triggered. If the owner files a plan, then the Department approves the plan, rejects the plan, or requests more information. If no plan is approved within eight months, then again surety liability is triggered. Finally, surety liability is triggered if an owner fails to follow an approved closure plan and does not cure noncompliance within 30 days after notice from the Department. Section 506.606(a).

Once surety liability has been triggered, the Department sends a notice to the financial institution. The financial institution must then deposit the proceeds of the surety instrument into an account upon which the Department is authorized to draw for lagoon closure. The Department then proceeds to close the lagoon. Alternatively, the financial institution may assume liability for lagoon closure itself. Section 506.606(c). In that case, the financial institution does not deposit the funds in an account accessible by the Department. Instead, the financial institution is obligated to close the lagoon in accordance with the closure regulations. Should it fail to do so, the financial institution is still obligated to deposit the proceeds from surety instrument in an account accessible by the Department so that it can close the lagoon.

### REQUESTED CHANGES TO PROPOSAL

The Board received comments on its proposal at first notice from the Farm Groups (PC 10), the Department (PC 11), and the Agency (PC 12). In their comments these parties requested a number of changes to the proposal. Requested changes are discussed on a section-by-section basis.

#### Section 506.103: Definitions

At first notice, the Board proposed adding definitions of "maintained" and "serviced" to the regulations in Part 506. The Farm Groups object to the phrase "including but not limited to," which prefaces the lists of defects for which lagoons must be inspected or which must be repaired when present. The Farm Groups assert that "the [LMFA] and the adopted rules for servicing a lagoon specifically state what actions a producer must take." PC 10 at 2.

The Farm Groups have not cited any specific provisions of the LMFA or the adopted rules which address servicing of lagoons, and the Board has not found any such provision. The Board notes that Section 16 of the LMFA (510 ILCS 77/16), which requires annual lagoon inspections by the Department, limits the scope of the Department's investigation to a visual inspection for burrow holes, trees or woody vegetation, proper freeboard, erosion, settling of the berm, bermtop maintenance, leaks, and seepage. However, the Board does not find such a limited list always adequate for determining whether a lagoon owner is properly maintaining or servicing a lagoon. A lagoon owner may not ignore an obvious defect just

because it is not among the examples listed in the definitions in Section 506.103, and the Board will not speculate as to the range of problems which could arise with respect to a lagoon. Accordingly, the Board has not changed these definitions.

Section 506.209: Lagoon Closure and Ownership Transfer

Removal from Service

Notice to Financial Institution. Section 506.209(a)(1) of the proposed rules requires the owner or operator of a lagoon to give written notification to the Department when a lagoon is removed from service. The Farm Groups suggest that notice should also be given to the financial institution providing evidence of financial responsibility with respect to the lagoon when the Department determines that a lagoon has been removed from service, as well as when closure is completed. The Farm Groups propose that the following language be added to Section 506.209:

The Department, upon receipt of notice from the owner or operator that a lagoon is removed from service or when a lagoon is considered removed from service in accordance with Section 506.209(b), shall notify the surety of potential liability and the effective date that the lagoon was removed from service. A notice of a release of liability shall be issued by the Department when the lagoon closure procedure is completed. PC 10 at 2.

Regarding notice to the financial institution upon completion of closure, such notice is already required under Section 506.605(c) of the proposed rules. As for notice to a financial institution when a lagoon is removed from service, the Board concludes that such notice is appropriate. However, rather than appending the above-quoted language to Section 506.209(a)(1) as requested by the Farm Groups, the Board amends Section 506.606(b) to provide that the Department must give notice to the financial institution when it determines that a lagoon has been removed from service. Please note that to facilitate this amendment most of Section 506.606(b) becomes 506.606(c), and former Section 506.606(c) is now 506.606(d).

Denial of Waiver Request. The Farm Groups note that under Section 506.209(b)(5) a lagoon is considered removed from service when the Department has issued a final denial of a request to use a lagoon for an alternative purpose, but that no provision is made for appeal of such a denial. The Farm Groups propose that the words “and administrative appeals have been exhausted” be added to the end of subsection (b)(5). PC 10 at 3.

Based upon the Farm Groups’ comment, the Board has reexamined subsection (b)(5), and concludes that this provision, as written or as amended, is unnecessary. Until a lagoon owner receives a waiver of closure requirements from the Department, the lagoon is subject to all the requirements of the LMFA and Part 506. If a request to use a lagoon for an alternative purpose is denied, then the lagoon is still subject to the LMFA and Part 506. Inasmuch as

Section 506.209, under the proposed amendments, allows lagoons to remain idle as long as they are serviced and maintained, the Board sees no reason to require a lagoon to be removed from service just because a request for an alternative purpose waiver has been denied. Accordingly, the Board has deleted paragraph (b)(5) from Section 506.209.

### Idle Lagoons

In its opinion at first notice, the Board invited interested parties to comment on whether a maximum time should be set in the rules, after which an idle lagoon would be considered removed from service. The Agency has commented that because the definitions of maintained and serviced are included in the rules as well as the requirement that an idle lagoon be maintained and serviced, no advantage would be realized by imposing a time limit for idle lagoons. PC 12 at 4. The Board therefore has not included a limit on the time a lagoon may remain idle.

### Section 506.601: Scope, Applicability, and Definitions

The General Assembly's Joint Committee on Administrative Rules requested that a specific date be inserted in Section 506.601(b)(1) in lieu of a generic reference to the effective date of the provision. The Board has set June 1, 1999, as the date by which owners of registered lagoons must provide evidence of financial responsibility. Originally, Section 506.601(b)(1) gave lagoon owners 180 days from the effective date of the provision to come into compliance. The Board estimates that the June 1, 1999, date will provide approximately the same amount of time.

### Section 506.602: Evidence of Financial Responsibility

#### Term of Surety Instrument

Section 506.602(b), as proposed at first notice, mandates that the initial term of a surety instrument be at least three years, and that at least two years prior to expiration the lagoon owner must extend the term of coverage for an additional year. The Board adopted these provisions to ensure that even if a lagoon owner fails to renew a surety instrument as required, there would still always be at least two years of coverage within which the Department could draw upon the surety instrument to close the lagoon.

The Farm Groups state that this three-year requirement will create a financial hardship for lagoon owners, and remind the Board of "actuarial data" regarding abandonment and closure of lagoons. The Farm Groups also submit that recommended changes to Section 506.209 (which the Board has substantially adopted, as discussed above) obviate the need for a three-year term for surety instruments. PC 10 at 3.

The Board notes initially that any actuarial data which may exist regarding lagoon closures is apparently insufficient for the insurance industry, based on testimony from the hearings. Richard Davidson of the Pork Producers testified that "[t]he insurance market

expressed no interest in offering [lagoon closure] policies because there is no basis on which to compute an actuary cost.” Tr. at 56 (10/14/97). The Board also notes that the data provided by the Pork Producers at the hearing was anecdotal and second-hand: Mr. Davidson commented that “two lagoons may have been abandoned” but the Pork Producers “have no documentation that this is a fact.” Exh. 5 at 5 (emphasis added). Furthermore, even if the record contained sufficient information to compute the likelihood of a forced lagoon closure, it does not logically follow that just because a lagoon closure is unlikely, these regulations need not ensure that funds will be available to facilitate that closure.

The Board also cannot find that the addition of a provision requiring notice to a financial institution when a lagoon is removed from service, as discussed under Section 506.209 above, will ensure that closure takes place before a one-year-term surety instrument would expire. Any number of situations can be described in which such notification would not serve to ensure timely closure. To cite the most obvious example, under Section 506.209(b)(4) a lagoon is removed from service if the owner does not extend a surety instrument. If the term of the instrument were reduced to one year, the financial institution would not receive notice of removal from service until after it no longer had any obligation. This would result in precisely the situation the three-year term was designed to avoid: a lapse in coverage at the very time it might be needed.

The Board is not persuaded that the initial term of surety instruments under Section 506.602(b) should be modified. This change has not been made.

#### Validity of Surety Instrument

At first notice, the Board invited comments on the necessity of Section 506.602(d), which provides that a lagoon owner must ensure that the terms and conditions of any surety instrument used by the lagoon owner are valid, binding, and enforceable. The Board inquired whether this section imposed any duties or liabilities on a lagoon owner beyond those already imposed under the LMFA.

The only comment received on this subject was from the Agency. The Agency notes the lack of certainty as to the availability of certain instruments, and suggests that if a producer were to provide the Agency with a surety instrument which it had previously determined was unavailable, it would be prudent to require some verification of the validity of the instrument. PC 12 at 1-2. To the extent that Section 506.602(d) provides the Department with an avenue for recovery that may not be available otherwise, including this provision in the rules is indeed prudent. Subsection (d) has therefore been retained.

#### Section 506.603: Level of Surety

Section 506.603 of the proposed rules sets forth the formula by which the level of surety for a given lagoon is calculated. The Board’s proposal adopted the Department’s cost factor of 10¢/ft<sup>3</sup>, but invited comments on whether this amount was appropriate given changes

made to other terms of the Department's proposal. The Board also invited comments on whether a minimum level of surety should be set.

### Cost Factor

The Agency notes that the cost factor calculated by the Department assumes the sale of manure in a lagoon for use as fertilizer, and bases the value of the manure on the cost of commercial fertilizer. The Agency points out that there are a number of factors that can affect the value of manure as fertilizer, including the existence of a willing buyer at the time the lagoon must be closed, the distance the manure must be transported, and the extent to which the manure is interchangeable with commercial fertilizer for the buyer's purposes. PC 12 at 2.

In light of these variables, the Agency recommends including a 10% "engineering contingency" in the formula for calculating a level of surety. PC 12 at 3. Such a contingency would ensure that funds would be available to close the lagoon even if proceeds of the sale of manure are less than anticipated by the Department when the cost factor was calculated. The Board finds the Agency's analysis well reasoned and has added an engineering contingency of 10% to the formula for calculating the level of surety for a lagoon. The Board notes the Agency's statement that "[t]he term 'Engineering contingency' should not be construed as a proposal for a new requirement for professional engineering oversight or design of lagoon closure." *Id.*

The Agency recommended excluding the lagoon closure fund managed by the Illinois Farm Development Authority from the contingency requirement. PC 12 at 3. The Board concludes that such an exclusion is not appropriate. The minimum reserve level of the lagoon closure fund is set under Section 506.615(c) as the greater of either the level of surety of the largest lagoon in the fund, or twice the average level of surety of all participating lagoons. Should the minimum level be set based on the largest lagoon in the fund, then the Agency's arguments in favor of adding the contingency would apply to lagoons covered by the lagoon closure fund as well. Accordingly, the rules do not exclude lagoons covered by the closure fund from the application of the contingency requirement.

### Minimum Level of Surety

The Farm Groups note that other rules governing livestock waste lagoon construction set a minimum design volume for a given lagoon (see 35 Ill. Adm. Code 506.204(g)(3) and (4)), and that fixed costs are included in the Department's cost factor. PC 10 at 1. The Board has therefore not included a minimum level of surety in the proposed regulations.

### Section 506.605: Release of Lagoon Owner and Financial Institution

The Department suggested that the Board add the words "of this Section" at the end of paragraph 506.605(b)(2) to clarify the reference to "subsection (a)." PC 11 at 1. The Board has made this change to the rule.

## Section 506.606: Financial Responsibility Proceeds

### Time for Approval of Lagoon Closure Plan

Under Section 506.606(a)(2) and (b)(1)(B) of the rules proposed at first notice, one event triggering the Department's ability to call upon a surety instrument is the failure of an owner or financial institution to obtain approval of a closure plan within one year of the date a lagoon is removed from service. The Department points out that under the proposed rules both the owner and the financial institution could each use up one year attempting to obtain approval of a closure plan. PC 11 at 2. For example, if, at the end of a year, the owner has not obtained approval of a closure plan, then the Department may call upon the financial institution issuing a surety instrument to fulfill its obligations under the instrument. Under Section 506.606(c) of the proposed rules (formerly Section 506.606(b)), the financial institution then has the option of assuming responsibility for lagoon closure itself. If it does so, it also has a year to get a closure plan approved. If both the owner and the financial institution use up their entire year without a plan being approved, then closure could not, as the Department correctly points out, take place within the two year time period allowed under Section 15(e) of the LMFA. *Id.*

The Department suggests changing the period for approval of a closure plan to eight months. PC 11 at 2. Even with other notice periods involved in the closure process, this would give the Department several months, even in a worst-case scenario, to close a lagoon within the statutory time period. The Board finds this change is warranted, and has changed the time for obtaining approval of a closure plan in Section 506.606(a)(2) and (c)(1)(B) to eight months. To keep the regulations consistent, the same change has been made to Section 506.614(c)(2).

### Maintenance and Service of Lagoon by Financial Institution

Section 506.606(c)(3) of the proposed rules (formerly Section 506.606(b)(3)) provides that any funds expended by a financial institution to maintain or service a lagoon pending closure do not reduce the level of the financial institution's obligation. Describing this provision in its opinion at first notice, the Board explained:

[O]nce the financial institution has assumed responsibility for closure, the financial institution remains potentially liable for up to the level of surety until closure is certified by the Department as described in Section 506.209. This means that if a closure plan is either not filed, not approved within one year (unless the lagoon is maintained or serviced), or not followed after approval, the financial institution has not fulfilled its obligation and is therefore once again liable under the surety instrument. In that event, amounts expended by the financial institution in service, maintenance or partial closure are not deducted from the amount of liability. Such activities may, however, reduce the costs



incurred by the Department to complete closure, and thus increase the dollar amount released to the financial institution upon completion of closure by the Department. In the Matter of: Livestock Waste Regulations (May 21, 1998), R97-15(B), slip op. at 10.

The Department notes that the proposed rule mentions only amounts expended to service or maintain a lagoon, not amounts expended in partial closure, and suggests that language be added to clarify that partial closure expenditures do not reduce a financial institution's obligation. PC 11 at 3. The Farm Groups, on the other hand, argue that maintaining and servicing a lagoon pending closure is a legitimate cost of closing a lagoon, and that this provision places an unknown liability above and beyond the surety amount on the financial institution. The Farm Groups recommend that it be amended to permit costs of maintenance and service to be paid out of surety funds. PC 10 at 3-4.

It is important to note that this provision is only of significance where a financial institution has assumed responsibility for closure of a lagoon. No financial institution is ever required to maintain or service a lagoon. The financial institution may always simply deposit the proceeds of a surety instrument into an account for use by the Department, and have no further obligations. Where a financial institution assumes responsibility for closure, however, its obligations under the surety instrument are not affected unless closure is completed, at which point the financial institution is released. The reason for this rule is that the Department must always be able to call upon the surety instrument if it needs to close the lagoon, *i.e.*, in case the financial institution does not perform as required. The costs of closing the lagoon may not have been significantly reduced by any activity of the financial institution in the meantime.

For example, assume that a lagoon is serviced and maintained for some period by a financial institution, while the terms of a closure plan are negotiated between the financial institution and the Department. Later, the financial institution defaults under the closure plan, before any closure activities have taken place. At that point, the Department could call upon the financial institution to deposit funds for closure of the lagoon. The level of surety for the lagoon was calculated based on the estimated cost to close the lagoon, so presumably the entire amount would be required. If the financial institution were allowed to deduct costs of maintenance and service of the lagoon, there might not be sufficient funds remaining to close the lagoon when closure is finally conducted.

For these reasons, the Board has not made the changes suggested by the Farm Groups, and has added the additional language suggested by the Department.

#### Deposit of Funds for Lagoon Closure

The Department notes that there are two situations in which a financial institution may be required to deposit funds for use by the Department to close a lagoon: when liability is triggered under Section 506.606(a) and the financial institution elects not to assume

responsibility for closure of the lagoon, and when the financial institution assumes liability but the defaults on some portion of the procedure. PC 11 at 3. The Department suggests that the first sentence of paragraph (c)(4) (formerly (b)(4)) of Section 506.606 be amended to reflect that it applies in either of these circumstances. The Board has made the suggested change to Section 506.606(c)(4).

The Farm Groups, noting that funds deposited for lagoon closure belong to the financial institution and are not State funds, have suggested that conditions be placed on the type of account into which such funds may be deposited; specifically, they recommend inclusion of a provision that “[s]uch funds shall be deposited in a non-appropriated, interest-bearing, and financially secure account which is subject to audit.” PC 10 at 3. The Farm Groups are correct that the funds deposited for lagoon closure remain the financial institution’s. Under Section 506.606(c), it is the financial institution that deposits the funds; accordingly, the financial institution will control the type of account into which they are deposited. The only condition on what type of account may be used is that the Department be authorized to draw on the account to close the lagoon. Since the financial institution will control the type of account used, there is no need to include provisions in the rules mandating characteristics of such accounts to protect financial institutions. Accordingly, the Board has not done so.

Under Section 506.607 of the proposed rules, a lagoon owner may use multiple surety instruments to evidence financial responsibility. Thus, a given financial institution’s obligation may be less than the level of surety for the lagoon. Section 506.606(c)(1) and (c)(2) have been amended to reflect this possibility.

#### Interest on Funds Deposited for Lagoon Closure

The Department notes that a considerable amount of interest could accrue on funds deposited for closure of a lagoon under Section 506.606(c) (former Section 506.606(b)), and suggests that language be added to avoid any confusion that may arise over the use of interest earned while funds are in the disbursement account. PC 11 at 3. The Board has added language to Section 506.606(c)(4) to clarify that the Department may use any interest earned to close the lagoon, and also that any remaining interest must be returned to the financial institution when closure is complete.

#### Section 506.610: Commercial or Private Insurance

Under Section 506.607, a lagoon owner may use multiple surety instruments to provide evidence of financial responsibility for lagoon closure. Thus, the amount of any given surety instrument may be less than the level of surety. The Board has deleted Section 506.610(d), which required an insurance policy to have a face amount at least equal to the level of surety, in recognition of this possibility.

#### Section 506.611: Guarantee

### Disclosure of Financial Statements

Section 506.611 sets forth the criteria for using a guarantee as evidence of financial responsibility for lagoon closure. Subsection (b) of Section 506.611 requires a guarantor to submit a financial statement to the Department. The Farm Groups assert that the information contained in such a financial statement “constitutes private business information which is considered confidential under the Freedom of Information Act and is not subject to public availability.” The Farm Groups recommend that the confidential nature of financial statements, and their exemption from disclosure, be specifically stated in the proposed rule. PC 10 at 4.

The Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.*) provides generally that all public records must be made available for inspection and copying by any person, except for certain categories of documents which are specifically declared exempt. 5 ILCS 140/3(a) (1996). It may well be that a financial statement submitted under Section 506.611 falls within one of the exempt categories of documents; this determination, however, is made by the agency receiving the FOIA request. 5 ILCS 140/3(c) (1996). Thus, whether financial statements of guarantors are exempt from disclosure will be determined by the Department if and when a FOIA request is received, rather than by the Board in this rulemaking proceeding. See 2 Ill. Adm. Code 701. The Board notes that in any event no pronouncement in a rule could shield documents otherwise subject to disclosure under FOIA—the Board may not through rulemaking expand or restrict the operation of the statute. Accordingly, the Board has not added the provision requested by the Farm Groups. The Board expresses no opinion as to whether or not guarantor financial statements will be exempt from FOIA disclosure.

### Evaluation of Financial Statements

Section 506.611(c) provides that the Department reviews the financial statement of a guarantor and determines whether adequate resources exist to guarantee closure costs. The Farm Groups object to this provision, arguing that it allows the Department too much discretionary authority. The Farm Groups propose changing subsection (c) to provide that the financial statement must indicate a net worth equal to or greater than the level of surety.

A proposed guarantor’s net worth may not be an accurate indicator of that party’s ability to fund closure of a lagoon, particularly if a substantial percentage of the proposed guarantor’s assets are not liquid, and would have to be either liquidated or encumbered to fund closure. Because the adequacy of a proposed guarantor’s resources will vary from case to case, the Board will not (at least on the record before it) adopt a rigid formula for determining adequacy. The Board believes that the Department must retain a measure of discretion in making this evaluation. The Board has therefore not made the suggested change to subsection (c).

### Section 506.612: Surety Bond

For the reasons discussed under Section 506.610 above, the Board has deleted Section 506.612(c)(2), which required a surety bond to have a penal sum at least equal to the level of surety.

#### Section 506.613: Letter of Credit

For the reasons discussed under Section 506.610 above, the Board has deleted Section 506.613(d), which required a letter of credit to be in an amount at least equal to the level of surety.

#### Section 506.614: Certificate of Deposit or Designated Savings Account

The Department submits that an additional condition should be added to Section 506.614(f), which lists the conditions under which the Department must relinquish trusteeship of a certificate of deposit or designated savings account. The Department recommends that subsection (f) include replacing a surety instrument as a condition causing the Department to release the trusteeship. PC 11 at 4. This would make Section 506.614(f) consistent in its operation with Section 506.605, which was the Board's intent. Accordingly, the Board has added the requested condition to Section 506.614(f).

#### Section 506.615: Participation in a Livestock Waste Lagoon Closure Fund

##### Role of Farm Development Authority

Section 506.615 sets forth the criteria for providing evidence of financial responsibility for lagoon closure through participation in a livestock waste lagoon closure fund. Asserting that subsection (a) of Section 506.615 "assigns responsibility to the Farm Development Authority which was never intended," and which the Farm Development Authority does not desire, the Farm Groups recommend that the phrase "managed by the Illinois Farm Development Authority" be changed to "established by a government-industry cooperative agreement for which the Illinois Farm Development Authority serves as the fiduciary custodian." PC 10 at 4. The Board notes that the language "managed by the Illinois Farm Development Authority" is taken directly from Section 17 of the LMFA. Accordingly, the Board does not accept the Farm Groups' argument that the management role of the Farm Development Authority was "never intended." Therefore, the Board has not changed this provision of subsection (a).

##### Financial Statement

Subsection (a) also provides that a certificate of participation in a lagoon closure fund must include a financial statement of the fund establishing the fund's compliance with Section 506.615's requirements. The Farm Groups have suggested that this requirement creates unnecessary paperwork for the lagoon owner, and recommend that the fund be required to provide a statement to the Department annually. The Board has not adopted this recommended change. The status of the fund may change dramatically throughout the course of a year,

through the addition and departure of members and payouts for closure of lagoons; a financial statement prepared in January may well not reflect the financial condition of the fund in November. This requirement ensures that the fund meets the requirements of Section 506.615 at the time the lagoon owner submits his certification to the Department.

The Farm Groups have also recommended that language be added to subsection (a) to provide that the financial statements of the fund be considered confidential business information and not be available to the public. PC 10 at 4-5. For the reasons stated in its discussion of recommended changes to Section 506.611 above, the Board has not added this language.

#### Maintenance of Reserve Level

Section 506.615(c) (formerly Section 506.615(b)) sets a minimum level of reserves which a lagoon closure fund must maintain. If called upon to fund closure of a lagoon, the level of reserves in the lagoon closure fund may be reduced below this minimum level. The Farm Groups state that “[n]ormal operational procedures dictate at least 120 days will be needed to reassess producers and bring the fund back to the minimum reserve level[.]” PC 10 at 5. The intention at first notice was not that a payment from the fund would throw all members into noncompliance. Accordingly, the Board has added a new subsection (e) to Section 506.615 to provide the lagoon closure fund 120 days from a payment for lagoon closure to demonstrate that the reserves in the fund have been brought back up to the minimum level set in subsection (c).

The Farm Groups also proposed that the rules include a paragraph providing that “[w]ithin 180 days of the establishment of a lagoon closure fund, the fund must have assets to meet the requirements set forth in [subsection (c)].” PC 10 at 5. Inasmuch as this term deals with the internal operations of the fund, the Board has not included it in the rules. The Board notes that under Section 506.601(b) of the proposed rules, all owners of lagoons subject to the rules will have until June 1, 1999, to come into compliance. Thus, as long as the lagoon closure fund is established by December 1, 1998, the fund will have the cushion it seeks. Regardless of the date of establishment, however, the balance in the fund must meet the requirements of Section 506.615(c) on June 1, 1999, or the funds’ members will not be in compliance with the financial responsibility requirements of the LMFA.

#### Duration of Coverage

At first notice, Section 506.615(d) required that the lagoon closure fund provide coverage for specified periods of time. The Department suggests linking the length of the periods of coverage to the duration requirements for surety instruments in Section 506.602(b). The Board notes that Section 506.602(b) sets forth minimum terms for surety instruments, but it is not intended to preclude use of an instrument with a longer term. Also, where under Section 506.607 a replacement instrument is provided for an existing instrument which has not expired, such an instrument may have a term less than the terms set forth in Section 506.602, as long as the replacement instrument will not expire before the instrument it replaces. Thus,

the Board concludes that a reference to the time periods set forth in Section 506.602(b) is not appropriate. The Board has, however, split subsection (a) to create a new subsection (b), which sets forth items that must be included in a certificate of participation; this new subsection provides that the certification must include a date through which the fund provides coverage. Subsection (f), derived from former subsection (d), provides that the fund may not cancel or terminate coverage before the date set in the certificate of participation. The Board believes that these changes clarify the operation of Section 506.615.

### Section 506.Appendix A

#### Illustration A: Surety Bond

The Department notes that if the financial institution issuing a surety bond for lagoon closure assumes liability for closure of the lagoon, as it may do under Section 506.606(c) of the proposed rules, then the institution's total obligations could exceed the penal sum of the bond. The Department has therefore suggested that the following language be added to Illustration A of Appendix A to Part 506, the sample surety bond form:

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 unless the Surety assumes liability for the closure of the lagoon.

The Department's point is well taken. However, a financial institution's obligation under a surety bond is not affected by any expenditures that institution may make to close a lagoon if the institution has assumed responsibility for closure. Thus, if a financial institution assumes responsibility for closure and therefore has to expend more than the penal sum of a bond, any such expenditures are not due to an increase in the financial institution's obligations under the bond. To make this distinction clear, the Board has added the following sentence to the form surety bond: "If the Surety assumes responsibility to provide closure, expenditures made by the Surety for that purpose may exceed the amount of the penal sum, but the amount of the Surety's obligation under this bond is not affected." The Board believes that the addition of this language addresses the Department's concerns.

#### Illustration B: Irrevocable Standby Letter of Credit

The Department has also identified several inadvertent omissions and a typographical error in Illustration B, the form letter of credit. The Board has removed an extra digit from the Department's zip code, added a reference to the Federal Savings and Loan Insurance Corporation to the first paragraph of the form to conform the language of the letter to the language of Section 506.613(b)(2), and added a reference to Section 506.606(c) to item 2 in the second paragraph of the letter. This last addition reflects that the financial institution may be called upon to deposit funds for lagoon closure under Section 506.606(c) if the financial

institution assumes responsibility for closure of the lagoon but fails to achieve closure in accordance with the rules.

### Resolution of Disputes

At first notice, the Board invited comments by interested persons regarding whether a provision for resolution of disputes between the Department and lagoon owners should be included in the rules. The Farm Groups and the Agency both take the position that disputes should be governed by existing rules adopted by the Department. The Board accordingly has not included a provision for resolution of disputes in these rules.

### Other Changes

The Board has made a number of other editorial changes to the proposed rules for grammatical, typographical, or stylistic reasons. Changes other than those discussed above are intended to be non-substantive.

### CONCLUSION

Based upon the record in this proceeding, the Board finds that adoption of the proposed rules, as amended, for the purposes of second notice is warranted.

### ORDER

The Board hereby proposes for second notice the following amendments to 35 Ill. Adm. Code 506. The Clerk of the Board is directed to file these proposed rules with the Joint Committee on Administrative Rules.

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE E: AGRICULTURE RELATED POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD

PART 506  
LIVESTOCK WASTE REGULATIONS

SUBPART A: GENERAL PROVISIONS

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Section	
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#### SUBPART F: FINANCIAL RESPONSIBILITY

Section	
506.601	<u>Scope, Applicability, and Definitions</u>
506.602	<u>Mechanisms for Providing Evidence</u> of Financial Responsibility
506.603	Level of Surety



<u>506.604</u>	<u>Upgrading Surety Instrument</u>
<u>506.605</u>	<u>Release of Lagoon Owner and Financial Institution</u>
<u>506.606</u>	<u>Financial Responsibility Proceeds</u>
<u>506.607</u>	<u>Use of Multiple Surety Instruments</u>
<u>506.608</u>	<u>Use of a Single Surety Instrument for Multiple Lagoons</u>
<u>506.610</u>	<u>Commercial or Private Insurance</u>
<u>506.611</u>	<u>Guarantee</u>
<u>506.612</u>	<u>Surety Bond</u>
<u>506.613</u>	<u>Letter of Credit</u>
<u>506.614</u>	<u>Certificate of Deposit or Designated Savings Account</u>
<u>506.615</u>	<u>Participation in a Livestock Waste Lagoon Closure Fund</u>
<u>506.620</u>	<u>Penalties</u>

### SUBPART G: SETBACKS

Section	
506.701	Applicability
506.702	Procedures
506.703	Initial Determination of Setbacks
506.704	Penalties

<u>APPENDIX A</u>	<u>Surety Instruments</u>
	<u>ILLUSTRATION A Surety Bond</u>
	<u>ILLUSTRATION B Irrevocable Standby Letter of Credit</u>

AUTHORITY: Authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/27] and Section 55 of the Livestock Management Facilities Act and implementing the Livestock Management Facilities Act [510 ILCS 77].

SOURCE: Adopted in R97-15(A) at 21 Ill. Reg. 6851, effective May 20, 1997; amended in R97-15(B) at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

### SUBPART A: GENERAL PROVISIONS

Section 506.103	Definitions
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Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part shall be the same as that applied to the same words or terms in the Environmental Protection Act [415 ILCS 5] or the Livestock Management Facilities Act [510 ILCS 77]. For the purposes of this Part, the terms included herein shall have the following meanings~~their associated meanings as follows~~:

“AGENCY” MEANS THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY. [510 ILCS 77/10.5]

“ANIMAL FEEDING OPERATION” MEANS A FEEDING OPERATION AS DEFINED IN THE ILLINOIS ENVIRONMENTAL PROTECTION ACT AND THE RULES PROMULGATED UNDER THAT ACT CONCERNING AGRICULTURE RELATED POLLUTION. [510 ILCS 77/10.7]

“ANIMAL UNIT” MEANS A UNIT OF MEASUREMENT FOR ANY ANIMAL FEEDING OPERATION CALCULATED AS FOLLOWS:

BROOD COWS AND SLAUGHTER AND FEEDER CATTLE  
MULTIPLIED BY 1.0.

MILKING DAIRY COWS MULTIPLIED BY 1.4.

YOUNG DAIRY STOCK MULTIPLIED BY 0.6.

SWINE WEIGHING OVER 55 POUNDS MULTIPLIED BY 0.4.

SWINE WEIGHING UNDER 55 POUNDS MULTIPLIED BY 0.03.

SHEEP, LAMBS, OR GOATS MULTIPLIED BY 0.1.

HORSES MULTIPLIED BY 2.0.

TURKEYS MULTIPLIED BY 0.02.

LAYING HENS OR BROILERS MULTIPLIED BY 0.01 (IF THE  
FACILITY HAS CONTINUOUS OVERFLOW WATERING).

LAYING HENS OR BROILERS MULTIPLIED BY 0.03 (IF THE  
FACILITY HAS A LIQUID MANURE HANDLING SYSTEM).

DUCKS MULTIPLIED BY 0.02. [510 ILCS 77/10.10]

“Aquifer material” means sandstone ~~that~~which is five feet or more in thickness, or fractured carbonate ~~that~~which is ten feet or more in thickness; or, sand, gravel, or sand and gravel, as defined herein, such that there is at least two feet or more present within any five foot section of a soil boring performed in accordance with Section 506.202 of this Part.

“CERTIFIED LIVESTOCK MANAGER” MEANS A PERSON THAT HAS BEEN DULY CERTIFIED BY THE DEPARTMENT AS AN OPERATOR OF A LIVESTOCK WASTE HANDLING FACILITY. [510 ILCS 77/10.15]

“DEPARTMENT” MEANS THE ILLINOIS DEPARTMENT OF AGRICULTURE.  
[510 ILCS 77/10.20]

“FARM RESIDENCE” MEANS ANY RESIDENCE ON A FARM OWNED OR OCCUPIED BY THE FARM OWNERS, OPERATORS, TENANTS, OR SEASONAL OR YEAR-ROUND HIRED WORKERS. FOR PURPOSES OF THIS DEFINITION, A “FARM” IS THE LAND, BUILDINGS, AND MACHINERY USED IN THE COMMERCIAL PRODUCTION OF FARM PRODUCTS, AND "FARM PRODUCTS" ARE THOSE PLANTS AND ANIMALS AND THEIR PRODUCTS WHICH ARE PRODUCED OR RAISED FOR COMMERCIAL PURPOSES AND INCLUDE BUT ARE NOT LIMITED TO FORAGES AND SOD CROPS, GRAINS AND FEED CROPS, DAIRY AND DAIRY PRODUCTS, POULTRY AND POULTRY PRODUCTS, LIVESTOCK, FRUITS, VEGETABLES, FLOWERS, SEEDS, GRASSES, TREES, FISH, HONEY AND OTHER SIMILAR PRODUCTS, OR ANY OTHER PLANT, ANIMAL, OR PLANT OR ANIMAL PRODUCT WHICH SUPPLIES PEOPLE WITH FOOD, FEED, FIBER, OR FUR. [510 ILCS 77/10.23]

“Gravel” or “Sand and gravel” means unconsolidated materials that contain a matrix (particles of two millimeters or less) that is consistent with the definition of “sand” and particles larger than two millimeters in size.

“LAGOON” or “Earthen livestock waste lagoon” MEANS ANY EXCAVATED, DIKED, OR WALLED STRUCTURE OR COMBINATION OF STRUCTURES DESIGNED FOR BIOLOGICAL STABILIZATION AND STORAGE OF LIVESTOCK WASTES. A LAGOON DOES NOT INCLUDE STRUCTURES SUCH AS MANUFACTURED SLURRY STORAGE STRUCTURES OR PITS UNDER BUILDINGS AS DEFINED IN RULES UNDER THE ENVIRONMENTAL PROTECTION ACT CONCERNING AGRICULTURE RELATED POLLUTION. [510 ILCS 77/10.25]

“LICENSED PROFESSIONAL ENGINEER” MEANS A PERSON, CORPORATION OR PARTNERSHIP LICENSED UNDER THE LAWS OF THE STATE OF ILLINOIS TO PRACTICE PROFESSIONAL ENGINEERING. [415 ILCS 5/57.2]

“LICENSED PROFESSIONAL GEOLOGIST” MEANS AN INDIVIDUAL WHO IS LICENSED UNDER the laws of the State of Illinois TO ENGAGE IN THE PRACTICE OF PROFESSIONAL GEOLOGY IN ILLINOIS. [225 ILCS 745/15]

“LIVESTOCK MANAGEMENT FACILITY” MEANS ANY ANIMAL FEEDING OPERATION, LIVESTOCK SHELTER, OR ON-FARM MILKING AND ACCOMPANYING MILK-HANDLING AREA. TWO OR MORE LIVESTOCK MANAGEMENT FACILITIES UNDER COMMON OWNERSHIP, WHERE THE FACILITIES ARE NOT SEPARATED BY A MINIMUM DISTANCE OF 1/4 MILE, AND THAT SHARE A COMMON LIVESTOCK WASTE HANDLING FACILITY SHALL BE CONSIDERED A SINGLE LIVESTOCK MANAGEMENT FACILITY. LIVESTOCK MANAGEMENT Facilities AT EDUCATIONAL INSTITUTIONS,

LIVESTOCK PASTURE OPERATIONS, facilities WHERE ANIMALS ARE HOUSED ON A TEMPORARY BASIS SUCH AS COUNTY AND STATE FAIRS, LIVESTOCK SHOWS, RACE TRACKS, AND HORSE BREEDING AND FOALING FARMS, AND MARKET HOLDING FACILITIES ARE NOT SUBJECT TO THE Livestock Management Facilities Act or the requirements of this Part. [510 ILCS 77/10.30]

“LIVESTOCK WASTE” MEANS LIVESTOCK EXCRETA AND ASSOCIATED LOSSES, BEDDING, WASH WATERS, SPRINKLING WATERS FROM LIVESTOCK COOLING, PRECIPITATION POLLUTED BY FALLING ON OR FLOWING ONTO AN ANIMAL FEEDING OPERATION, AND OTHER MATERIALS POLLUTED BY LIVESTOCK. [510 ILCS 77/10.35]

“LIVESTOCK WASTE HANDLING FACILITY” MEANS INDIVIDUALLY OR COLLECTIVELY THOSE IMMOVABLE CONSTRUCTIONS OR DEVICES, EXCEPT SEWERS, USED FOR COLLECTING, PUMPING, TREATING, OR DISPOSING OF LIVESTOCK WASTE OR FOR THE RECOVERY OF BY-PRODUCTS FROM THE LIVESTOCK WASTE. TWO OR MORE LIVESTOCK WASTE HANDLING FACILITIES UNDER COMMON OWNERSHIP AND WHERE THE FACILITIES ARE NOT SEPARATED BY A MINIMUM DISTANCE OF 1/4 MILE SHALL BE CONSIDERED A SINGLE LIVESTOCK WASTE HANDLING FACILITY. [510 ILCS 77/10.40]

“Maintained” means, with reference to a livestock waste lagoon, that the livestock waste lagoon is inspected (including but not limited to inspection for burrow holes, trees and woody vegetation, proper freeboard, erosion, settling of berm, berm top integrity, leaks, and seepage) and preventive action is taken as necessary to assure the integrity of the lagoon and its berm and associated appurtenances.

“MODIFIED” MEANS STRUCTURAL CHANGES TO A LAGOON THAT INCREASE ITS VOLUMETRIC CAPACITY. [510 ILCS 77/10.43]

“NEW FACILITY” MEANS A LIVESTOCK MANAGEMENT FACILITY OR A LIVESTOCK WASTE HANDLING FACILITY THE CONSTRUCTION OR EXPANSION OF WHICH IS COMMENCED ON OR AFTER May 21, 1996 (THE EFFECTIVE DATE OF THE Livestock Management Facilities ACT). EXPANDING A FACILITY WHERE THE FIXED CAPITAL COST OF THE NEW COMPONENTS CONSTRUCTED WITHIN A 2-YEAR PERIOD DOES NOT EXCEED 50% OF THE FIXED CAPITAL COST OF A COMPARABLE ENTIRELY NEW FACILITY SHALL NOT BE DEEMED A NEW FACILITY AS USED IN THE Livestock Management Facilities ACT. [510 ILCS 77/10.45]

“NON-FARM RESIDENCE” MEANS ANY RESIDENCE WHICH IS NOT A FARM RESIDENCE. [510 ILCS 77/10.47]

“Occupied residence” means a house or other type of shelter that is intended or used for human occupancy and has been occupied by humans for more than a total of six months in the last two years at that location. For the purposes of this definition, “intended or used for human occupancy” means running water and sanitation are provided within the residence.

“OWNER OR OPERATOR” MEANS ANY PERSON WHO OWNS, LEASES, CONTROLS, OR SUPERVISES A LIVESTOCK MANAGEMENT FACILITY OR LIVESTOCK WASTE-HANDLING FACILITY. [510 ILCS 77/10.50]

“PERSON” MEANS ANY INDIVIDUAL, PARTNERSHIP, CO-PARTNERSHIP, FIRM, COMPANY, CORPORATION, ASSOCIATION, JOINT STOCK COMPANY, TRUST, ESTATE, POLITICAL SUBDIVISION, STATE AGENCY, OR ANY OTHER LEGAL ENTITY OR THEIR LEGAL REPRESENTATIVE, AGENT, OR ASSIGNS. [510 ILCS 77/10.55]

“Placed in service” means the placement of livestock waste in a livestock waste lagoon upon the completion of construction or modification in accordance with the requirements of this Part.

“POPULATED AREA” MEANS ANY AREA WHERE AT LEAST 10 INHABITED NON-FARM RESIDENCES ARE LOCATED OR WHERE AT LEAST 50 PERSONS FREQUENT A COMMON PLACE OF ASSEMBLY OR A NON-FARM BUSINESS AT LEAST ONCE PER WEEK. [510 ILCS 77/10.60] The existence of a populated area shall be determined by identifying the area around the livestock management or livestock waste handling facility delineated by a distance equal to the applicable setback distance and identifying the number of residences or the existence of a non-farm business or the existence of a common place of assembly within that area. For the purpose of setback requirements, common places of assembly or non-farm businesses include but are not limited to churches, hospitals, schools, day care centers, manufacturing companies, land managed for recreational or conservation purposes, museums, camps, parks, retail and wholesale facilities, and shopping centers. A common place of assembly or a non-farm business includes places that operate less than 52 weeks per year, such as schools with seasonal vacation periods and businesses or other places which experience seasonal shutdowns, and parks, camps, and recreational areas which experience seasonal shutdowns or reduced attendance during a portion of the calendar year, provided that such places are frequented by at least 50 persons at least once per week during the portions of the year when seasonal shutdowns or reductions in attendance do not occur.

“Residence” means a house or other structure, including all attachments to the house or structure, which is used as a place of human habitation.

“Sand” means unconsolidated materials, where 70% or more of the particles are of size 0.06 millimeters to 2.00 millimeters, and which according to the USDA soil texture

classification scheme includes soil textures of sand, and loamy sand, and portions of sandy loam and sandy clay loam.

“Serviced” means, with reference to a livestock waste lagoon, that corrective action is taken as necessary to assure the integrity of the lagoon and its berm and associated appurtenances, including but not limited to removal or repair of burrow holes, trees and woody vegetation, freeboard level, erosion, settling of berm, berm top maintenance, leaks, and seepage.

(Source: Amended at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART B: STANDARDS FOR LIVESTOCK WASTE LAGOONS

### Section 506.209 Lagoon Closure and Ownership Transfer

- a) WHEN ANY EARTHEN LIVESTOCK WASTE LAGOON IS REMOVED FROM SERVICE, IT SHALL BE COMPLETELY EMPTIED. APPROPRIATE CLOSURE PROCEDURES SHALL BE FOLLOWED AS DETERMINED BY the requirements of this Part. [510 ILCS 77/15(e)]
  - 1) In the event that any earthen livestock waste lagoon is ~~to be~~ removed from service, the requirements contained in Section 15(e) of the Livestock Management Facilities Act [510 ILCS 77/15(e)] shall be met. The owner or operator shall notify the Department in writing when a lagoon is removed from service. Within 60 days after removal of the lagoon from service, and the owner or operator shall submit a lagoon closure plan to the Department for review and approval. If no lagoon closure plan is received by the Department within 60 days, the Department shall send the lagoon owner a notice of default.
  - 2) The lagoon closure plan shall provide for the following:
    - A) The sampling, analysis and reporting of results of all remaining livestock waste, sludge and minimum six-inch thickness of soil from throughout the lagoon interior consistent with the requirements of Section 506.312 of this Part;
    - B) The removal of all remaining livestock waste including sludge, the removal of a minimum 6 inch thickness of soil from throughout the lagoon interior, and the application of these materials to crop land at agronomic rates consistent with the provisions of the site livestock waste management plan or their otherwise proper disposal;

- C) The removal of all associated appurtenances, including but not limited to transfer lines, ramps, pumping ports and other waste conveyance structures;
- D) The proper management of any impounded precipitation in the remaining excavation if it is not immediately filled and the area immediately returned to its pre-construction condition;
- E) The proper abandonment of any monitoring wells installed pursuant to Section 506.206 of this Part, which shall be conducted pursuant to the Illinois Water Well Construction Code at 77 Ill. Adm. Code 920.120; and
- F) A proposed time frame for the completion of the closure activities ~~which will be~~ no greater than two years from the cessation of operation date unless the lagoon is maintained or serviced.

23) The Department shall review and approve, reject, or request additional information relative to the lagoon closure plan. THE DEPARTMENT MAY also GRANT A WAIVER TO any of THE BEFORE-STATED CLOSURE REQUIREMENTS THAT WILL PERMIT THE LAGOON TO BE USED FOR AN ALTERNATIVE PURPOSE. [510 ILCS 77/15(e)]

34) Upon completion of the lagoon closure activities as prescribed by the Department-approved closure plan, the owner or operator shall notify the Department ~~to allow for post closure inspection~~. The Department shall conduct a site inspection and issue a written notification of closure completion or inform the owner or operator of any unresolved closure issues.

b) A lagoon is considered removed from service when:

- 1) The Department has ordered the lagoon removed from service under Section 506.620 of this Part;
- 2) A tribunal of competent jurisdiction has ordered the lagoon closed or ordered the owner or operator to cease operations;
- 3) The lagoon no longer receives livestock waste and the lagoon is not being serviced or maintained;
- 4) The owner fails to extend the term for which evidence of financial responsibility is shown as required in Section 506.602(b) of this Part; or

5) The owner or operator informs the Department in accordance with subsection (a)(1) of this Section that the lagoon has been removed from service.

b~~c~~) UPON A CHANGE IN THE OWNERSHIP OF A REGISTERED EARTHEN LIVESTOCK WASTE LAGOON, THE new OWNER SHALL NOTIFY, in writing, THE DEPARTMENT OF THE CHANGE WITHIN 30 WORKING DAYS OF THE CLOSING OF THE TRANSACTION. [510 ILCS 77/15(e)]

(Source: Amended at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART F: FINANCIAL RESPONSIBILITY

##### Section 506.601 Scope, Applicability, and Definitions

~~a) OWNERS OF NEW OR MODIFIED LAGOONS REGISTERED UNDER THE PROVISIONS OF the Livestock Management Facilities Act [510 ILCS 77] SHALL ESTABLISH AND MAINTAIN EVIDENCE OF FINANCIAL RESPONSIBILITY TO PROVIDE FOR THE CLOSURE OF THE LAGOONS AND THE PROPER DISPOSAL OF THEIR CONTENTS WITHIN THE TIME PROVISIONS OUTLINED IN Section 17 of the Livestock Management Facilities Act. [510 ILCS 77/17]~~

a) This Subpart provides procedures by which the owner of a new or modified livestock waste lagoon registered under the Livestock Management Facilities Act provides evidence of financial responsibility satisfying the requirements of Section 17 of the Livestock Management Facilities Act.

b) Owners of lagoons must comply with the financial responsibility requirements of this Part either:

1) on or before June 1, 1999; or

2) before the lagoon is placed in service.

c) For the purposes of this Subpart, the following terms have the following meanings:

1) “Financial institution” means:

A) An insurer providing commercial or private insurance to evidence financial responsibility for lagoon closure in accordance with Section 506.610 of this Part;



- B) A guarantor providing a guarantee as evidence of financial responsibility for lagoon closure in accordance with Section 506.611 of this Part;
- C) The issuer of a surety bond as evidence of financial responsibility for lagoon closure in accordance with Section 506.612 of this Part;
- D) The issuer of a letter of credit as evidence of financial responsibility for lagoon closure in accordance with Section 506.613 of this Part; or
- E) The livestock waste lagoon closure fund managed by the Illinois Farm Development Authority that evidences financial responsibility for lagoon closure in accordance with Section 506.615 of this Part.
- 2) “Level of surety” means the level, calculated in accordance with Section 506.603 of this Part, at which evidence of financial responsibility must be provided.
- 3) “Surety instrument” means any of the devices listed in Section 506.602 of this Part by which a lagoon owner evidences financial responsibility for lagoon closure. Unless the context requires otherwise, “surety instrument” includes a combination of surety instruments.

(Source: Amended at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.602 Mechanisms for Providing Evidence of Financial Responsibility

- a) FINANCIAL RESPONSIBILITY MAY BE EVIDENCED BY ANY COMBINATION OF THE FOLLOWING:
- 1) COMMERCIAL OR PRIVATE INSURANCE;
  - 2) GUARANTEE;
  - 3) SURETY BOND;
  - 4) LETTER OF CREDIT; ~~or~~
  - 5) CERTIFICATE OF DEPOSIT OR DESIGNATED SAVINGS ACCOUNT; or-

6) PARTICIPATION IN A LIVESTOCK WASTE LAGOON CLOSURE FUND MANAGED BY THE ILLINOIS FARM DEVELOPMENT AUTHORITY. [510 ILCS 77/17]

- b) The lagoon owner must provide continuous coverage from the time the lagoon is placed in service until such time as the owner is released from the financial responsibility requirements pursuant to Section 506.605(a) of this Part. The initial term of any surety instrument (other than a certificate of deposit or designated savings account) utilized to fulfill the requirements of this Part must be at least three years. At least two years prior to the expiration date of such instrument, the owner must provide the Department with proof that the term of coverage has been extended for at least one additional year.
- ~~c~~b) Upon a change in the ownership of a livestock management facility or livestock waste handling facility involving a lagoon that is subject to the financial responsibility requirements of this Subpart, the new owner must~~shall~~ establish and maintain evidence of financial responsibility at the same level of surety as the previous owner.
- d) The lagoon owner must ensure that the terms and conditions of the surety instrument(s) listed in subsection (a) of this Section upon which the owner relies are legally valid, binding, and enforceable under State and federal law.

(Source: Amended at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.603 Level of Surety

~~THE LEVEL OF SURETY REQUIRED SHALL BE DETERMINED BY RULE AND BE BASED UPON THE VOLUMETRIC CAPACITY OF THE LAGOON. [510 ILCS 77/17]~~

- a) The level of surety is determined by the following formula:

$$\text{Level of Surety} = (V \times CF) + EC$$

where:

V = Volume of the lagoon as constructed or modified in cubic feet, including the freeboard volume;

CF = Cost factor determined pursuant to subsection (b) of this Section; and

EC = Engineering contingency determined under subsection (c) of this Section.

- b) The cost factor is obtained from the following:
- 1) Until December 31, 2002, the cost factor is 10¢ per cubic foot of lagoon volume.
  - 2) From January 1, 2003 through December 31, 2007, the cost factor is 12¢ per cubic foot of lagoon volume.
  - 3) After January 1, 2008, the cost factor is 15¢ per cubic foot of lagoon volume.
- c) The engineering contingency is equal to 10% of (V x CF).
- (Source: Amended at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.604 Upgrading Surety Instrument

- a) The owner of a lagoon must increase the total amount of surety in place so as to equal the level of surety as calculated within 90 days after:
- 1) a modification resulting in an increase in the volume of the lagoon; or
  - 2) an increase in the cost factor under Section 506.603(b) of this Part.
- b) If modification of a lagoon results in a decrease in volumetric capacity, the owner or operator may provide the Department with documentation of the reduction in volumetric capacity and request a recalculation of the level of surety. Within 90 days after a request by the owner or operator under this subsection, the Department must either:
- 1) release any surety amount above the level of surety as recalculated based upon the owner's documentation of reduction of volumetric capacity; or
  - 2) conduct an inspection and determine the amount by which volumetric capacity has been decreased.
- c) If the Department conducts an inspection under subsection (b), then the Department must release any surety amount above the level of surety as recalculated based upon the results of the inspection.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.605 Release of Lagoon Owner and Financial Institution

- a) The Department must release a lagoon owner from the requirements of this Subpart when:
- 1) The lagoon has been properly closed and a notification of closure completion pursuant to Section 506.209 of this Part has been issued to the lagoon owner by the Department; or
  - 2) A waiver has been granted by the Department to the lagoon owner allowing the lagoon to be used for an alternative purpose; or
  - 3) Title of the property containing the lagoon has been transferred to a new owner and the new owner has posted financial assurance as required under Section 506.602(c) of this Part.
- b) The Department must release a financial institution when:
- 1) A lagoon owner offers an authorized alternative surety that meets the requirements of Section 506.607(c) of this Part; or
  - 2) The Department releases the lagoon owner from the requirements of this Subpart under subsection (a) of this Section.
- c) The Department must notify the lagoon owner and financial institution in writing within 60 days after a release under this Section. If a release is based upon proper closure of a lagoon, notification under this subsection should occur at the same time as notice of proper closure under Section 506.209(a)(4).

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.606 Financial Responsibility Proceeds

- a) A financial institution issuing a surety instrument evidencing financial responsibility for closure of a livestock waste lagoon becomes liable on the surety instrument when a lagoon is removed from service and:
- 1) The owner fails to submit the lagoon closure plan required by Section 506.209 of this Part and:
    - A) cannot be found; or
    - B) fails to cure such failure within 30 days after notice from the Department;

- 2) The owner fails to obtain Department approval of a lagoon closure plan within eight months after the date that the lagoon is removed from service, unless the lagoon is maintained or serviced; or
  - 3) The owner fails to comply with an approved lagoon closure plan and:
    - A) cannot be found; or
    - B) fails to cure such noncompliance within 30 days after notice from the Department.
- b) The Department must provide notice to the financial institution providing surety for a lagoon
- 1) when it determines that the lagoon has been removed from service; and
  - 2) when it determines that one of the criteria for liability set forth in subsection (a) of this Section has been met.
- c) Within 30 days after notice of liability from the Department, the financial institution must either assume liability for closure of the lagoon and notify the Department of its election to assume liability, or deposit the amount for which it is liable in connection with the lagoon into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon.
- 1) If the financial institution assumes liability for closure of the lagoon, it must submit a lagoon closure plan that meets the requirements of Section 506.209 of this Part within 60 days after notifying the Department of its election. Notwithstanding the financial institution's assumption of liability for closure of the lagoon, the Department may require the financial institution to deposit funds up to the amount for which the financial institution is liable under the surety instrument into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon if:
    - A) The financial institution does not submit the lagoon closure plan as required and fails to cure such omission within 30 days after notice from the Department;
    - B) The financial institution fails to obtain Department approval of a lagoon closure plan within eight months after the date that it elects to assume liability for closure of the lagoon, unless the lagoon is maintained or serviced; or

- C) The financial institution fails to comply with an approved lagoon closure plan and fails to cure such noncompliance within 30 days after notice from the Department.
- 2) A financial institution which assumes liability for closure of a lagoon under this Section remains liable for the full amount of the surety instrument until the Department issues written notification of completion of closure in accordance with Section 506.209, notwithstanding the expiration of the instrument utilized to evidence financial responsibility by the owner.
- 3) Any amounts that a financial institution may expend for service or maintenance of the lagoon pending closure or for partial closure of the lagoon do not reduce the amount of the financial institution's obligation under this subsection(c).
- 4) If the financial institution elects, or is required under subsection(c)(1) of this Section, to deposit the funds required by the Department into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon, then the Department shall close the lagoon within the time frame established under Section 15(e) of the LMFA or as soon as practicable, to the extent possible utilizing the funds deposited by the financial institution. The Department may use any interest earned on deposited funds to close the lagoon. The Department must release any funds remaining in the account, including any remaining interest earned on funds in the account, to the financial institution upon completion of closure.
- d) The Department may sue in any court of competent jurisdiction to enforce its rights under any surety instrument.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.607 Use of Multiple Surety Instruments

- a) The lagoon owner may use any combination of the surety instruments listed in Section 17 of the Livestock Management Facilities Act [510 ILCS 77/17] and this Subpart to evidence the required level of financial responsibility.
- b) A lagoon owner is not limited to maintaining financial responsibility with the original surety instrument or combination of instruments. The owner must notify the Department before making any change in surety instruments.

- c) If a lagoon owner makes any change in surety instruments, the lagoon owner must maintain the total financial responsibility for the lagoon at a level not less (without counting the amounts to be released) than the level of surety.
- d) A replacement surety instrument or instruments must provide evidence of financial responsibility for a period at least equal to the existing instrument or instruments. This provision does not relieve an owner of the obligation under Section 506.602(b) to provide proof at least two years prior to expiration of a surety instrument that the term for which financial responsibility has been demonstrated has been extended for at least an additional year.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.608 Use of a Single Surety Instrument for Multiple Lagoons

- a) An owner may use a surety instrument specified in this Subpart to provide evidence of financial responsibility for more than one lagoon.
- b) Whenever a single surety instrument is used for multiple lagoons, the owner must submit an itemization to the Department identifying all lagoons covered by the surety instrument and the amount allocated to each lagoon.
- c) The amount of funds available through the surety instrument must be no less than the sum of funds that would be available if a separate surety instrument had been established and maintained for each lagoon.
- d) In directing funds available through a single surety instrument for the closure of any single lagoon covered by that surety instrument, the Department shall direct only the amount of funds designated for that lagoon, unless the owner agrees to allow the Department to use additional funds available under that surety instrument. Such an agreement does not affect the owner's obligation to provide evidence of financial responsibility up to the level of surety for all other lagoons.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.610 Commercial or Private Insurance

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining closure insurance that conforms to the requirements of this Subpart and submitting an executed duplicate original of such insurance policy to the Department.
- b) The insurer must be licensed to transact the business of insurance by the Illinois Department of Insurance pursuant to the Illinois Insurance Code [215 ILCS 5].

- c) The policy must be on forms approved by the Illinois Department of Insurance.
- d) The closure insurance policy must guarantee that funds will be available to close the lagoon. The policy must also guarantee that, upon a notice of liability from the Department, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, in accordance with Section 506.606(c) of this Part.
- e) The policy must provide that the insurer may not cancel or terminate the policy.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.611      Guarantee

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining a guarantee that conforms to the requirements of this Subpart.
- b) A guarantor must submit a financial statement to the Department from the guarantor's most recent fiscal year.
- c) The Department will review the financial statement, determine if adequate resources exist to guarantee the closure costs, and notify the lagoon owner of acceptance or denial within 30 days after receipt of the financial statement by the Department.
- d) The guarantor shall guarantee to pay the amount specified in the guarantee upon notice from the Department as provided in Section 506.606(c) of this Part.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.612      Surety Bond

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining a surety bond that conforms to the requirements of this Subpart and submitting the bond to the Department.
- b) The surety company issuing the bond must be licensed by the Illinois Department of Insurance pursuant to the Illinois Insurance Code [215 ILCS 5] and approved by the U.S. Department of the Treasury as an acceptable surety. Acceptable sureties are listed in Circular 570 from the U.S. Department of the Treasury.



- c) The bond must guarantee that the lagoon owner will provide lagoon closure and content removal in accordance with Section 506.209 of this Part.
- d) The surety bond must be in substantially the form specified in Appendix A, Illustration A of this Part.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.613 Letter of Credit

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Subpart and submitting the letter to the Department.
- b) The issuing institution must be an entity that has the authority to issue letters of credit and:
- 1) whose letter of credit operations are regulated by the Illinois Commissioner of Banks and Real Estate; or
  - 2) whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- c) The letter of credit made out to the Department must be accompanied by a letter from the lagoon owner referring to the letter of credit by number, issuing institution, and date and providing the following information: name and address of the lagoon site and the amount of funds assured for closure of the lagoon by the letter of credit.
- d) The letter of credit must be substantially in the form specified in Appendix A, Illustration B of this Part.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.614 Certificate of Deposit or Designated Savings Account

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by designating certificate(s) of deposit or savings account(s) for use as financial responsibility.
- b) The issuing or depository financial institution must be an entity whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

- c) The Department may draw on the certificate(s) of deposit or savings account(s) to pay the costs of closing a lagoon in accordance with this subsection. The Department shall close a lagoon when the lagoon is removed from service and:
- 1) The owner fails to submit the lagoon closure plan required by Section 506.209 of this Part and:
    - A) cannot be found; or
    - B) fails to cure such failure within 30 days after notice from the Department;
  - 2) The owner fails to obtain Department approval of a lagoon closure plan within eight months after the date that the lagoon is removed from service, unless the lagoon is maintained or serviced; or
  - 3) The owner fails to comply with an approved lagoon closure plan and:
    - A) cannot be found; or
    - B) fails to cure such noncompliance within 30 days after notice from the Department.
- d) The Director of the Department shall be listed as trustee of the certificate(s) of deposit or savings account(s) for the lagoon owner.
- e) At maturity of any certificate of deposit designated as financial responsibility for lagoon closure, the certificate shall be renewed or the proceeds deposited into a designated savings account that meets the requirements of this Section.
- f) The Department shall relinquish trusteeship of the certificate(s) of deposit or savings account(s) when:
- 1) The lagoon has been properly closed and a notification of closure completeness pursuant to Section 506.209 of this Part has been issued to the lagoon owner by the Department;
  - 2) A waiver has been granted by the Department to the lagoon owner allowing the lagoon to be used for an alternative purpose pursuant to Section 506.209 of this Part;
  - 3) Title of the property containing the lagoon has been transferred to a new owner and the new owner has posted financial assurance as required under Section 506.602(c) of this Part; or

- 4) A lagoon owner offers an authorized alternative surety which meets the requirements of Section 506.607(c) of this Part.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_, effective \_\_\_\_\_)

Section 506.615 Participation in a Livestock Waste Lagoon Closure Fund

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by participating in a livestock waste lagoon closure fund managed by the Illinois Farm Development Authority. An owner electing to provide evidence of financial responsibility under this Section must submit a certificate of participation in such a lagoon closure fund to the Department.
- b) The certificate of participation submitted pursuant to subsection (a) of this Section must include
- 1) the level of surety for the lagoon;
  - 2) the dollar amount of coverage provided by the lagoon closure fund;
  - 3) the dates for which coverage is provided; and
  - 4) a financial statement of the lagoon closure fund establishing the lagoon closure fund's compliance with the requirements of this Section.
- c) The lagoon closure fund must maintain minimum reserves equal to the greater of:
- 1) the level of surety of the largest lagoon covered by the lagoon closure fund; or
  - 2) twice the average level of surety of lagoons covered by the fund.
- d) The lagoon closure fund must guarantee that funds will be available to close the lagoon. Upon a notice of liability from the Department, the lagoon closure fund must comply with the requirements of Section 506.606(c) of this Part.
- e) If the reserves of the lagoon closure fund are reduced to less than the minimum amount required under subsection (b) due to expenditures of funds in order to comply with Section 506.606(c), then within 120 days of such reduction the lagoon closure fund must demonstrate to the Department that the minimum reserve level has been restored.
- f) The lagoon closure fund may not cancel or terminate coverage prior to the date set forth in the certification pursuant to subsection (b)(3) of this Section.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.620 Penalties

The Department may order a lagoon removed from service if the owner fails to provide evidence of financial responsibility to the Department or fails to maintain financial responsibility in the amount required pursuant to Section 506.603 of this Subpart.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.Appendix A Surety Instruments

Section 506.Illustration A Surety Bond

SURETY 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 Department of Agriculture ("Department") the above penal sum unless the Principal provides closure for each site in accordance with 510 ILCS 77/15(e) and 35 Ill. Adm. Code 506.209. 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 15(b) of the Livestock Management Facilities Act ("LMFA") to register at least one livestock waste lagoon with the Department; and

Whereas the Principal is required, under Section 17 of the LMFA to evidence financial responsibility for closure of each registered lagoon; and

Whereas the Surety is licensed by the Illinois Department of Insurance; and

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 Department if, during the term of the bond, the Department issues a notice of liability to the Surety.

The Surety shall pay the penal sum of the bond to the Department within 30 days after the Department mails the notice of liability to the Surety unless the Surety assumes responsibility to provide closure and so notifies the Department. Payment shall be made by deposit of funds into a designated account upon which the Department is authorized to draw.

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. If the Surety assumes responsibility to provide closure, expenditures made by the Surety for that purpose may exceed the amount of the penal sum, but the amount of the Surety's obligation under this bond is not affected.

This bond shall expire on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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 Department.

In Witness Whereof, the Principal and Surety have executed this Surety 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: \$\_\_\_\_\_

Section 506.Illustration B Irrevocable Standby Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

Director  
Illinois Department of Agriculture  
P.O. Box 19281

Springfield IL 62794-9281

Dear Sir or Madam:

We have authority to issue letters of credit. Our letter-of-credit operations are regulated by the Illinois Commissioner of Banks and Real Estate or our deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. (Omit language that does not apply.)

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of \_\_\_\_\_ up to the aggregate amount of \_\_\_\_\_ U.S. dollars (\$ \_\_\_\_\_), available upon presentation of:

1. your sight draft, bearing reference to this letter of credit No. \_\_\_\_\_; and
2. your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Livestock Management Facilities Act [510 ILCS 77] and 35 Ill. Adm. Code 506.606(a) or 506.606(c)."

This letter of credit is effective as of \_\_\_\_\_ and shall expire on \_\_\_\_\_.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of draft directly into a designated account in accordance with your instructions.

This letter of credit is governed by the Uniform Commercial Code [810 ILCS 5].

Signature \_\_\_\_\_

Typed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

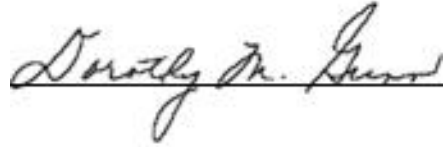
Name and address of issuing institution \_\_\_\_\_

This credit is subject to \_\_\_\_\_

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 17th day of September 1998 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written in black ink. The signature is positioned above a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board