

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
SOLID WASTE AND SPECIAL WASTE)
HAULING (AMENDMENTS TO 35 ILL.)
ADM. CODE PART 807 SUBPART F,)
PART 810 AND PART 811 SUBPART G))
)

10-9
R09-
(Rulemaking – Land)

RECEIVED
CLERK'S OFFICE

JUL 27 2009

STATE OF ILLINOIS
Pollution Control Board

NOTICE

John Therriault, Assistant Clerk,
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

General Counsel
Office of Legal Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

ORIGINAL

Matthew J. Dunn
Environmental Bureau Chief
Office of the Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois Environmental Protection Agency's ("Agency") Motion for Acceptance, Appearance of Attorney, Motion Regarding Incorporations by Reference, Certification of Origination, Statement of Reasons, and the Proposed Amendments a copy of each of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Stephanie Flowers
Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATE: 7-23-09

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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MOTION FOR ACCEPTANCE

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”), and pursuant to 35 Ill. Adm. Code 102.106, 102.200, and 102.202, moves the Illinois Pollution Control Board (“Board”) accept for hearing the Illinois EPA’s proposal for amendment to 35 Ill. Adm. Code Part 807, 810, and 811. This proposal includes:

- 1) Appearance of Attorney for the Illinois EPA;
- 2) Motion Regarding Incorporations by Reference;
- 3) Certification of Origination;
- 4) Statement of Reasons;
- 5) Proposed Regulations;
- 6) Electronic copy of the Proposed Regulations;
- and 7) Proof of Service.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: *Douglas P. Scott*
Douglas P. Scott
Director

DATE:

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APPEARANCE

The undersigned hereby enters her appearance as attorney on behalf of the Illinois

Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Stephanie Flowers
Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATED: 7-23-09

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MOTION REGARDING INCORPORATIONS BY REFERENCE

NOW COMES the Illinois Environmental Protection Agency (“Agency”) and moves the Illinois Pollution Control Board (“Board”) to waive the requirement set forth at 35 Ill. Adm. Code 102.202(d) and 101.306(a) that 4 copies of material to be incorporated by reference be submitted with this regulatory proposal with regard to the material listed below.

In support of this Motion, the Agency states:

1. The Agency proposal would incorporate a 2-volume AICPA Professional Standards and a 2-volume FASB Accounting Standards.
2. The Agency has included one copy of each item with this submittal;
3. Given the current fiscal situation of the State, copy costs for multiple copies would be unwarranted.

THEREFORE, the Agency moves the Board to waive the submittal requirement for the materials incorporated by reference.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Stephanie Flowers
Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATE: 7-23-09

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CERTIFICATION OF ORIGINATION

NOW COMES the Illinois Environmental Protection Agency and pursuant to 35 Ill. Adm. Code 102.202(i) certifies that this proposal for amendments to 35 Ill. Adm. Code Part 807 Subpart F, Part 810, and Part 811 Subpart G amends the most recent version of those rules as published on the Illinois Pollution Control Board's website.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Stephanie Flowers
Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATED: 7-23-09

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STATEMENT OF REASONS

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”) and submits its Statement of Reasons for the above-captioned proceeding to the Illinois Pollution Control Board (“Board”) pursuant to 35 Ill. Adm. Code 102.202(b).

I. FACTS IN SUPPORT, PURPOSE AND EFFECT

A. Background

The Board adopted the financial assurance rules in 35 Ill. Adm. Code 807, Subpart F in its final order for R84-22C issued on November 21, 1985 and for 35 Ill. Adm. Code 811, Subpart G in its final order for R88-7 issued on August 17, 1990. The financial assurance rules have remained substantially unchanged since these dates with three identical in substance rulemakings adding to Subpart G of Part 811. These identical in substance rulemakings were the R93-10 final order issued December 16, 1993, the R97-20 final order issued November 20, 1997, and the R99-1 final order issued February 4, 1999. The rules were promulgated pursuant to Section 21.1(b) of the Environmental Protection Act (“Act”). (415 ILCS 5/21.1(b) as added by P.A. 83-775) The purpose of the financial assurance rules is to establish requirements for performance bonds and other securities insuring closure and post-closure care and corrective action at non-

hazardous waste disposal sites and to prescribe the conditions under which the State of Illinois is entitled to collect monies from these instruments.

The proposed amendments to Parts 807 and 811 were developed by an Illinois EPA workgroup consisting of legal staff and staff of the compliance unit at the Bureau of Land. On December 14, 2004, the preliminary draft was circulated to several solid waste associations and banking and financial associations to receive comments from their members regarding the impact of the changes on the solid waste industry.¹ The Illinois EPA received three comments, one of which was simply supportive of the proposed changes.² The second comment suggested some alternate language and identified some increased costs to letters of credit associated with the proposed changes. The Illinois EPA did not change the language as suggested in the second comment as the changes suggested were not substantive and because the Illinois EPA believes the language should be consistent with the Board's other financial assurance programs. The third comment stated that an increase in the availability of surety bonds should result from the proposed changes. Since the circulation of the draft to the outreach associations, the Illinois EPA has added some additional language taken from the financial assurance sections of 35 Ill. Adm. Code 724. Overall, the Illinois EPA does not anticipate any significant controversy regarding the proposed amendments.

B. Purpose and Facts in Support

The main purpose of the amendments proposed to Parts 807 and 811 is to provide consistency throughout the Board's financial assurance programs by adding evergreen renewal

¹ The following associations were included in the outreach effort by the Illinois EPA: Illinois Bankers Association, Community Bankers Association of Illinois, Illinois League of Financial Institutions, Illinois Counties Solid Waste Management Association, Solid Waste Association of North America, Waste Management, Allied Waste, and National Solid Wastes Management Association.

² See attached Exhibits 1-3 for the three comment letters received by the Illinois EPA.

language to the bonds and letters of credit obtained by waste disposal sites and reducing the required term of these instruments to one year or more from the current minimum of four or five years. The Board's other financial assurance programs regulated in Parts 724, 725, 704 and 848 incorporate the evergreen renewal language and one-year term limits into bonds and/or letters of credit and are the model for the changes to Parts 807 and 811. In addition, Part 810 is being opened for the sole purpose of updating an incorporation by reference in Section 810.104(a)(2) that is referred to in Section 811.715. The text at Section 810.104(a)(2) was adopted by the Board in their final order for R88-7 issued on August 17, 1990. Although Part 810 has been expanded since this original adoption, the reference at Section 810.104(a)(2) has not been updated. Numerous other stylistic changes and updates are also proposed for Parts 807 and 811.

Besides providing consistency among the Board's financial assurance programs, the addition of evergreen renewal language would also shift responsibility and costs for maintaining continuous financial assurance from the Illinois EPA to owners, operators, and sureties, and thereby protect the public, environment and the State against an expiration of coverage that could leave a landfill without funds for closure and post-closure care or corrective action. Currently, under Parts 807 and 811, if a bond or letter of credit is not renewed at the expiration of a four or five year term, the bond or letter of credit will expire unless the Illinois EPA acts to preserve it. The existing regulations provide for an automatic extension of the financial assurance for an additional twelve months but only if the Illinois EPA provides notice to the issuing institution within 30 days after expiration of the instrument. This imposes additional administrative responsibility and costs on the Illinois EPA for tracking and notification and is inconsistent with the Board's other financial assurance programs. Under the Board's other financial assurance

programs at Parts 724, 725, 704 and 848 the responsibility and costs for ensuring continuous financial assurance coverage fall on the facility owners, operators and the sureties.

Also, under Parts 807 and 811 there is currently no authority for the Illinois EPA to draw on existing bonds or letters of credit to prevent a lapse in financial assurance coverage. The Illinois EPA is only able to draw on the instrument if the owner/operator has abandoned the site, is adjudicated bankrupt, fails to initiate closure or post-closure care or corrective action when ordered to do so by the Board or the courts, or fails to perform closure, post-closure or corrective action in accordance with applicable requirements. See subsection (e)(2) of 35 Ill. Adm. Code 807.662-664 and 811.711-713. If the instrument already has expired before these circumstances arise, resources may not be available to conduct the necessary closure, post-closure or corrective action. With the proposed amendments, the Illinois EPA would be required to draw on the bond or letter of credit before the expiration date if the owner or operator does not provide substitute financial assurance prior to the expiration date. In other words, the approaching lapse of the instrument itself becomes a reason for demanding payment of the penal sum unless alternate financial assurance is obtained before expiration of the bond. This is consistent with the requirements of the Board's other financial assurance programs.

In addition, the amendments propose a one-year minimum term limit that is consistent with the Board's other financial assurance rules. This change in term requirements from four or five years to one year should result in an increase in the availability of bonds and letters of credit as a financial assurance option. Please see the attached comments from Michael Damewood of St. Paul Travelers regarding the benefits of one year term limits.

C. Affected Sources and Facilities

Affected sources and facilities would include those sources and facilities required to obtain financial assurance for the closure and post closure care of waste disposal sites and any sources and facilities that provide financial assurance services for waste disposal sites.

D. Technical Feasibility and Economic Reasonableness

No new technical requirements are created by the proposed amendments. Economic costs to the State of Illinois due to the amendments are minimal and may include updated forms and employee procedural training. For economic costs to the regulated community due to the amendments please see the attached comments regarding increased costs for letters of credit with proposed evergreen renewal language and also the greater availability of bonds with one-year term limits.

E. Description of Proposed Amendments

Please see attached table providing an explanation for each amendment proposed.

II. SYNOPSIS OF TESTIMONY

Currently, the Illinois EPA plans to call Brian White, Manager of the Compliance Unit of the Bureau of Land. Mr. White will testify about the amendments to the rules and will assist in answering questions. Written testimony will be submitted prior to hearing in accordance with the Board's procedural rules.

III. PUBLISHED STUDY OR RESEARCH REPORT

No published study or research report was used in developing the proposed amendments to 35 Ill. Admin. Code 807, 810, and 811.

IV. SUPPORTING DOCUMENTS

Exhibit 1: Comments of Jay Stevenson of the Illinois League of Financial Institutions.

Exhibit 2: Comments of Bruce Baker of the Illinois Bankers Association.

Exhibit 3: Comments of Michael Damewood of St Paul Travelers.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Stephanie Flowers
Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATED: 7-23-09
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1)	Table of Contents Section 811.715	Table of Contents Section 807.666	Revision: Capitalized the second element in the hyphenated compound of the title. Revision: Added language so illustrations are consistent with body of rules.	Applies also to Sections 811.715 and 807.666 in body of rule.
2)	Table of Contents Illustration G & H			
3)	Table of Contents Note		Correction: Replace statutory language format.	
4)	811.700(b)	807.600(b)	Update: "May" is stricken and replaced by "shall" to indicate obligation rather than discretion as per the Illinois Administrative Code Style Manual Section 1-21(f).	Applies also to Sections 811.706(a), 807.640, 811.713(e), and 807.664(e).
5)	811.700(e)		Revision: Definition of "assumed closure date" is revised to more accurately describe this term.	
6)	811.700(f)		Correction: Language replaced to correct the Illinois Environmental Protection Act reference under which an MSWLF unit is required to obtain a permit.	
7)	811.703(c)		Correction: Replaced language to provide reference to correct section of the Act.	
8)	811.704(g)		Revision: This section is removed because the cost estimate is not reduced by any present value calculation since no interest accrues in any financial assurance mechanism except a trust. For trusts see Section 811.718.	
9)	811.704(k)(3)		Correction: Language replaced to correct the reference copied from 40 CFR 258.73(a)(2).	
10)	811.706(a)	807.640	See (4)	
11)	811.710(b)(1)	807.661(b)(1)	Update: "Illinois Commissioner of Banks and Trust Companies" is replaced with "Department of Financial and Professional Regulation" per the change of name in Executive Order 2004-6 and 15 ILCS 520/0.01 et seq. as amended by Public Act 89-508.	Applies also to Sections 811.713(b)(1), 807.664(b)(1), 811 Illustration A ¶6, 807 Illustration A ¶6, 811 Illustration E ¶11, and 807 Illustration E ¶11.
12)		807.661(b)(2)	Update: "Foreign Corporations as Fiduciaries Act" is replaced with "Corporate Fiduciary Act" as in Part 811 due to repeal of former.	Applies also to 807 Illustration A ¶6.
13)	811.710(b)(1) & (2)		Update: Past citation reference is stricken.	Applies also to 811 Illustration A ¶6, 811 Illustration E ¶2.2, and 807 Illustration E ¶2.2.

14)	811.710(c)	807.661(c)	Substantive change: Add language to require Schedule A of trust agreement to be updated to current closure estimate. Language from 35 Ill. Adm. Code 724.243(a)(2)	
15)	811.710(d)(1)(B)		Revision: The definition of pay-in period is revised to more accurately describe this term.	
16)	811.710(g)(2)		Correction: Added mistakenly omitted language "to release" so that paragraph parallels 807.661(f)(2).	
17)	811.711(b)	807.662(b)	Update: "Department of Insurance" is replaced with "Department of Financial and Professional Regulation" per the change of name in Executive Order 2004-6.	Applies also to Sections 811.712(b), 807.663(b), 811.714(b), 807.665(b), 811.714(c), 807.665(c), 811 Illustration C ¶4, 807 Illustration C ¶4, 811 Illustration D ¶4, 807 Illustration D ¶4, 811 Illustration F ¶1, and 807 Illustration F ¶1.
18)		807.662(b)	Substantive change: Add language allowing for an excess or surplus lines insurer approved by the insurance department of one or more states as in 811.711(b).	
19)	811.711(b)		Update: All caps statutory language replaced with italicized statutory language per the Illinois Administrative Code Style Manual Section 1-14(a)(2).	Applies also to Sections 811.712(b) and 811.714(b).
20)	811.711(b)		Correction: Duplicate reference stricken.	Applies also to Sections 811.712(b) and 811.714(b).
21)	811.711(c)		Correction: Language is stricken to only reference the proper illustration.	Applies also to Section 811.712(c).
22)	811.711(d)	807.662(d)	Correction: Landfill Closure and Post-Closure Fund is capitalized and hyphenated properly according to the fund name at 21.1(c) of the Illinois Environmental Protection Act and 30 ILCS 105/5.382.	Also applies to Sections 811.711(h)(2), 811.712(d), 807.663(d), 811.712(h)(2), 811.713(d), 807.664(d), 811.713(h)(2), 811 Illustration C ¶7, 807 Illustration C ¶7, 811 Illustration D ¶7, 807 Illustration D ¶7, 811 Illustration E ¶4, 807 Illustration E ¶4, 811 Illustration H ¶7, and 807 Illustration H ¶7.

23	811.711(e)(1)	807.662(e)(1)	Revision: For better reading flow the sentence was divided into two requirements and in 811.711(e)(1)(A) the corrective action language was revised.	Also applies to Sections 811.712(e)(1) and 807.663(e)(1).
24	811.711(e)(1)(B)	807.662(e)(1)(B)	Substantive Change: The bond will now need to guarantee that in addition to providing closure and post-closure care and corrective action, the owner or operator will provide alternative financial assurance if the current financial assurance is not renewed. The language is from 35 Ill. Adm. Code 724.243(b)(4)(C) with minor adjustments: "notice of cancellation" replaced by "notice that the bond will not be renewed for another term". Also, Part 807 uses "alternate financial assurance" and Part 811 uses "alternative financial assurance" for consistency of terms throughout the entire Part. Other sources: 35 Ill. Adm. Code 725.243(b), 704.215, and 704.216.	Also applies to Sections 811.712(e)(1)(B) and 807.663(e)(1)(B).
25	811.711(e)(2)(C)		Correction: "Title VII" is stricken and replaced with "Title VIII" to accurately reference the enforcement section of the Illinois Environmental Protection Act.	Also applies to Sections 811.712(e)(2)(C) and 811.713(e)(2)(E).
26	811.711(e)(2)(F)	807.662(e)(2)(E)	Substantive Change: The Illinois EPA will now be required to collect on the bond or letter of credit if alternate financial assurance is not provided before the expiration of the current financial assurance.	Applies also to Sections 811.712(e)(2)(F), 811.713(e)(2)(F), 807.663(e)(2)(E), and 807.664(e)(2)(E).
27	811.711(f)(2)	807.662(f)(2)	Correction: Replaced language to specify that a reduction of the cost estimate must be approved in writing. Language from last sentence of 35 Ill. Adm. Code 724.243(b)(7). Other sources: 35 Ill. Adm. Code 725.243(b), 725.243(c), 704.215, 704.216, and 704.217.	Applies also to Sections 811.712(f)(2), 811.713(f)(2), 811.714(d)(2), 807.663(f)(2), 807.664(f)(2), and 807.665(d)(2).
28	811.711(f)(3)	807.662(f)(3)	Reiteration: Repeated requirement of 807.621(b) and 811.704(b) for when cost estimate increases and added timeframe of 90 days. Language from 35 Ill. Adm. Code 724.243(b)(7) with minor adjustment. Other sources: 35 Ill. Adm. Code 725.243(b), 725.243(c), 704.215, 704.216, and 704.217.	Applies also to Sections 811.712(f)(3), 811.713(f)(3), 811.714(d)(3), 807.663(f)(3), 807.664(f)(3), and 807.665(d)(3).

29)	811.711(g)(1)	807.662(g)(1)	Substantive Change: The term of the bond or letter of credit can be one year or more. Language from 35 Ill. Adm. Code 724.243(d)(5). Other sources: 35 Ill. Adm. 725.243(c), 704.217 and 848.413.	Applies also to Sections 811.712(g)(1), 811.713(g)(1), 807.663(g)(1), and 807.664(g)(1).
30)	811.711(g)(2)	807.662(g)(2)	Substantive Change: The bond or letter of credit will now be renewed every term unless the financial institution or surety notifies the owner and operator and the Illinois EPA that it intends not to renew. Evergreen renewal language from 35 Ill. Adm. Code 724.243(d)(5). Other sources: 35 Ill. Adm. Code 725.243(b), 725.243(c), 704.215, 704.216, 704.217, and 848.413.	Applies also to Sections 811.712(g)(2), 811.713(g)(2), 807.663(g)(2), and 807.664(g)(2).
31)	811.711(g)(3)	807.662(g)(3)	Reiteration: Repeated requirement of 807.604 and 811.702. Language from 35 Ill. Adm. Code 724.243(c)(9) with minor adjustments: "written authorization for termination of the bond" is language from illustrations. Other sources: 35 Ill. Adm. Code 725.243(b), 725.243(c), 704.215, 704.216, and 704.217.	Applies also to Sections 811.712(g)(3), 811.713(g)(3), 807.663(g)(3), and 807.664(g)(3).
32)	811.711(g)(3)		Correction: Duplicate passage stricken.	
33)	811.711(h)(2)		See (22)	
34)	811.711(h)(2)	807.662(h)(2)	Revision: Added language to clarify refunds are conditional.	Applies also to Sections 811.712(h)(2), 811.713(h)(2), 807.663(h)(2), and 807.664(h)(2).
35)	811.712(b)	807.663(b)	See (17)	
36)		807.663(b)	Substantive change: Add language allowing for an excess or surplus lines insurer approved by the insurance department of one or more states as in 811.712(b).	
37)	811.712(b)		See (19)	
38)	811.712(b)		See (20)	
39)	811.712(c)		See (21)	
40)	811.712(d)	807.663(d)	See (22)	
41)	811.712(e)(1)	807.663(e)(1)	See (23) and Revision: The last sentence of the new (e)(1)(A) was moved to (e)(3) of 811.712 and 807.663 for better reading flow.	Applies also to Sections 811.712(e)(3) and 807.663(e)(3).
42)	811.712(e)(1)(B)	807.663(e)(1)(B)	See (24)	
43)	811.712(e)(2)(C)		See (25)	

44)	811.712(e)(2)(F)	807.663(e)(2)(E)	See (26)
45)	811.712(e)(3)	807.663(e)(3)	See (41)
46)	811.712(f)(2)	807.663(f)(2)	See (27)
47)	811.712(f)(3)	807.663(f)(3)	See (28)
48)	811.712(g)(1)	807.663(g)(1)	See (29)
49)	811.712(g)(2)	807.663(g)(2)	See (30)
50)	811.712(g)(3)	807.663(g)(3)	See (31)
51)	811.712(h)(2)		See (22)
52)	811.712(h)(2)	807.663(h)(2)	See (34)
53)	811.713(b)(1)	807.664(b)(1)	See (11)
54)	811.713(b)(2)	807.664(b)(2)	Update: "or the Federal Savings and Loan Insurance Corporation" is stricken per merger of FSLIC and FDI/C in 12 U.S.C.A. 1811 et seq. as amended by Public Law 101-73.
55)	811.713(d)	807.664(d)	Applies also to 807 Illustration A Section 6(b), 807 Illustration A Section 8(d), and 807 Illustration E ¶1.
56)	811.713(e)	807.664(e)	See (22)
57)	811.713(e)(2)(C)		See (4)
58)	811.713(e)(2)(F)	807.664(e)(2)(E)	See (25)
59)	811.713(f)(2)	807.664(f)(2)	See (26)
60)	811.713(f)(3)	807.664(f)(3)	See (27)
61)	811.713(g)(1)	807.664(g)(1)	See (28)
62)	811.713(g)(2)	807.664(g)(2)	See (29)
63)	811.713(g)(3)	807.664(g)(3)	See (30)
64)	811.713(h)(2)		See (31)
65)	811.713(h)(2)	807.664(h)(2)	See (22)
66)	811.714(a)	807.665(a)	See (34)
67)	811.714(b)	807.665(b)	Correction: Added language specifying that a certificate of insurance (Illustration F) must be submitted to the Agency in addition to an insurance policy.
68)	811.714(b)		See (17)
69)	811.714(b)		See (19)
70)		807.665(b)	See (20)
71)	811.714(c)	807.665(c)	Substantive change: Add language allowing for an excess or surplus lines insurer approved by the insurance department of one or more states as in 811.714(b).
			See (17) and Correction: Substitute language "filed with" because no approval is given by the Insurance Division. Revision: Added citation reference.

72)	811.714(d)(2)	807.665(d)(2)	See (27)	
73)	811.714(d)(3)	807.665(d)(3)	See (28)	
74)	811.715	807.666	See (1)	
75)		807.666(a)	Update: Definition of "Generally Accepted Accounting Principles" is updated by adding current edition, publisher name and address to meet requirement of 5 ILCS 100/5-75.	
76)	811.715(e)(1)(A)(iv)		Correction: Duplicate word is stricken and "s" is added for correct grammar.	
77)	811.715(h)(1)	807.666(h)(1)	Correction: "Which" is replaced with "that" as a grammar correction.	Applies also to 811 Illustration A ¶6, 811 Illustration E ¶1, and 807 Illustration E ¶1.
78)	811.715(h)	807.666(h)	Revision: The sentence was divided into two requirements. In the new (h)(1) the language "gross revenue and financial tests" was replaced with "the requirements of this Section" to also reference the requirements of subsections (f) and (g). At the new (h)(2) the language "on a form specified in Appendix A, Illustration H" was added to direct the reader to the correct form in Appendix A. The language "in accordance with subsections (d), (e), (f), and (g)" was added to give authority for language used in Illustration H.	
79)	811.716(c)(1)(A)(iii)		Correction: "(f)(4)" is replaced with "(d)" to correct the reference copied from 40 CFR 258.74(f)(3)(A)(3).	
80)	811.716(c)(5)		Substantive Change: Add requirement to submit evidence of alternative financial assurance to the Agency.	
81)	811.718		Revision: Clarification that availability of discounting is limited to trust mechanism because no interest accrues in mechanisms other than a trust.	
82)	811 Illustration A ¶ 6	807 Illustration A ¶ 6	See (11)	
83)		807 Illustration A ¶ 6	See (12)	
84)	811 Illustration A ¶ 6		See (13)	
85)	811 Illustration A ¶ 6	807 Illustration A ¶ 6	See (77)	

86)	811 Illustration A Sec. 2	807 Illustration A Section 2	Substantive change: Change "initial" to "current". Schedule A of trust agreement must be updated to current cost estimate. See (14)	
87)		807 Illustration A Section 6(b)	See (54)	
88)		807 Illustration A Section 8(d)	See (54)	
89)		807 Illustration A Section 14	Correction: Correct phrase "Director or his/her designee(s)".	
90)		807 Illustration A Section 16-18	Substantive change: Add language to allow Director to appoint designee to carry out duties of the Trust Agreement	Applies also to 811 Illustration D ¶2.
91)		807 Illustration A Section 17	Correction: Insert "Director".	
92)		811 Illustration A Section 10	Correction: Insert "be" for correct grammar.	
93)		811 Illustration A Section 14	Correction: Correct phrase "Director or his/her designee(s)".	
94)		811 Illustration A Section 16	Correction: Correct "is" to "it".	
95)		811 Illustration A Section 16-18	Substantive change: Add language to allow Director to appoint designee to carry out duties of the Trust Agreement.	
96)		811 Illustration A Section 17	Correction: Insert "Director" after "EPA".	
97)		811 Illustration A	Reiteration: Insert certification for requirement of 807.661(c) and 811.710(c) that trust agreement must be on the form specified. Language from 35 Ill. Adm. Code 724.251 incorporating 40 CFR 264.151 Trust certification language on page 4.	
98)		811 Illustration C ¶ 2	Correction: Insert comma for proper punctuation.	Applies also to 811 Illustration D ¶2.
99)		807 Illustration C ¶ 2	Update: Insert current reference to the Illinois Environmental Protection Act.	Applies also to 807 Illustration D ¶2.
100)		811 Illustration C ¶ 3	Update: Insert current reference to the Illinois Environmental Protection Act.	Applies also to 811 Illustration D ¶3, and 807 Illustration D ¶3.
101)		811 Illustration C ¶ 4	See (17)	
102)		807 Illustration C ¶ 4	See (18)	
103)		811 Illustration C ¶ 6	Correction: The word "and" was replaced with "or" because the Agency can call in the bond even if only closure is not provided as acknowledged in 811.711(e)(2)(C) and 807.662(e)(2)(C).	Applies also to 811 Illustration D ¶6, 807 Illustration D ¶6, 811 Illustration H ¶6, and 807 Illustration H ¶6.

104)	811 Illustration C ¶ 6(d) 807 Illustration C ¶ 6(d) Correction: Changed "Agency" to "IEPA" for consistency of terms (see ¶ 1).	Applies also to 811 Illustration D ¶ 6(d), 811 Illustration D ¶ 8, 807 Illustration D ¶ 6(d), 807 Illustration D ¶ 8, 811 Illustration H ¶ 6(d), and 807 Illustration H ¶ 6(d).
105)	811 Illustration C ¶ 6(f) 807 Illustration C ¶ 6(e) Substantive Change: Add language from 807.662(e)(2)(E) and 811.711(e)(2)(F) requiring Agency to collect on bond if alternative financial assurance is not provided.	Applies also to 811 Illustration D ¶ 6(f), 807 Illustration D ¶ 6(e), 811 Illustration H ¶ 6(f), and 807 Illustration H ¶ 6(e).
106)	811 Illustration C ¶ 7 807 Illustration C ¶ 7 Revision: Strike "failed to so provide closure and post-closure care or corrective action" and insert "failed to fulfill one or more of the conditions described above" to more accurately state when surety shall pay the penal sum. Language from 40 CFR 264.151, Financial Guarantee Bond language page 5 incorporated by 35 Ill. Adm. Code 724.251. Other source: 40 CFR 144.70 incorporated by 35 Ill. Adm. Code 704.240.	Applies also to 811 Illustration D ¶ 7, 807 Illustration D ¶ 7, 811 Illustration D ¶ 8, 807 Illustration D ¶ 8, 811 Illustration H ¶ 7, and 807 Illustration H ¶ 7.
107)	811 Illustration C ¶ 7 807 Illustration C ¶ 7 See (22)	
108)	811 Illustration C ¶ 9 807 Illustration C ¶ 8 Substantive Change: Insert evergreen renewal language. Language from 35 Ill. Adm. Code 724.251 incorporating 40 CFR 264.151 Letter of Credit Auto-renewal language on page 9. Other source: 40 CFR 144.70 incorporated by 35 Ill. Adm. Code 704.240.	Applies also to 811 Illustration D ¶ 10, and 807 Illustration D ¶ 10.
109)	811 Illustration C ¶ 10 807 Illustration C ¶ 9 Revision: Add "in accordance with . . ." to reference when IEPA will send written authorization for termination of the bond.	Applies also to 811 Illustration D ¶ 11, and 807 Illustration D ¶ 11.
110)	811 Illustration C ¶ 12 807 Illustration C ¶ 11 Reiteration: Insert certification for requirement of 807.662(c) and 811.711(c) that bond must be on the form specified. Language from 35 Ill. Adm. Code 724.251 incorporating 40 CFR 264.151 Financial Guarantee Bond language on page 6. Other source: 40 CFR 144.70 incorporated by 35 Ill. Adm. Code 704.240.	Applies also to 811 Illustration D ¶ 13, 807 Illustration D ¶ 13, 811 Illustration H ¶ 12, and 807 Illustration H ¶ 12.
111)	811 Illustration C Correction: Reformat signature lines to correct order as in Part 807.	Applies also to 811 Illustration D and 811 Illustration H.

112)		807 Illustration D ¶ 1	Correction: Capitalize the word "Agency".
113)	811 Illustration D ¶ 2	807 Illustration D ¶ 2	See (98)
114)		807 Illustration D ¶ 2	See (99)
115)	811 Illustration D ¶ 3	807 Illustration D ¶ 3	See (100)
116)	811 Illustration D ¶ 4	807 Illustration D ¶ 4	See (101)
117)		807 Illustration D ¶ 4	See (102)
118)	811 Illustration D ¶ 6	807 Illustration D ¶ 6	See (103)
119)	811 Illustration D ¶ 6(d)	807 Illustration D ¶ 6(d)	See (104)
120)	811 Illustration D ¶ 6(f)	807 Illustration D ¶ 6(e)	See (105)
121)	811 Illustration D ¶ 7	807 Illustration D ¶ 7	See (106)
122)	811 Illustration D ¶ 7	807 Illustration D ¶ 7	See (107)
123)	811 Illustration D ¶ 8	807 Illustration D ¶ 8	See (108)
124)	811 Illustration D ¶ 8	807 Illustration D ¶ 8	See (109)
125)	811 Illustration D ¶ 10	807 Illustration D ¶ 10	See (110)
126)	811 Illustration D ¶ 11	807 Illustration D ¶ 11	See (111)
127)	811 Illustration D ¶ 12	807 Illustration D ¶ 12	Correction: "Forfeiture" replaced with "Performance" to reference accurate title.
128)	811 Illustration D ¶ 13	807 Illustration D ¶ 13	See (112)
129)	811 Illustration D		See (113)
130)	811 Illustration E	807 Illustration E	Correction: Insert correct IEPA address.
131)	811 Illustration E ¶ 1	807 Illustration E ¶ 1	See (114)
132)		807 Illustration E ¶ 1	See (115)
133)	811 Illustration E ¶ 1	807 Illustration E ¶ 1	See (116)
134)	811 Illustration E ¶ 2.1	807 Illustration E ¶ 2.1	Correction: Capitalize "Y our".
135)	811 Illustration E ¶ 2.2	807 Illustration E ¶ 2.2	See (117) and (118)
136)	811 Illustration E ¶ 3	807 Illustration E ¶ 3	Substantive Change: Insert evergreen renewal language. Language from 35 Ill. Adm. Code 724.251 incorporating 40 CFR 264.151 Letter of Credit Auto-renewal language on page 9. See also 40 CFR 144.70 incorporated by 35 Ill. Adm. Code 704.240.
137)	811 Illustration E ¶ 4	807 Illustration E ¶ 4	See (119)
138)	811 Illustration E ¶ 5	807 Illustration E ¶ 5	Update: Strike duplicate reference to governing authority. See also (139). Retiteration: Insert certification for requirement of 807.664(c) and 811.713(c) that letter of credit must be on the form specified. Language from 35 Ill. Adm. Code 724.251 incorporating 40 CFR 264.151 Letter of Credit certification language on page 9.

139)	811 Illustration E	807 Illustration E	Correction: Correct governing authority paragraph. Language from 35 Ill. Adm. Code 724.251 incorporating 40 CFR 264.151 Letter of Credit language on page 9.
140)	811 Illustration F		Correction: Add "corrective action" language because mechanism can be used as a corrective action financial assurance mechanism.
141)		807 Illustration F ¶ 1	See (17) and Substantive change: Add language from 807.665(b) allowing for an excess or surplus lines insurer approved by the insurance department of one or more states as in 811.
142)	811 Illustration F ¶ 1		See (17) and Correction: Add language from 811.714(b) allowing for an excess or surplus lines insurer approved by the insurance department of one or more states.
143)		807 Illustration F ¶ 2	Correction: Capitalize "Code".
144)	811 Illustration F ¶ 3	807 Illustration F ¶ 3	Substantive Change: Insert authority to request copy of policy. Language from 35 Ill. Adm. Code 724.251 incorporating 40 CFR 264.151 Certificate of Insurance language on page 10.
145)	811 Illustration F ¶ 4	807 Illustration F ¶ 4	Substantive Change: Insert certification paragraph. Language from 35 Ill. Adm. Code 724.251 incorporating 40 CFR 264.151 Certificate of Insurance language on page 10.
146)	811 Illustration G		Revision: Insert "Owner or" in front of each instance of "Operator" to allow form to be consistent with body of rules.
147)	811 Illustration G		Correction: Add "corrective action" language because mechanism can be used as a corrective action financial assurance mechanism.
148)	811 Illustration H		Revision: Insert "Owner or" in front of each instance of "Operator" to allow form to be consistent with body of rules.
149)	811 Illustration H ¶ 2	807 Illustration H ¶ 2	Update: Insert current reference to the Illinois Environmental Protection Act.
150)	811 Illustration H ¶ 3	807 Illustration H ¶ 3	Update: Insert current reference to the Illinois Environmental Protection Act.
151)	811 Illustration H ¶ 4		Revision: Insert paragraph to parallel language in Illustrations C and D.
152)	811 Illustration H ¶ 6	807 Illustration H ¶ 6	See (103)

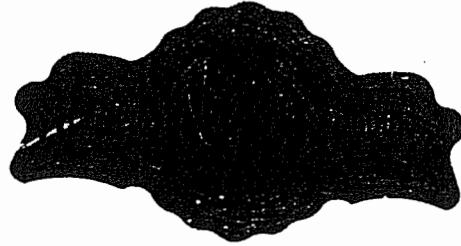
153)	811 Illustration H ¶ 6(d) 807 Illustration H ¶ 6(d) See (104)	Revision: Insert paragraph to parallel language in Illustrations C and D.
154)	811 Illustration H ¶ 6(e)	
155)	811 Illustration H ¶ 6(f) 807 Illustration H ¶ 6(e) See (105)	
156)	811 Illustration H ¶ 7 807 Illustration H ¶ 7 See (106)	
157)	811 Illustration H ¶ 7 807 Illustration H ¶ 7 See (22)	
158)	811 Illustration H ¶ 8 807 Illustration H ¶ 8	Revision: Insert paragraph to parallel language in Illustrations C and D.
159)	811 Illustration H ¶ 9 807 Illustration H ¶ 9	Revision: Insert paragraph to parallel language in Illustrations C and D.
160)	811 Illustration H ¶ 10 807 Illustration H ¶ 10	Revision: Insert paragraph to parallel language in Illustrations C and D.
161)	811 Illustration H ¶ 12 807 Illustration H ¶ 12 See (110)	
162)	811 Illustration H	See (111)
163)	810.104(a)(2)	Update: Accounting and Auditing standards incorporated by reference are updated to current editions.



Illinois League
of Financial
Institutions

EXHIBIT 1
133 South 4th Street
Suite #206
Springfield, IL 62701

Telephone 217.522.5575
Fax 217.789.9115
www.ilfi.org



January 3, 2005

Mr. Greg Bouillon
Account Supervisor
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P. O. Box 19276
Springfield, IL 62794-9276

Dear Mr. Bouillon:


We have received and reviewed the proposed changes to the language of 35 Ill. Adm. Code 807, Subpart F, 810, and 811, Subpart G.

The changes as they relate to financial institutions are primarily technical in that archaic language is deleted and more appropriate terminology and provisions consistent with current law are substituted.

The changes, as they may relate to our industry, will have a positive impact and are supported by the Illinois League of Financial Institutions.

Thank you for giving us an opportunity to receive the proposed changes in advance and affording us the opportunity to comment on the same.

Yours very truly,


Jay R. Stevenson
President

RECEIVED

JAN 04 2005

IEPA/BOI

January 26, 2005

Mr. Greg Bouillon
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

133 S. Fourth Street, Suite 300
Springfield, Illinois 62701
217.789.9340
FAX: 217.789.5410

**Re: Proposed Amendments to 35 Illinois Administrative Code
Part 807, Subpart F, Part 810, and Part 811, Subpart G
(December 9, 2004)**

10 S. LaSalle Street, Suite 950
Chicago, Illinois 60603
312.347.3400
FAX: 312.922.0518

Dear Mr. Bouillon,

We are writing on behalf of the Illinois Bankers Association ("IBA") in response to the Environmental Protection Agency's ("EPA") proposed amendments to its rules at Title 35 of the Illinois Administrative Code, Part 807, Subpart F, Part 810, and Part 811, Subpart G, implementing the Environmental Protection Act. The IBA is a full-service trade association representing financial institutions of all sizes in Illinois, including state and national community banks, regional banks, money center banks, savings banks, and savings and loan associations, which together account for over 85 percent of all banking assets in our state. We appreciate this opportunity to comment on the EPA's proposed amendments.

The proposed amendments would require that irrevocable standby letters of credit include provisions which are less favorable to the issuers of the letters of credit than are currently required in the EPA's rules (see, 35 Ill. Adm. Code Part 811, Appendix A, Illustration E). Specifically, the proposed amendments would require the issuer of an irrevocable standby letter of credit to provide the EPA with 120 days prior notice of a non-renewal of the letter of credit, which would prompt the EPA to draw on the letter if a landfill operator failed to provide alternate financial assurance within 90 days following the bank's non-renewal notification.

It is important to note that irrevocable standby letters of credit are issued on the basis of credit underwriting decisions. The proposed change would, in many cases, result in the EPA drawing on letters of credit issued to landfill operators based on an event (the failure to arrange alternative financial assurance) that cannot be determined at the time the underwriting decision is made. Consequently, the proposed change, if adopted, will make it more difficult for landfill operators to obtain such letters of credit. Alternatively, to the extent these letters of credit remain available, the proposed change would result in increased costs for the letters of credit. While the IBA understands the EPA's desire, as a matter of public policy, to strengthen the existing financial assurance mechanisms for landfill operators in favor of the State of Illinois, and the IBA does not oppose the proposed change, the EPA may wish to consider the important role that financial institutions serve in providing financial assurance through the issuance of letters of credit, and the impact that these proposed changes may have on the availability and costs of such letters.

Mr. Greg Bouillon
January 26, 2005
Page Two

The IBA strongly suggests, however, that the EPA add language to the proposed amendments clarifying that the changes to Parts 807 and 811 *apply only to irrevocable standby letters of credit that are issued after the effective date of the amendments*. The proposed amendments are silent on this important issue. It would be highly problematic for the EPA to draw on letters of credit on the basis of terms that did not exist at the time that the underwriting decisions were made to issue the letters of credit. While it does not seem likely that the EPA intended for the proposed changes to have a retroactive application to outstanding letters of credit, we believe that this is an important clarification that should be stated in the amended rules.

Finally, the IBA recommends that the EPA amend the third paragraphs of the Irrevocable Standby Letter of Credit forms that are set forth in Part 807.Appendix A, Illustration E, and Part 811.Appendix A, Illustration E, to read as follows (our added language is in bold italics) :

"This letter of credit is effective as of _____ and shall expire on _____; but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the **then** current expiration date, we notify both you and [owner's or operator's name] by certified mail, **return receipt requested**, that we have decided not to extend this letter of credit beyond the **then** current expiration date. **Notice shall be deemed given as of the date of signature appearing on the return receipt issued in conjunction with the certified mailing of the notification.**"

Thank you for your consideration of our comments.

Sincerely,



Bruce Jay Baker
Executive Vice President
and General Counsel

Flowers



Michael Damewood
Account Manager
St. Paul Travelers Bond
215 Shuman Blvd.
Naperville IL. 60563
Phone: 630-961-7037
Fax: 866-216-5979
E-mail: Mdamewoo@spt.com

February 10, 2005

Mr. Greg Bouillon
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O Box 19276
Springfield IL. 62794-9276

RECEIVED
Division of Legal Counsel

FEB 17 2005

Environmental Protection
Agency

RE: Landfill financial assurance duration

Dear Greg:

Through our waste handling customers, we received your notice requesting commentary on the proposed changes to the Ill. Adm. Code(s) 807, subpart F, 810 and 811. Please be advised that sureties are generally unwilling to provide bonds which extend more than one or two years. St. Paul Travelers is opposed to providing bond coverage over 1 to 2 years. I know many of our waste clients are equally uncomfortable extending terms with these types of lengths.

From a surety's perspective, it is very difficult, if not impossible; for us to underwrite any company's ability to respond to a problem that may not arise for years. Surety bonds are underwritten and priced based upon the customers ability and financial resources at the time of the contract award. We are able to project those qualifications for the length of a typical contract, but simply cannot do so for a period in excess of 1 or 2 years.

Reducing the length of closure assurance from five years would have several beneficial impacts. First, more waste companies would be able to obtain surety bonding as an alternative form of financial assurance. As the current law stands, only the largest companies can obtain surety credit for the five year term required. Secondly, the cost of the financial assurance would become much more in line with the risk being undertaken. The risk on a one to two year bond is simply much easier to quantify than that of a five year obligation. Finally, we would assert that the risk to the State of Illinois is actually reduced. The financial companies backing the bonds or letters of credit can just as easily encounter financial difficulties during the five year term as the waste companies themselves. Reducing the term length would provide the waste company an opportunity to replace the financial assurance more frequently should the need arise-thus improving the quality of the State's financial backing.

FEB 14 2005

Page _

In 2004 St. Paul Insurance and Travelers Insurance merged to create St. Paul Travelers (NYSE-STA). Prior to the merger Travelers and St. Paul were respectively the 1st and 2nd largest writers of surety bonds in the United States. Combined, STA currently is far and away the largest writer of surety bonds in the U.S. and is rated A+ by A.M. Best. We appreciate your consideration of our position and would be happy to discuss these topics further should the opportunity arise. Please realize St. Paul Travelers has been providing surety bonds for clients since 1910, and we have a vested interest in our clients being able to pursue work in the State of Illinois under fair and reasonable contract terms.

Regards,


Michael Damewood

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, 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. 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 R95-9 at 19 Ill. Reg. 14427, effective September 29, 1995; amended in R96-1 at 20 Ill. Reg. 11985, effective August 15, 1996; amended in R97-20 at 21 Ill. Reg. 15825, effective November 25, 1997; amended in R04-5/R04-15 at 28 Ill. Reg. 9090, effective June 18, 2004, amended in _____ at Ill. Reg. _____, effective _____.

Section 810.104 Incorporations by Reference

a) The Board incorporates the following material by reference:

1) Code of Federal Regulations:

40 CFR 141.40 (1997).

40 CFR 258.Appendix II (1997).

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

FASB Accounting Standards – Current Text, 2008 Edition.

AICPA Professional Standards – Statements on Auditing Standards, June 1, 2008 edition.

~~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.

5) U.S. Army Corps of Engineers, Publication Department, 2803 52nd Ave., Hyattville, Maryland 20781, 301-394-0081:

Engineering Manual 1110-2-1906 Appendix VII, Falling-Head Permeability Cylinder (1986).

6) 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 Ill. Reg. _____, effective _____ Amended at 21 Ill. Reg. 15825, effective November 25, 1997)

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

PART 807
SOLID WASTE

SUBPART A: GENERAL PROVISIONS

Section	
807.101	Authority, Policy and Purposes
807.102	Repeals
807.103	Severability
807.104	Definitions
807.105	Relation to Other Rules

SUBPART B: SOLID WASTE PERMITS

Section	
807.201	Development Permits
807.202	Operating Permits
807.203	Experimental Permits
807.204	Former Authorization
807.205	Applications for Permit
807.206	Permit Conditions
807.207	Standards for Issuance
807.208	Permit No Defense
807.209	Permit Revision
807.210	Supplemental Permits
807.211	Transfer of Permits
807.212	Permit Revocation
807.213	Design, Operation and Maintenance Criteria
807.214	Revised Cost Estimates

SUBPART C: SANITARY LANDFILLS

Section	
807.301	Prohibition
807.302	Compliance with Permit
807.303	Methods of Operation
807.304	Equipment, Personnel and Supervision
807.305	Cover

807.306	Litter
807.307	Salvaging
807.308	Scavenging
807.309	Animal Feeding
807.310	Special Wastes
807.311	Open Burning
807.312	Air Pollution
807.313	Water Pollution
807.314	Standard Requirements
807.315	Protection of Waters of the State
807.316	Application
807.317	Operating Records
807.318	Completion or Closure Requirements

SUBPART E: CLOSURE AND POST-CLOSURE CARE

Section	
807.501	Purpose, Scope and Applicability
807.502	Closure Performance Standard
807.503	Closure Plan
807.504	Amendment of Closure Plan
807.505	Notice of Closure and Final Amendment to Plan
807.506	Initiation of Closure
807.507	Partial Closure
807.508	Certification of Closure
807.509	Use of Waste Following Closure
807.523	Post-closure Care Plan
807.524	Implementation and Completion of Post-closure Care Plan

SUBPART F: FINANCIAL ASSURANCE FOR CLOSURE AND POST-CLOSURE CARE

Section	
807.600	Purpose, Scope and Applicability
807.601	Requirement to Obtain Financial Assurance
807.602	Time for Submission of Financial Assurance
807.603	Upgrading Financial Assurance
807.604	Release of Financial Institution
807.605	Application of Proceeds and Appeal
807.606	Release of the Operator
807.620	Current Cost Estimate
807.621	Cost Estimate for Closure
807.622	Cost Estimate for Post-closure Care

807.623	Biennial Revision of Cost Estimate
807.624	Interim Formula for Cost Estimate
807.640	Mechanisms for Financial Assurance
807.641	Use of Multiple Financial Mechanisms
807.642	Use of Financial Mechanism for Multiple Sites
807.643	Trust Fund for Unrelated Sites
807.644	RCRA Financial Assurance
807.661	Trust Fund
807.662	Surety Bond Guaranteeing Payment
807.663	Surety Bond Guaranteeing Performance
807.664	Letter of Credit
807.665	Closure Insurance
807.666	Self-insurance for Non-Commercial Sites

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 Post-closure Care
Illustration G	Operator's Bond Without Surety
Illustration H	Operator's Bond With Parent Surety
Illustration I	Letter from Chief Financial Officer

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

SOURCE: Adopted as an emergency rule and filed with the Secretary of State July 27, 1973; amended at 2 Ill. Reg. 16, p. 3, effective April 10, 1978; codified at 7 Ill. Reg. 13636; recodified from Subchapter h to Subchapter i at 8 Ill. Reg. 13198; emergency amendment in R84-22A at 9 Ill. Reg. 741, effective January 3, 1985, for a maximum of 150 days; amended in R84-22B at 9 Ill. Reg. 6722, effective April 29, 1985; amended in R84-22C at 9 Ill. Reg. 18942, effective November 25, 1985; amended in R84-45 at 12 Ill. Reg. 15566, effective September 14, 1988; amended in R88-7 at 14 Ill. Reg. 15832, effective September 18, 1990; emergency amendment in R93-25 at 17 Ill. Reg. 17268, effective September 24, 1993, for a maximum of 150 days; amended in R90-26 at 18 Ill. Reg. 12451, effective August 1, 1994; amended in R96-1 at 20 Ill. Reg. 12549, effective August 15, 1996, amended in _____ at _____ Ill. Reg. _____, effective _____.

NOTE: *Italics denotes statutory language.*

SUBPART F: FINANCIAL ASSURANCE FOR CLOSURE AND POST-CLOSURE CARE

Section 807.600 Purpose, Scope and Applicability

- a) This Subpart provides procedures by which an operator of a waste disposal site can give "financial assurance" satisfying the requirement of Section 21.1(a) of the Act that such operator post with the Agency a performance bond or other security for the purpose of insuring closure of the site and post-closure care in accordance with the Act and Board rules.
- b) Each operator must file a closure plan as part of a permit application. The operator of a disposal site or indefinite storage unit must also file a post-closure care plan (Sections 807.205, 807.503 and 807.523). The operator of a disposal site or indefinite storage unit must prepare a cost estimate of closure and post-closure care, and provide financial assurance in this amount (Sections 807.601 and 807.620). Financial assurance ~~shall~~may be given through a combination of a trust agreement, bond guaranteeing payment, bond guaranteeing payment or performance, letter of credit, insurance or self-insurance (Section 807.640). The cost estimate and amount of financial assurance is to be updated at least on a biennial basis (Section 807.623).
- c) This Subpart applies only to the non-governmental operators of disposal sites or indefinite storage units (Section 807.601). Whether a site is a disposal site or, alternatively, a treatment or storage site, depends on whether the closure plan provides for removal of all wastes and waste residues from the site prior to completion of closure. Whether a unit is an indefinite storage unit depends on the technical feasibility and economic reasonableness of removal of all wastes and waste residues prior to closure (Section 807.104).

(Source: Amended at Ill. Reg. _____, effective _____ Amended at 9 Ill. Reg. 18942, effective November 25, 1985)

Section 807.640 Mechanisms for Financial Assurance

The operator of a waste disposal site ~~shall~~may utilize any of the following mechanisms to give financial assurance for closure and post-closure care:

- a) Trust Fund (Section 807.661);
- b) Surety Bond Guaranteeing Payment (Section 807.662);

- c) Surety Bond Guaranteeing Performance (Section 807.663);
- d) Letter of Credit (Section 807.664);
- e) Closure Insurance (Section 807.665); or,
- f) Self-insurance (Section 807.666).

(Source: Amended at Ill. Reg. _____, effective _____ Amended-
at 9 Ill. Reg. 18942, effective November 25, 1985)

Section 807.661 Trust Fund

- a) An operator may satisfy the requirements of this Subpart by establishing a trust fund which conforms to the requirements of this Section and submitting an original, signed duplicate of the trust agreement to the Agency.
- b) The trustee must be an entity which has the authority to act as a trustee and:
 - 1) Whose trust operations are regulated by the Department of Financial and Professional Regulation~~Illinois Commissioner of Banks and Trust Companies~~; or,
 - 2) Who complies with the Corporate Fiduciary Act [205 ILCS 620/1-1 et seq.]~~Foreign Corporations as Fiduciaries Act, (Ill. Rev. Stat. 1983, ch. 17, par. 2801 et seq.)~~.
- c) The trust agreement must be on forms specified in Appendix A and the trust agreement must be accompanied by a formal certification of acknowledgment. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure and post-closure cost estimates covered by the agreement.
- d) Payments into the trust:
 - 1) The operator must make a payment into the trust fund each year during the pay-in period.
 - 2) The pay-in period is the number of years remaining until the site reaches the stage in its expected operating life at which the cost of premature closure would be the greatest, as indicated by its closure plan. Provided, however, that the pay-in period shall not be less than three years nor greater than ten years.

- 3) Annual payments are determined by the following formula:

$$\text{Annual payment} = (\text{CE}-\text{CV})/\text{Y}$$

where:

CE = Current cost estimate

CV = Current value of the trust fund

Y = Number of years remaining in the pay in period.

- 4) The operator must make the first annual payment prior to the initial receipt of waste for disposal, or prior to March 1, 1985 for sites receiving waste for disposal prior to that date. The operator must also, prior to such initial receipt of waste, submit to the Agency a receipt from the trustee for the first annual payment.
- 5) Subsequent annual payments must be made no later than 30 days after each anniversary of the first payment.
- 6) The operator may accelerate payments into the trust fund, or may deposit the full amount of the current cost estimate at the time the fund is established.
- e) The trustee must evaluate the trust fund annually as of the day the trust was created, or on such earlier date as may be provided in the agreement. The trustee must notify the operator and the Agency of the value within 30 days after the evaluation date.
- f) Release of excess funds:
- 1) If the value of the financial assurance is greater than the total amount of the current cost estimate, the operator may submit a written request to the Agency for release from the trust fund of the amount in excess of the current cost estimate.
- 2) Within 60 days after receiving a request from the operator for release of funds, the Agency will instruct the trustee to release to the operator such funds as the Agency specifies in writing.
- g) Reimbursement for closure and post-closure care expenses:
- 1) After initiating closure, an operator or any other person authorized to perform closure or post-closure care may request reimbursement

for closure or post-closure care expenditures by submitting itemized bills to the Agency.

- 2) Within 60 days after receiving bills for closure or post-closure care activities, the Agency will determine whether the expenditures are in accordance with the closure or post-closure care plan and if so, it will instruct the trustee to make reimbursement in such amounts as the Agency specifies in writing.
- 3) If the Agency has reason to believe that the cost of closure and post-closure care will be significantly greater than the value of the trust fund, it may withhold reimbursement of such amounts as it deems prudent until it determines that the operator is no longer required to maintain financial assurance for closure and post-closure care.

(Source: Amended at Ill. Reg. _____, effective _____ ~~Amended at 9 Ill. Reg. 18942, effective November 25, 1985~~)

Section 807.662 Surety Bond Guaranteeing Payment

- a) An 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.
- b) The surety company issuing the bond must be licensed by the Illinois ~~Department of Financial and Professional Regulation~~ 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.
- c) The surety bond must be on forms specified in Appendix A.
- d) Any payments made under the bond will be placed in the Landfill Closure and Post-Closure Fund within the State Treasury.
- e) Conditions:
 - 1) The bond must guarantee that the operator will:
 - A) Provide closure and post-closure care in accordance with the closure and post-closure care plans in the permit; and

- B) Provide alternate financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the operator and the Agency of a notice from the surety that the bond will not be renewed for another term.
- 2) The surety will become liable on the bond obligation when, during the term of the bond, the operator fails to perform as guaranteed by the bond. The operator fails to perform when the operator:
- A) Abandons the site;
- B) Is adjudicated bankrupt;
- C) Fails to initiate closure of the site or post-closure care when ordered to do so by the Board or a court of competent jurisdiction; ~~or,~~
- D) Notifies the Agency that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care in accordance with the closure and post-closure care plans; or,
- E) Fails to provide alternate financial assurance, as specified in the Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the operator and the Agency of a notice from the surety that the bond will not be renewed for another term.
- f) Penal sum:
- 1) The penal sum of the bond must be in an amount at least equal to the current cost estimate.
- 2) Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Agency. The Agency shall approve a reduction in the penal sum whenever the current cost estimate decreases.
- 3) Whenever the current cost estimate increases to an amount greater than the penal sum, the operator, within 90 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance, as

specified in this Subpart, to cover the increase and submit evidence of such alternate financial assurance to the Agency.

g) Term:

- 1) The bond shall be issued for a term of at least one year ~~four years~~ and shall not be cancelable during that term.
- 2) The surety bond must provide that on the current expiration date and on each successive expiration date the term of the surety bond will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the surety notifies both the operator and the Agency by certified mail of a decision not to renew the bond. Under the terms of the surety bond, the 120 days will begin on the date when both the operator and the Agency have received the notice, as evidenced by the return receipts. ~~If the operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond shall be automatically extended for one twelve-month period starting with the date of expiration of the bond. During such extension the bond will not serve as financial assurance satisfying the requirements of this Part, and will not excuse the operator from the duty to provide substitute financial assurance.~~
- 3) The Agency shall release the surety by providing written authorization for termination of the bond to the operator and the surety when either of the following occurs:
 - A) An operator substitutes alternate financial assurance, as specified in the Subpart; or
 - B) The Agency releases the operator from the requirements of this Subpart in accordance with subsection (b) of Section 807.606 of 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 operator or another person provides financial assurance for closure and post-closure care of the site, unless the Agency determines that a plan or the amount of substituted financial assurance is inadequate to provide closure and post-closure care as required by this Part.

- 2) After closure and post-closure care have been completed in accordance with the plans and requirements of this Part, the Agency shall refund any unspent money which was paid to the Agency by the surety subject to appropriation of funds by the Illinois General Assembly.

(Source: Amended at Ill. Reg. _____, effective _____ ~~Amended at 9 Ill. Reg. 18942, effective November 25, 1985~~)

Section 807.663 Surety Bond Guaranteeing Performance

- a) An 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.
- b) The surety company issuing the bond must be licensed by the Illinois ~~Department of Financial and Professional Regulation~~ 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.
- c) The surety bond must be on forms specified in Appendix A.
- d) Any payments made under the bond will be placed in the Landfill Closure and Post-Closure Fund within the State Treasury.
- e) Conditions:
 - 1) The bond must guarantee that the operator will:
 - A) Provide closure and post-closure care in accordance with the closure and post-closure care plans in the permit. ~~The surety shall have the option of providing closure and post-closure care in accordance with the closure and post-closure care plans, or of paying the penal sum.; and~~
 - B) Provide alternate financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the operator and the Agency of a notice from the surety that the bond will not be renewed for another term.

2) The surety will become liable on the bond obligation when, during the term of the bond, the operator fails to perform as guaranteed by the bond. The operator fails to perform when the operator:

- A) Abandons the site;
- B) Is adjudicated bankrupt;
- C) Fails to initiate closure of the site or post-closure care when ordered to do so by the Board or a court of competent jurisdiction; ~~or~~;
- D) Notifies the Agency that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care in accordance with the closure and post-closure care plans; or,
- E) Fails to provide alternate financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the operator and the Agency of a notice from the surety that the bond will not be renewed for another term.

3) Upon the failure of the operator to perform as guaranteed by the bond, the surety shall have the option of providing closure and post-closure care in accordance with the closure and post-closure care plans, or of paying the penal sum.

f) Penal sum:

- 1) The penal sum of the bond must be in an amount at least equal to the current cost estimate.
- 2) Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Agency. The Agency shall approve a reduction in the penal sum whenever the current cost estimate decreases.
- 3) Whenever the current cost estimate increases to an amount greater than the penal sum, the operator, within 90 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of such

increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of such alternate financial assurance to the Agency.

g) Term:

- 1) The bond shall be issued for a term of at least one year ~~four years~~ and shall not be cancelable during that term.
- 2) The surety bond must provide that on the current expiration date and on each successive expiration date the term of the surety bond will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the surety notifies both the operator and the Agency by certified mail of a decision not to renew the bond. Under the terms of the surety bond, the 120 days will begin on the date when both the operator and the Agency have received the notice, as evidenced by the return receipts. ~~If the operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond shall be automatically extended for one twelve-month period starting with the date of expiration of the bond. During such extension the bond will not serve as financial assurance satisfying the requirements of this Part, and will not excuse the operator from the duty to provide substitute financial assurance.~~
- 3) The Agency shall release the surety by providing written authorization for termination of the bond to the operator and the surety when either of the following occurs:
 - A) An operator substitutes alternate financial assurance, as specified in the Subpart; or
 - B) The Agency releases the operator from the requirements of this Subpart in accordance with subsection (b) of Section 807.606 of 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 operator or another person provides financial assurance for closure and post-closure care of the site, unless the Agency determines that a plan or the amount of substituted financial assurance is inadequate to provide closure and post-closure care as required by this Part.

- 2) After closure and post-closure care have been completed in accordance with the plans and requirements of this Part, the Agency shall refund any unspent money which was paid to the Agency by the surety subject to appropriation of funds by the Illinois General Assembly.
- i) The surety will not be liable for deficiencies in the performance of closure by the operator after the Agency releases the operator from the requirements of this Subpart.

(Source: Amended at Ill. Reg. _____, effective _____ Amended at 9 Ill. Reg. 18942, effective November 25, 1985)

Section 807.664 Letter of Credit

- a) An 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.
- b) The issuing institution must be an entity which has the authority to issue letters of credit and:
 - 1) Whose letter-of-credit operations are regulated by the Illinois Department of Financial and Professional Regulation ~~Commissioner of Banks and Trust Companies~~; 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 forms specified in Appendix A.
 - 2) The letter of credit must be accompanied by a letter from the operator referring to the letter of credit by number, issuing institution and date and providing the following information: name and address of the site and the amount of funds assured for closure of the site by the letter of credit.
- d) Any amounts drawn by the Agency pursuant to the letter of credit will be deposited in the Landfill Celosure and Post-Celosure Fund within the State Treasury.

- e) Conditions on which the Agency ~~shall~~ may draw on the letter of credit:
- 1) Agency ~~shall~~ may draw on the letter of credit if the operator fails to perform closure or post-closure care in accordance with the closure and post-closure care plans.
 - 2) Agency ~~shall~~ may draw on the letter of credit when the operator:
 - A) Abandons the site;
 - B) Is adjudicated bankrupt;
 - C) Fails to initiate closure or post-closure care of the site when ordered to do so by the Board or a court of competent jurisdiction; ~~or~~
 - D) Notifies the Agency that it has initiated closure, or initiates closure, but fails to provide closure and post-closure care in accordance with the closure and post-closure care plans; or
 - E) Fails to provide alternate financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the operator and the Agency of a notice from the issuing institution that the letter of credit will not be extended for another term.
- f) Amount:
- 1) The letter of credit must be issued in an amount at least equal to the current cost estimate.
 - 2) Whenever the current cost estimate decreases, the amount of credit may be reduced to the amount of the current cost estimate following written approval by the Agency. ~~The Agency shall approve a reduction in the amount whenever the current cost estimate decreases.~~
 - 3) Whenever the current cost estimate increases to an amount greater than the amount of the credit, the operator, within 90 days after the increase, must either cause the amount of the credit to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Agency or obtain other financial

assurance, as specified in this Subpart, to cover the increase and submit evidence of such alternate financial assurance to the Agency.

g) Term:

- 1) The letter of credit shall be irrevocable and shall be issued for a term of at least one year~~four years~~.
- 2) The letter of credit must provide that on the current expiration date and on each successive expiration date the letter of credit will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the operator and the Agency by certified mail of a decision not to extend the letter of credit for another term. Under the terms of the letter of credit, the 120 days will begin on the date when both the operator and the Agency have received the notice, as evidenced by the return receipts. If the operator fails to substitute alternate financial assurance prior to expiration of a letter of credit, the term of the letter of credit shall be automatically extended for one twelve-month period starting with the date of expiration. During such extension the letter of credit will not serve as financial assurance satisfying the requirements of this Part, and will not excuse the operator from the duty to provide substitute financial assurance.
- 3) The Agency must return the letter of credit to the issuing institution for termination when either of the following occurs:
 - A) An operator substitutes alternate financial assurance, as specified in this Subpart; or
 - B) The Agency releases the operator from the requirements of this Subpart in accordance with subsection (b) of Section 807.606 of this Part.

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 operator or another person provides financial assurance for closure and post-closure care of the site, unless the Agency determines that a plan or the amount of substituted financial assurance is inadequate to provide closure and post-closure care as required by this Part.

- 2) After closure and post-closure care have been completed in accordance with the plans and requirements of this Part, the Agency shall refund any unspent money which was paid to the Agency by the financial institution subject to appropriation of funds by the Illinois General Assembly.

(Source: Amended at Ill. Reg. _____, effective _____ ~~Amended at 9 Ill. Reg. 18942, effective November 25, 1985~~)

Section 807.665 Closure Insurance

- a) An operator may satisfy the requirements of this Subpart by obtaining closure and post-closure care insurance which conforms to the requirements of this Section and submitting to the Agency an executed duplicate original of such insurance policy and the certificate of insurance for closure and/or post-closure care specified in Appendix A, Illustration F.
~~an executed duplicate original of such insurance policy to the Agency.~~
- b) The insurer must be licensed to transact the business of insurance by the Illinois Department of Financial and Professional Regulation~~Department of Insurance~~ 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.
- c) The policy must be on forms filed with the Illinois Department of Financial and Professional Regulation – Division of Insurance pursuant to Section 143(2) of the Illinois Insurance Code [215 ILCS 5/143(2)] and 50 Ill. Adm. Code 753, or on forms approved by the insurance department of one or more states.~~approved by the Illinois Department of Insurance.~~
- d) Face amount:
 - 1) The closure and post-closure 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) Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate following written approval by the Agency. ~~The Agency shall approve a reduction in the amount of the policy whenever the current cost estimate decreases.~~

- 3) Whenever the current cost estimate increases to an amount greater than the face amount, the operator, within 90 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of such alternate financial assurance to the Agency.
- e) The closure and post-closure care insurance policy must guarantee that funds will be available to close the site and to provide post-closure 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 operator abandons the site;
 - 2) The operator is adjudicated bankrupt;
 - 3) The Board or a court of competent jurisdiction orders the site closed;
 - 4) The operator notifies the Agency that it is initiating closure; or
 - 5) Any person initiates closure with approval of the Agency.
 - f) After initiating closure, an operator or any other person authorized to perform closure or post-closure care may request reimbursement for closure and post-closure care expenditures by submitting itemized bills to the Agency. Within 60 days after receiving bills for closure or post-closure care activities, the Agency will determine whether the expenditures are in accordance with the closure plan or post-closure care plan, and if so, will instruct the insurer to make reimbursement in such amounts as the Agency specifies in writing. If the Agency has reason to believe that the cost of closure and post-closure care will be significantly greater than the face amount of the policy, it may withhold reimbursement of such amounts as it deems prudent until it determines that the operator is no longer required to maintain financial assurance.
 - g) Cancellation:
 - 1) The operator shall maintain the policy in full force and effect until the Agency consents to termination of the policy.

- 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 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 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 operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(Source: Amended at Ill. Reg. _____, effective _____ ~~Amended at 9 Ill. Reg. 18942, effective November 25, 1985~~)

Section 807.666 Self-insurance for Non-Commercial Sites

- a) Definitions: The following terms are used in this Section. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting principles.

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

"Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Generally accepted accounting principles" means FASB Accounting Standards – Current Text, 2004 Edition, American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, NY 10036-8775 ~~Financial Accounting Standards Board, June, 1984~~, which is hereby

incorporated by reference. This incorporation includes no later amendments or editions.

"Gross Revenue" means total receipts less returns and allowances.

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

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

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

"Tangible net worth" means the tangible assets less liabilities; tangible assets do not include intangibles such as goodwill and rights to patents or royalties.

- b) An operator may satisfy the financial assurance requirements of this Part by providing the following:
 - 1) Bond without surety promising to pay the cost estimate (paragraph (c)).
 - 2) Proof that the operator meets the gross revenue test (paragraph (d)).
 - 3) Proof that the operator meets the financial test (paragraph (e)).
- c) Bond without surety. An operator utilizing self-insurance must provide a bond without surety on forms provided in Appendix A. The operator must promise to pay the current cost estimate to the Agency unless the operator provides closure and post-closure care in accordance with the closure and post-closure care plans.
- d) Gross revenue test. The operator must demonstrate that less than one-half of its gross revenues are derived from waste disposal operations.
- e) Financial test:
 - 1) To pass the financial test the operator must meet the criteria of either paragraph (e)(1)(A) or (e)(1)(B):

- A) The operator must have:
 - i) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5; and
 - ii) Net working capital and tangible net worth each at least six times the current cost estimate; and
 - iii) Tangible net worth of at least \$10 million; and
 - iv) Assets in the United States amounting to at least 90 percent of the operator's total assets and at least six times the current cost estimate.

- B) The operator must have:
 - i) A current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
 - ii) Tangible net worth at least six times the current cost estimate; and
 - iii) Tangible net worth of at least \$10 million; and
 - iv) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the current cost estimate.

- 2) To demonstrate that it meets this test, the operator must submit the following items to the Agency:
 - A) A letter signed by the operator's chief financial officer and worded as specified in Appendix A; and
 - B) A copy of the independent certified public accountant's report on examination of the operator's financial statements for the latest completed fiscal year; and

- C) A special report from the operator's independent certified public accountant to the operator stating that:
 - i) The accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and
 - ii) In connection with that procedure, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.
- f) Updated information:
 - 1) After the initial submission of items specified in paragraphs (d) and (e), the operator must send updated information to the Agency within 90 days after the close of each succeeding fiscal year.
 - 2) If the operator no longer meets the requirements of paragraphs (d) and (e), the operator must send notice to the Agency of intent to establish alternate financial assurance. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the operator no longer meets the requirements.
- g) Qualified opinions. If the opinion required in paragraphs (e)(2)(B) and (e)(2)(C) includes an adverse opinion or a disclaimer of opinion, the Agency shall disallow the use of self-insurance. If the opinion includes other qualifications, the Agency shall disallow the use of self-insurance if:
 - 1) The qualifications relate to the numbers which are used in the gross revenue test or the financial test; and,
 - 2) In light of the qualifications, the operator has failed to demonstrate that it meets the gross revenue test or financial test.
- h) Parent corporation. An operator may satisfy the financial assurance requirements of this Part by:
 - 1) D demonstrating that a corporation ~~that~~ which owns an interest in the operator meets the requirements of this Section~~gross revenue and financial tests~~; and,

2) Providing a bond to the Agency with the parent corporation as surety on a form specified in Appendix A, Illustration H in accordance with subsections (d), (e), (f), and (g) of Section 807.662 of this Part. ~~The operator must also provide a bond with the parent as surety (Appendix A).~~

(Source: Amended at Ill. Reg. _____, effective _____ Amended at 9 Ill. Reg. 18942, effective November 25, 1985)

APPENDIX A Financial Assurance Forms

ILLUSTRATION A Trust Agreement

TRUST AGREEMENT

Trust Fund Number _____

Trust Agreement, the "Agreement," entered into as of the ____ day of _____, by and between _____, a _____, the "Grantor," and _____, _____, the "Trustee."

Whereas, Section 21.1 of the Environmental Protection Act, "Act", prohibits any person from conducting any waste disposal operation unless such person has posted with the Illinois Environmental Protection Agency, "IEPA", a performance bond or other security for the purpose of insuring closure of the site and post-closure care in accordance with the Act and Illinois Pollution Control Board, "IPCB", rules.

Whereas, the IPCB has established certain regulations applicable to the Grantor, requiring that an operator of a waste disposal site provide assurance that funds will be available when needed for closure and/or post-closure care of the site.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the sites identified in this agreement.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Whereas, Trustee is an entity which has authority to act as a trustee and whose trust operations are regulated by the Illinois Department of Financial and Professional Regulation ~~Commissioner of Banks & Trust Companies~~ or who complies with the Corporate Fiduciary Act [205 ILCS 620/1-1 et seq.] ~~Foreign Corporations as Fiduciaries Act (Ill. Rev. Stat. 1983, ch. 17, par. 2801, et seq.)~~ (Line through any condition that ~~which~~ does not apply.)

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantor" means the operator who enters into this Agreement and any successors or assigns of the operator.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Sites and Cost Estimates. This Agreement pertains to the sites and cost estimates identified on attached Schedule A (on Schedule A, list the name and address and ~~initial~~current cost estimate of each site for which financial assurance is demonstrated by this agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the IEPA. The Grantor and the Trustee intend that no other third party have access to the Fund except as provided in this agreement. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached to this agreement. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits on the Fund, less any payments or distributions made by the Trustee pursuant to this agreement. The Fund shall be held by the Trustee, in trust, as provided in this agreement. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor.

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the IEPA shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the sites covered by this agreement. The Trustee shall reimburse the Grantor or other persons as specified by the IEPA from the Fund for closure and post-closure expenditures in such amounts as the IEPA shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the IEPA specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trust Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- a) Securities or other obligations of the Grantor, or any other owner or operator of the site, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal government or the State of Illinois;

- b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by the Federal Deposit Insurance Corporation ~~or Federal Savings & Loan Insurance Corporation.~~
- c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this agreement or by law, the Trustee is expressly authorized and empowered:

- a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;
- b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers granted in this agreement;
- c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve

Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund.

- d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by the Federal Deposit Insurance Corporation or ~~Federal Savings & Loan Insurance Corporation~~; and
- e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee, to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually furnish to the Grantor and to the IEPA a statement confirming the value of the Trust. The evaluation day shall be each year on the _____ day of _____. Any securities in the Fund shall be valued at market value as of the evaluation day. The Trustee shall mail the evaluation statement to the Grantor and the IEPA within 30 days after the evaluation day. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the IEPA shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and the successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall

specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the IEPA and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the IEPA to the Trustee shall be in writing, signed by the IEPA Director or his/her designee(s), and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or IEPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or IEPA, except as provided in this agreement.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the IEPA, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the IEPA Director or his/her designees, or by the Trustee and the IEPA Director or his/her designees if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the IEPA Director or his/her designees, or by the Trustee and the IEPA Director or his/her designees, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the IEPA Director or his/her designees issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed and enforced according to the laws of the State of Illinois.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 35 Ill. Adm. Code, Part 807.Appendix A, Illustration A as such regulations were constituted on the date first above written.

Attest: Signature of Grantor

Typed Name

Title

Seal

Attest: Signature of Trustee

Typed Name

Title

Seal

(Source: Amended at Ill. Reg. _____, effective _____ Amended-
at 9 Ill. Reg. 18942, effective November 25, 1985)

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 post-closure care for each site in accordance with the closure and post-closure care 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 [415 ILCS 5/21(d)], ~~Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1021(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 [415 ILCS 5/21.1] ~~Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1021.1~~, to provide financial assurance for closure and post-closure and post-closure care; and

Whereas the Surety is licensed by the Illinois Department of Financial and Professional Regulation ~~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~~ post-closure care for any site in accordance with the closure and post-closure care 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 post-closure care when ordered to do so by the Board or a court of competent jurisdiction; ~~or~~
- d) Notifies the IEPA Agency that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care in accordance with the closure and post-closure care plans; or,
- e) Fails to provide alternate financial assurance and obtains the IEPA written approval of the assurance provided within 90 days after receipt by both the Principal and the IEPA of a notice from the Surety that the bond will not be renewed for another term.

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 fulfill one or more of the

~~conditions described above failed to so provide closure and post-closure care.~~ Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Post-Closure 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 _____, _____; but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, the Surety notifies both the IEPA and the operator by certified mail that the Surety has decided not to extend the term of this surety bond beyond the current expiration date. The 120 days will begin on the date when both the operator and the IEPA have received the notice, as evidenced by the return receipts. ~~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 accordance with 35 Ill. Adm. Code 807.604.

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 and that the wording of this surety bond is identical to the wording specified in 35 Ill. Adm. Code Part 807. Appendix A, Illustration C as such regulation was constituted on the date this bond was executed.

Principal

Corporate Surety

Signature

Name

Type Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Title

Corporate seal

Corporate seal

Bond premium: \$ _____

(Source: ~~Amended at Ill. Reg. _____, effective _____ Amended-~~
~~at 9 Ill. Reg. 18942, effective November 25, 1985)~~

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 post-closure care for each site in accordance with the closure and post-closure care 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 [415 ILCS 5/21(d)], ~~Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1021(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 [415 ILCS 5/21.1]~~Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1021.1~~, to provide financial assurance for closure and post-closure care; and

Whereas the Surety is licensed by the Illinois Department of Financial and Professional Regulation~~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 post-closure care in accordance with the closure and post-closure care plans for the site if, during the term of the bond, the Principal fails to provide closure ~~and~~ post-closure care for any site in accordance with the closure and post-closure care 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 post-closure care when ordered to do so by the Board or a court of competent jurisdiction; ~~or~~
- d) Notifies the ~~IEPA~~ Agency that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care in accordance with the closure and post-closure care plans; or,
- e) Fails to provide alternate financial assurance and obtain the IEPA written approval of the assurance provided within 90 days after receipt by both the Principal and the IEPA of a notice from the Surety that the bond will not be renewed for another term.

The Surety shall pay the penal sum of the bond to the IEPA or notify the IEPA that it intends to provide closure and post-closure care in accordance with the closure and post-closure care plans for the site within 30 days after the IEPA mails notice to the Surety that the Principal has failed to fulfill one or more of the conditions described above~~failed to provide closure and post-closure care~~. Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Post-Closure Fund.

If the Surety notifies the ~~IEPA Agency~~ that it intends to provide closure and post-closure care, then the Surety must initiate closure and post-closure care within 60 days after the IEPA mailed notice to the Surety that the Principal failed to fulfill one or more of the conditions described above~~failed to provide closure and post-closure care~~. The Surety must complete closure and post-closure care in accordance with the closure and post-closure care 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 _____, _____; but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, the Surety notifies both the IEPA and the Principal by certified mail that the Surety has decided not to extend the term of this surety bond beyond the current expiration date. The 120 days will begin on the date when both the operator and the IEPA have received the notice, as evidenced by the return receipts. 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 accordance with 35 Ill. Adm. Code 807.604.

In Witness Whereof, the Principal and Surety have executed this Performance 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 and that the wording of this surety bond is identical to the wording specified in 35 Ill. Adm. Code Part 807. Appendix A, Illustration D as such regulation was constituted on the date this bond was executed.

Principal

Corporate Surety

Signature

Name

Type Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Title

Corporate seal

Corporate seal

Bond premium: \$ _____

(Source: ~~Amended at Ill. Reg. _____, effective _____~~ Amended
at 9 Ill. Reg. 18942, effective November 25, 1985)

Appendix A Financial Assurance Forms
ILLUSTRATION E Irrevocable Standby Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

Director
Illinois Environmental Protection Agency
C/O Bureau of Land #24
Financial Assurance Program
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
2200 Churchill Road
Springfield, Illinois 62706

Dear Sir or Madam:

We have authority to issue letters of credit. Our letter-of-credit operations are regulated by the Illinois Department of Financial and Professional Regulation Commissioner of Banks and Trusts or our deposits are insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation. (Omit language ~~that~~which 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 Environmental Protection Act [415 ILCS 5/1 et seq.], Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1001 et seq. and 35 Ill. Adm. Code 807.664(e).

This letter of credit is effective as of _____ and shall expire on _____; ~~but, such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. The 120 days will begin on the date when both the operator and the IEPA have received the notice, as evidenced by the return receipts. but, such expiration date shall be automatically extended for one period of twelve months starting with the expiration date if the operator fails to substitute alternate financial assurance prior to the expiration of this letter of credit and you notify us of such failure within 30 days after the above expiration date.~~

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 the draft directly into the State of Illinois Landfill Celosure and Post-Celosure Fund in accordance with your instructions.

~~This letter of credit is governed by the Uniform Commercial Code (Ill. Rev. Stat. 1983, ch. 26, pars. 1-101 et seq.)~~

We certify that the wording of this letter of credit is identical to the wording specified in 35 Ill. Adm. Code, Part 807. Appendix A, Illustration E as such regulations were constituted on the date shown immediately below.

Signature

Typed Name

Title

Date

Name and address of issuing institution

This credit is subject to [insert “the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce,” or “the Uniform Commercial Code”].

(Source: Amended at Ill. Reg. _____, effective _____ Amended-
at 9 Ill. Reg. 18942, effective November 25, 1985)

Appendix A Financial Assurance Forms

ILLUSTRATION F Certificate of Insurance for Closure and/or Post-Closure Care

CERTIFICATE OF INSURANCE FOR CLOSURE AND/OR POST-CLOSURE CARE

Name and Address of Insurer ("Insurer"):

Name and Address of Insured ("Insured"):

Sites Covered:

Name _____

Address _____

City _____

Amount insured for this site: \$ _____

Name _____

Address _____

City _____

Amount insured for this site: \$ _____

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

Face Amount _____

Policy Number _____

Effective Date _____

The Insurer hereby certifies that it is licensed to transact the business of insurance by the Illinois Department of Financial and Professional Regulation Department of Insurance or that it 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.

The insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for closure and post-closure care for the sites identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 35 Ill. Adm. Code 807.665, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Illinois Environmental Protection Agency ("IEPA"), the Insurer agrees to furnish to the IEPA a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 35 Ill. Adm. Code, 807. Appendix A, Illustration F as such regulations were constituted on the date shown immediately below.

Name (Authorized signature for Insurer)

Typed Name

Title

Date

(Source: Amended at Ill. Reg. _____, effective _____ Amended at 9 Ill. Reg. 18942, effective November 25, 1985)

Appendix A Financial Assurance Forms
ILLUSTRATION H Operator's Bond with Parent Surety

OPERATOR'S BOND WITH PARENT SURETY

Date bond executed: _____

Effective Date: _____

Surety: _____

Surety's address: _____

Operator: _____

Operator's address: _____

Site: _____

Site address: _____

Penal sum: \$ _____

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

Whereas the Operator is required, under Section 21(d) of the Environmental Protection Act [415 ILCS 5/21(d)], Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1021(d), to have a permit to conduct a waste disposal operation; and

Whereas the Operator is required, under Section 21.1 of the Environmental Protection Act [415 ILCS 5/21.1] Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1021.1, to provide financial assurance for closure and post-closure care; and

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

Whereas the Surety is a corporation which owns an interest in the Operator;

The Surety shall pay the penal sum to the IEPA if, during the term of the bond, the Operator fails to provide closure ~~and~~ post-closure care for any site in accordance with

the closure and post-closure care plans for that site as guaranteed by this bond. The Operator fails to so provide when the Operator:

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or post-closure care when ordered to do so by the Board or a court of competent jurisdiction; or
- d) Notifies the IEPA Agency that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care in accordance with the closure and post-closure care plans; or,
- e) Fails to provide alternate financial assurance and obtain the IEPA written approval of the assurance provided within 90 days after receipt by the IEPA of a notice from the Surety that the bond will not be renewed for another term.

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 Operator has failed to fulfill one or more of the conditions described above~~failed to so provide closure and post-closure care~~. Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Post-Closure 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 _____, _____; but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, the Surety notifies both the IEPA and the Operator by certified mail that the Surety has decided not to extend this surety bond beyond the current expiration date. The 120 days will begin on the date when both the Operator and the IEPA have received the notice, as evidenced by the return receipts.

The Operator 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 accordance with 35 Ill. Adm. Code 807.604.

In Witness Whereof, the Operator and Surety have executed this 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 Operator and Surety and that the wording of this surety bond is identical to the wording specified in 35 Ill. Adm. Code Part 807. Appendix A, Illustration H as such regulation was constituted on the date this bond was executed.

Operator

Surety

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Title

Corporate seal

Corporate seal

(Source: Amended at Ill. Reg. _____, effective _____ Amended-
at 9 Ill. Reg. 18942, effective November 25, 1985)

**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
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- 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 point date during the next permit term when the extent and manner of the facility’s development, as permitted for operation in accordance with Section 813.203 where applicable, would make closure on which the costs of premature final closure of the facility, in accordance with the standards of this Part, the most expensive 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 an MSWLF unit that requires a permit under subsection (d) of Section 21~~section 21.1~~ of the Act, unless that person complies with the financial assurance requirements of this Part.
- g) 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 government, since the Subtitle D regulations exempt only federal and state governments from financial assurance requirements. (See 40 CFR 258.70 (1996).) 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 Ill. Reg. _____, effective _____ Amended at 21 Ill. Reg. 15831, effective November 25, 1997)

Section 811.703 Application of Proceeds and Appeals

- a) The Agency may sue in any court of competent jurisdiction to enforce its rights under financial instruments. The filing of an enforcement action before the Board is not a condition precedent to such an Agency action, except when this Subpart or the terms of the instrument provide otherwise.

- b) As provided in Titles VIII and IX of the Act and 35 Ill. Adm. Code 103 and 104, the Board may order modifications in permits to change the type or amount of financial assurance pursuant to an enforcement action or a variance petition. Also, the Board may order that an owner or operator modify a closure or postclosure care plan or order that proceeds from financial assurance be applied to the execution of a closure or postclosure care plan.

- c) The following Agency actions may be appealed to the Board as a permit denial pursuant to 35 Ill. Adm. Code 105 and Section 21.1(e) ~~Section 21.5(e)~~ of the Act:
 - 1) A refusal to accept financial assurance tendered by the owner or operator;
 - 2) A refusal to release the owner or operator from the requirement to maintain financial assurance;
 - 3) A refusal to release excess funds from a trust;
 - 4) A refusal to approve a reduction in the penal sum of a bond;
 - 5) A refusal to approve a reduction in the amount of a letter of credit;
 - 6) A refusal to approve a reduction in the face amount of an insurance policy; or
 - 7) A determination that an owner or operator no longer meets the gross revenue test or financial test.

(Source: Amended at Ill. Reg. _____, effective _____
~~Amended in R93-10 at 18 Ill. Reg. 1308, effective January 13, 1994)~~

Section 811.704 Closure and Postclosure Care and Corrective Action Cost Estimates

- a) Written cost estimate. The owner or operator shall have a written estimate of the cost of closure of all parts of the facility where wastes have been

deposited in accordance with the requirements of this Part; the written closure plan, required by Section 811.110 and 35 Ill. Adm. Code 812.114; and the cost of postclosure care and plans, required by this Part and the written postclosure care plans required by 35 Ill. Adm. Code 812.115. The cost estimate is the total cost for closure and postclosure care.

- b) The owner or operator shall revise the cost estimate whenever a change in the closure plan or postclosure care plan increases the cost estimate.
- c) The cost estimate must be based on the steps necessary for the premature final closure of the facility on the assumed closure date.
- d) The cost estimate must be based on the assumption that the Agency will contract with a third party to implement the closure plan.
- e) The cost estimate may not be reduced by allowance for the salvage value of equipment or waste, for the resale value of land, or for the sale of landfill gas.
- f) The cost estimate must, at a minimum, include all costs for all activities necessary to close the facility in accordance with all requirements of this Part.
- g) ~~(Blank) Except for a MSWLF unit, the postclosure monitoring and maintenance cost estimate must be prepared:~~
 - 1) ~~On the basis of the design period for each unit at a facility, assuming operations will cease on the assumed closure date; and~~
 - 2) ~~Reduced to present value, as follows:~~
 - A) ~~Based on a 4 percent discount rate;~~
 - B) ~~Without allowing for inflation;~~
 - C) ~~Over a period including the time remaining until the assumed closure date, plus the postclosure care period;~~
- h) The postclosure care cost estimate must, at a minimum, be based on the following elements in the postclosure care plan:
 - 1) Groundwater monitoring, based on the number of monitoring points and parameters and the frequency of sampling specified in the permit.

- 2) The annual Cost of Cover Placement and Stabilization, including an estimate of the annual residual settlement and erosion control and the cost of mowing.
- 3) Alternative Landfill Gas Disposal. If landfill gas is transported to an off-site processing system, then the owner or operator shall include in the cost estimate the costs necessary to operate an onsite gas disposal system, should access to the off-site facility become unavailable. The cost estimate must include the following information: installation, operation, maintenance and monitoring of an on-site gas disposal system.
- 4) Cost Estimates Beyond the Design Period. When a facility must extend the postclosure care period beyond the applicable design period, the cost estimate must be based upon such additional time and the care activities occurring during that time.
 - i) This Section does not authorize the Agency to require the owner or operator to perform any of the indicated activities upon which cost estimates are to be based; however, if the site permit requires a closure activity, the owner or operator shall include the cost of that activity in the cost estimate.
 - j) Once the owner or operator has completed an activity, the owner or operator may file an application for significant permit modification pursuant to 35 Ill. Adm. Code 813.201 indicating that the activity has been completed, and zeroing that element of the cost estimate.
 - k) Cost estimate for corrective action at MSWLF units.
 - 1) An owner or operator of a MSWLF unit required to undertake a corrective action program pursuant to Section 811.326 shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the Section 811.326. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator shall notify the Agency that the estimate has been placed in the operating record.
 - 2) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with Section 811.326(f).

- 3) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided pursuant to subsections (k)(5) and (k)(6) ~~under paragraph (b)~~ of this section if changes in the corrective action program or MSWLF unit conditions increase the maximum costs of corrective action.
- 4) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided pursuant to subsections (k)(5) and (k)(6) of this section if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator shall notify the Agency that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.
- 5) The owner or operator of each MSWLF unit required to undertake a corrective action program under Section 811.326 shall establish, in accordance with Section 811.706, financial assurance for the most recent corrective action program.
- 6) The owner or operator shall provide continuous coverage for corrective action until released from the financial assurance requirements for corrective action by demonstrating compliance with Section 811.326 (f) and (g).

BOARD NOTE: Subsection (k) is derived from 40 CFR 258.73 (1992).

(Source: Amended at Ill. Reg. _____, effective _____ Amended in R93-10 at 18 Ill. Reg. 1308, effective January 13, 1994)

Section 811.706 Mechanisms for Financial Assurance

- a) The owner or operator of a waste disposal site ~~shall~~ may utilize any of the mechanisms listed in subsections (a)(1) through (a)(10) to provide financial assurance for closure and postclosure care, and for corrective action at an MSWLF unit. An owner or operator of an 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);
 - 6) Self-insurance (see Section 811.715);
 - 7) Local government financial test (see Section 811.716);
 - 8) Local government guarantee (see Section 811.717);
 - 9) Corporate financial test (see Section 811.719); or
 - 10) Corporate guarantee (see Section 811.720).
- b) The owner or operator of an 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 an 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) (1996). Amendments prompted by amendments to 40 CFR 258.74(a)(5) (1996). 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 Section 811.700(g), to allow states to waive the compliance deadline until April 9, 1998.

(Source: Amended at Ill. Reg. _____, effective _____
Amended at 23 Ill. Reg. 2794, effective February 17, 1999)

Section 811.710 Trust Fund

- a) An owner or operator may satisfy the requirements of this Subpart by establishing a trust fund which conforms to the requirements of this Section and submitting an original signed duplicate of the trust agreement to the Agency.
- b) The trustee shall be an entity which has the authority to act as a trustee and:
 - 1) Whose trust operations are examined by the Illinois Department of Financial and Professional Regulation ~~Commissioner of Banks and Trust Companies~~ pursuant to the Illinois Banking Act (~~Ill. Rev. Stat. 1991, ch. 17, pars. 301 et seq.~~ [205 ILCS 5/1 et seq.]); or
 - 2) Who complies with the Corporate Fiduciary Act (~~Ill. Rev. Stat. 1991, ch. 17, pars. 1551-1 et seq.~~ [205 ILCS 620/1-1 et seq.]).
- c) The trust agreement must be on the forms specified in Appendix A, Illustration A, and the trust agreement must be accompanied by a formal certification of acknowledgement, on the form specified in Appendix A, Illustration B. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure, post-closure, and corrective action cost estimates covered by the agreement.
- d) Payments into the trust:
 - 1) For closure and post-closure care:
 - A) The owner or operator shall make a payment into the trust fund each year during the pay-in period.
 - B) The pay-in period is the initial permit term or the remaining operating life of the facility as estimated in the closure plan.

whichever period is shorter. ~~number of years remaining until the assumed closure date.~~

- C) Annual payments are determined by the following formula:

$$\text{Annual payment} = (\text{CE}-\text{CV})/\text{Y}$$

where:

CE = Current cost estimate

CV = Current value of the trust fund

Y = Number of years remaining in the pay in period.

- D) The owner or operator shall make the first annual payment prior to the initial receipt of waste for disposal. The owner or operator shall also, prior to such initial receipt of waste, submit to the Agency a receipt from the trustee for the first annual payment.
- E) Subsequent annual payments must be made no later than 30 days after each anniversary of the first payment.
- F) The owner or operator may accelerate payments into the trust fund, or may deposit the full amount of the current cost estimate at the time the fund is established.
- G) An owner or operator required to provide additional financial assurance for an increase in the cost estimate because of an amendment to this Subchapter may provide such additional financial assurance pursuant to this subsection. The owner or operator may provide the increase by contributing to a new or existing trust fund pursuant to this Section. Subsection (d)(2) notwithstanding, the pay-in period for such additional financial assurance shall be not less than three years.

- 2) For corrective action at MSWLF units:

- A) The owner or operator shall make payments into the trust fund annually over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

- B) The owner or operator shall make the first payment into the trust fund equal to at least one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period, as defined in subsection (d)(2)(A) of this section. The amount of subsequent payments must be determined by the following formula:

$$\text{Next payment} = (\text{RB}-\text{CV})/\text{Y}$$

where:

RB = Most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period);

CV = Current value of the trust fund; and

Y = Number of years remaining in the pay-in period.

- C) The owner or operator shall make the initial payment into the trust fund no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.

Board Note. Changes to subsection (d) are derived from 40 CFR 258.74 (a)(2), (a)(4), and (a)(5) (1992).

- e) The trustee shall evaluate the trust fund annually, as of the day the trust was created or on such earlier date as may be provided in the agreement. The trustee shall notify the owner or operator and the Agency of the value within 30 days after the evaluation date.
- f) If the owner or operator of a MSWLF unit establishes a trust fund after having used one or more alternative mechanisms specified in this Subpart, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this Section.

Board Note. Subsection (f) is derived from 40 CFR 258.74 (a)(6) (1992).

- g) Release of excess funds:

- 1) If the value of the financial assurance is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the Agency for a release of the amount in excess of the current cost estimate.
 - 2) Within 60 days after receiving a request from the owner or operator for a release of funds, the Agency shall instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing to be in excess of the current cost estimate.
- h) Reimbursement for closure, postclosure care and corrective action expenses:
- 1) After initiating closure or corrective action, an owner or operator, or any other person authorized to perform closure or postclosure care or corrective action, may request reimbursement for closure or postclosure care or corrective action expenditures, by submitting itemized bills to the Agency.
 - 2) Within 60 days after receiving the itemized bills for closure or postclosure care activities or correction action, the Agency shall determine whether the expenditures are in accordance with the closure or postclosure care or corrective action plan. The Agency shall instruct the trustee to make reimbursement in such amounts as the Agency specifies in writing as expenditures in accordance with the closure or postclosure care or corrective action plan.
 - 3) If the Agency determines, based on such information as is available to it, that the cost of closure and postclosure care or corrective action will be greater than the value of the trust fund, it shall withhold reimbursement of such amounts as it determines are necessary to preserve the fund in order to accomplish closure and postclosure care or corrective action until it determines that the owner or operator is no longer required to maintain financial assurance for closure and postclosure care or corrective action. In the event the fund 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 or corrective action activities (first priority);
 - B) Persons who have completed closure or postclosure care or corrective action authorized by the Agency (second priority);

- C) Persons who have completed work which furthered the closure or postclosure care or corrective action (third priority);
- D) The owner or operator and related business entities (last priority).

(Source: Amended at Ill. Reg. _____, effective _____
~~Amended in R93-10 at 18 Ill. Reg. 1308, effective January 13, 1994)~~

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 an MSWLF unit must be effective before the initial receipt of waste or before April 9, 1997 (the effective date of the financial assurance requirements under RCRA Subtitle D regulations), or such later date granted pursuant to Section 811.700(g), 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 to transact the business of insurance* by the Department of Financial and Professional Regulation ~~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* ~~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 Post-Closure Fund within the State Treasury.
- e) Conditions:
- 1) The bond must guarantee that the owner or operator will:
 - A) Provide closure and postclosure care in accordance with the approved closure and postclosure care plans and, if the bond is a corrective action bond, provide. If the facility is an MSWLF unit, then the corrective action bond must guarantee that the owner or operator will implement corrective action in accordance with Section 811.326; and
 - B) Provide alternative financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the owner or operator and the Agency of a notice from the surety that the bond will not be renewed for another term.
 - 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 VIII~~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 an MSWLF unit in accordance with Section 811.326; or,

F) Fails to provide alternative financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the owner or operator and the Agency of a notice from the surety that the bond will not be renewed for another term.

f) Penal sum:

- 1) The penal sum of the bond must be in an amount at least equal to the current cost estimate.
- 2) Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Agency~~The Agency shall approve a reduction in the penal sum whenever the current cost estimate decreases.~~
- 3) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within 90 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of such alternative financial assurance to the Agency.

g) Term:

- 1) The bond must be issued for a term of at least one year~~five years~~ and must not be cancelable during that term.
- 2) The surety bond must provide that on the current expiration date and on each successive expiration date the term of the surety bond will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the surety notifies both the owner or operator and the Agency by certified mail of a decision not to renew the bond. Under the terms of the surety bond, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts. 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 by providing written authorization for termination of the bond to the owner or operator and the surety when either of the following occurs:

A) An owner or operator substitutes alternative financial assurance, as specified in this Subpart; or

B) The Agency releases the owner or operator from the requirements of this Subpart in accordance with 35 Ill. Adm. Code 813.403(b).

~~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 an MSWLF unit, unless the Agency determines that the closure or postclosure care plan, corrective action program at an 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 an MSWLF unit, unless the Agency determines that the closure or postclosure care plan, corrective action at an 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 an MSWLF unit in accordance Section 811.326, the Agency shall refund any unspent money which was paid into the “Landfill Closure and Post-Closure Fund” by the surety subject to appropriation of funds by the Illinois General Assembly.

BOARD NOTE: MSWLF corrective action language at subsection (a) is derived from 40 CFR 258.74(b)(1) (1996). 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 Ill. Reg. _____, effective _____ Amended at 21 Ill. Reg. 15831, effective November 25, 1997)

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 an MSWLF unit must be effective before the initial receipt of waste or before April 9, 1997 (the effective date of the financial assurance requirements under RCRA Subtitle D regulations), or such later date granted pursuant to Section 811.700(g), 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 to transact the business of insurance by the Department of Financial and Professional Regulation* ~~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* ~~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 Post-Closure Fund within the State Treasury.
- e) Conditions:
 - 1) The bond must guarantee that the owner or operator will:
 - A) ~~P~~rovide closure and postclosure care in accordance with the closure and postclosure care plans in the permit and, if the bond is a corrective action bond, provide. If the facility is an MSWLF unit, then the corrective action bond must guarantee that the owner or operator will implement corrective action in accordance with Section 811.326; and- The surety shall have the option of providing closure and postclosure care or carrying out corrective action, or of paying the penal sum
 - B) Provide alternative financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the owner or operator and the Agency of a notice from the surety that the bond will not be renewed for another term.
 - 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 VIII~~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 an MSWLF unit in accordance with Section 811.326; or,

F) Fails to provide alternative financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the owner or operator and the Agency of a notice from the surety that the bond will not be renewed for another term

3) Upon failure of the owner or operator to perform as guaranteed by the bond, the surety shall have the option of providing closure and postclosure care or carrying out corrective action, or of paying the penal sum.

f) Penal sum:

1) The penal sum of the bond must be in an amount at least equal to the current cost estimate.

2) Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Agency. The Agency shall approve a reduction in the penal sum whenever the current cost estimate decreases.

3) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within 90 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of such alternative financial assurance to the Agency.

g) Term:

1) The bond must be issued for a term of at least one year~~five years~~ and must not be cancelable during that term.

2) The surety bond must provide that on the current expiration date and on each successive expiration date the term of the surety bond will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the surety notifies both the owner or operator and the Agency by certified mail of a decision not to renew the bond. Under the terms of the surety bond, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts. 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 by providing written authorization for termination of the bond to the owner or operator and the surety when either of the following occurs:

A) An owner or operator substitutes alternative financial assurance, as specified in this Subpart; or

B) The Agency releases the owner or operator from the requirements of this Subpart in accordance with 35 Ill. Adm. Code 813.403(b).

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 an MSWLF unit, unless the Agency determines that the closure or postclosure care plan, corrective action at an MSWLF unit, or the amount of substituted financial assurance is inadequate to provide closure and postclosure care or implement corrective action at an 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 an MSWLF unit in accordance with Section 811.326, the

Agency shall refund any unspent money which was paid into the “Landfill Closure and Post-Closure Fund” by the surety subject to appropriation of funds by the Illinois General Assembly.

- 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) (1996). 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 Ill. Reg. _____, effective _____ Amended at 21 Ill. Reg. 15831, effective November 25, 1997)

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 an MSWLF unit must be effective before the initial receipt of waste or before April 9, 1997 (the effective date of the financial assurance requirements under RCRA Subtitle D regulations), or such later date granted pursuant to Section 811.700(g), 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 Department of Financial and Professional Regulation ~~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 an 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 Post-Closure Fund within the State Treasury.
- e) Conditions on which the Agency ~~shall~~ 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 an 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 VIII~~ 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 Provide closure and 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 an MSWLF unit in accordance with Section 811.326; or,

F) Fails to provide alternative financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the owner or operator and the Agency of a notice from the issuing institution that the letter of credit will not be extended for another term.

f) Amount:

1) The letter of credit must be issued in an amount at least equal to the current cost estimate.

2) Whenever the current cost estimate decreases, the amount of credit may be reduced to the amount of the current cost estimate following written approval by the Agency. ~~The Agency shall approve a reduction in the amount whenever the current cost estimate decreases~~

3) Whenever the current cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 90 days after the increase, must either cause the amount of the credit to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of such alternative financial assurance to the Agency.

g) Term:

1) The letter of credit must be issued for a term of at least one ~~year~~~~five years~~ and must be irrevocable during that term.

2) The letter of credit must provide that on the current expiration date and on each successive expiration date the letter of credit will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing

institution notifies both the owner or operator and the Agency by certified mail of a decision not to extend the letter of credit for another term. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts. 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.

3) The Agency must return the letter of credit to the issuing institution for termination when either of the following occurs:

A) An owner or operator substitutes alternative financial assurance, as specified in this Subpart; or

B) The Agency releases the owner or operator from the requirements of this Subpart in accordance with Ill. Adm. Code 813.403(b).

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 an 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 an 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 an MSWLF unit in accordance with Section 811.326, the Agency shall refund any unspent money which was paid into the "Landfill Closure and Post-Closure Fund" by the financial institution subject to appropriation of funds by the Illinois General Assembly.

BOARD NOTE: MSWLF corrective action language at subsection

(a) is derived from 40 CFR 258.74 (c)(1) (1996). 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 Ill. Reg. _____, effective _____ Amended-
at 21 Ill. Reg. 15831, effective November 25, 1997)

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 to the Agency an executed duplicate original of such insurance policy and the certificate of insurance for closure and/or post-closure care specified in Appendix A, Illustration F to the Agency.
- b) The insurer shall be licensed to transact the business of insurance by the Department of Financial and Professional Regulation~~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. ~~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 filed with the Illinois Department of Financial and Professional Regulation – Division of Insurance approved by the Illinois Department of Insurance pursuant to 50 Ill. Adm. Code 753 and Section 143(2) of the Illinois Insurance Code [215 ILCS 5/143(2)] 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) Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate following written approval by the Agency. The Agency shall approve a reduction in the amount of the policy whenever the current cost estimate decreases.
 - 3) Whenever the current cost estimate increases to an amount greater than the face amount, the owner or operator, within 90 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of such alternative financial assurance to the Agency.
- 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 Ill. Reg. _____, effective _____
Amended at 21 Ill. Reg. 15831, effective November 25, 1997)

Section 811.715 Self-Insurance for Non-Commercial Sites

- a) Definitions. The following definitions are intended to assist in the understanding of this Part and are not intended to limit the meanings of terms in any way that conflicts with generally accepted accounting principles:

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

"Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Generally accepted accounting principles" means Auditing Standards - Current Text, incorporated by reference at 35 Ill. Adm. Code 810.104.

"Gross Revenue" means total receipts less returns and allowances.

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

"Liabilities" means probable future sacrifices of economic benefits arising from

present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

"Tangible net worth" means tangible assets less liabilities; tangible assets to not include intangibles such as goodwill and rights to patents or royalties.

b) Information to be Filed

An owner or operator may satisfy the financial assurance requirements of this Part by providing the following:

- 1) Bond without surety promising to pay the cost estimate (subsection (c)).
- 2) Proof that the owner or operator meets the gross revenue test (subsection (d)).
- 3) Proof that the owner or operator meets the financial test (subsection (e)).

c) **Bond Without Surety.** An owner or operator utilizing self-insurance shall provide a bond without surety on the forms specified in Appendix A, Illustration G. The owner or operator shall promise to pay the current cost estimate to the Agency unless the owner or operator provides closure and postclosure care in accordance with the closure and postclosure care plans.

d) **Gross Revenue Test.** The owner or operator shall demonstrate that less than one-half of its gross revenues are derived from waste disposal operations. Revenue is "from waste disposal operations" if it would stop upon cessation of the owner or operator's waste disposal operations.

e) Financial Test

1) To pass the financial test, the owner or operator shall meet the criteria of either subsection (e)(1)(A) or (e)(1)(B):

A) The owner or operator shall have:

- i) Two of the following three ratios: a ratio of total liabilities to net worth of less than 2.0; a ratio of the

sum of net income plus depreciation, depletion and amortization to total liabilities of greater than 0.1; or a ratio of current assets to current liabilities of greater than 1.5; and

- ii) Net working capital and tangible net worth each at least six times the current cost estimate; and
- iii) Tangible net worth of at least \$10 million; and
- iv) Assets in the United States amounting to at least 90 percent of the owner's or operator's total assets and at least six times the current cost estimate.

B) The owner or operator shall have:

- i) A current rating of AAA, AA, A or BBB for its most recent bond issuance as issued by Standard and Poor, or a rating of Aaa, Aa, A or Baa, as issued by Moody; and
- ii) Tangible net worth at least six times the current cost estimate; and
- iii) Tangible net worth of at least \$10 million; and
- iv) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the current cost estimate.

2) To demonstrate that it meets this test, the owner or operator shall submit the following items to the Agency:

- A) A letter signed by the owner or operator's chief financial officer and worded as specified in Appendix A, Illustration I; and
- B) A copy of the independent certified public accountant's report on examination of the owner or operator's financial statements for the latest completed fiscal year; and
- C) A special report from the owner or operator's independent certified public accountant to the owner or operator stating that:

- i) The accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and
 - ii) In connection with that procedure, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.
- f) Updated Information.
 - 1) After the initial submission of items specified in subsections (d) and (e), the owner or operator shall send updated information to the Agency within 90 days after the close of each succeeding fiscal year.
 - 2) If the owner or operator no longer meets the requirements of subsections (d) and (e), the owner or operator shall send notice to the Agency of intent to establish alternative financial assurance. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the operator no longer meets the requirements.
- g) Qualified Opinions. If the opinion required by subsections (e)(2)(B) and (e)(2)(C) includes an adverse opinion or a disclaimer of opinion, the Agency shall disallow the use of self-insurance. If the opinion includes other qualifications, the Agency shall disallow the use of self-insurance if:
 - 1) The qualifications relate to the numbers which are used in the gross revenue test or the financial test; and,
 - 2) In light of the qualifications, the owner or operator has failed to demonstrate that it meets the gross revenue test or financial test.
- h) Parent Corporation. An owner or operator may satisfy the financial assurance requirements of this Part by:
 - 1) D-demonstrating that a corporation ~~that~~ which owns an interest in the owner or operator meets the requirements of this Section; and, ~~the gross revenue and financial tests.~~

- 2) Providing a bond to the Agency with the parent corporation as surety on a form specified in Appendix A, Illustration H in accordance with subsections (d), (e), (f), and (g) of Section 811.711 of this Part. The owner or operator shall also provide a bond with the parent as surety (Appendix A, Illustration H).

(Source: Amended at Ill. Reg. _____, effective _____
Amended in R93-10 at 18 Ill. Reg. 1308, effective January 13, 1994)

Section 811.716 Local Government Financial Test

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

- a) Financial component.
 - 1) The unit of local government owner or operator shall satisfy subsection (a)(1)(A) or (a)(1)(B), 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:
 - i) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and
 - ii) 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). 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:

“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.

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

“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.

- 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 November 27, 1997, 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);

- ii) Provides evidence and certifies that the unit of local government meets the conditions of subsections (a)(1), (a)(2), and (a)(3); and
 - iii) Certifies that the unit of local government meets the conditions of subsections (b) and ~~(d)~~(4).
 - 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 (CPA) 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 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), if applicable, and the requirements of subsections (a)(2), (a)(3)(C), and (a)(3)(D). 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) 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) must be placed in the facility operating record as follows:
- A) In the case of closure and post-closure care, either before November 27, 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) 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, and submit evidence of such alternative financial assurance to the Agency.
 - 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 determines, 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 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).

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

(Source: Amended at Ill. Reg. _____, effective _____
Added at 21 Ill. Reg. 15831, effective November 25, 1997)

Section 811.718 Discounting

For facilities providing financial assurance solely through a trust fund, tThe 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: Amended at _____ Ill. Reg. _____, effective _____
~~Added at 21 Ill. Reg. 15831, effective November 25, 1997)~~

**Section 811.Appendix A Financial Assurance Forms
Illustration A Trust Agreement**

TRUST AGREEMENT

Trust Fund Number _____
Trust Agreement, the "Agreement," entered into as of the ___ day of __, by and between _____, a _____ the "Grantor," and __, the "Trustee."

Whereas, Section 21.1 of the Environmental Protection Act, "Act", prohibits any person from conducting any waste disposal operation unless such person has posted with the Illinois Environmental Protection Agency, "IEPA", a performance bond or other security for the purpose of insuring closure of the site and postclosure care or corrective action in accordance with the Act and Illinois Pollution Control Board, "IPCB," rules.

Whereas, the IPCB has established certain regulations applicable to the Grantor, requiring that an operator of a waste disposal site provide assurance that funds will be available when needed for closure and/or postclosure care or corrective action of the site.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the sites identified in this agreement.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Whereas, Trustee is an entity which has authority to act as a trustee and whose trust operations are regulated by the Illinois Department of Financial and Professional Regulation ~~Commissioner of Banks & Trust Companies~~ or who complies with the Corporate Fiduciary Act (Ill. Rev. Stat. 1991, ch. 17, par. 1551-1 et seq. [205 ILCS 5/1]). (Line through any condition ~~that~~ which does not apply.)

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- a) The term "Grantor" means the operator who enters into this Agreement and any successors or assigns of the operator.
- b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Sites and Cost Estimates. This Agreement pertains to the sites and cost estimates identified on attached Schedule A (on Schedule A, list the name and address and ~~initial~~ current cost estimate of each site for which financial assurance is demonstrated by this agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the IEPA. The Grantor and the Trustee intend that no other third party have access to the Fund except as provided in this agreement. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached to this agreement. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits on the Fund, less any payments or distributions made by the Trustee pursuant to this agreement. The Fund shall be held by the Trustee, in trust, as provided in this agreement. The Trustees shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor.

Section 4. Payment for Closure and Postclosure care or Corrective Action. The Trustee shall make payments from the Fund as the IEPA shall direct, in writing, to provide for the payment of the costs of closure and/or postclosure care or corrective action of the sites covered by this agreement. The Trustee shall reimburse the Grantor or other persons as specified by the IEPA from the Fund for closure and postclosure or corrective action expenditures in such amounts as the IEPA shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the IEPA specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trust Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- a) Securities or other obligations of the Grantor, or any other owner or operator of the site, or any of their affiliates as defined in Section 80a-2(a) of the Investment Company Act of 1940, as amended (15 U.S.C. 80a-2.(a)) shall not be acquired or held, unless they are securities or other obligations of the Federal government or the State of Illinois;
- b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by the Federal Deposit Insurance Corporation.

- c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trust participating therein; and
- b) To purchase shares in any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) including one which may be created, managed, underwritten or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this agreement or by law, the Trustee is expressly authorized and empowered:

- a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;
- b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers granted in this agreement;
- c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but

the books and records of the Trustee shall at all times show that all such securities are part of the Fund.

- d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by the Federal Deposit Insurance Corporation; and
- e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the capital Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee, to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually furnish to the Grantor and to the IEPA a statement confirming the value of the Trust. The evaluation day shall be each year on the ___ day of _____. Any securities in the Fund shall be valued at market value as of the evaluation day. The Trustee shall mail the evaluation statement to the Grantor and the IEPA within 30 days after the evaluation day. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the IEPA shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and the successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall

specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the IEPA and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the IEPA to the Trustee shall be in writing, signed by the IEPA Director or his/her designee(s), and the Trustee shall act and shall be fully protected in acting accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or IEPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or IEPA, except as provided in this agreement.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the IEPA, by certified mail within ten days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the IEPA Director or his/her designee(s), or by the Trustee and the IEPA Director or his/her designees ~~if~~ the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the IEPA Director or his/her designee(s), or by the Trustee and the IEPA Director or his/her designees(s), if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the IEPA Director or his/her designee(s) issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed and enforced according to the laws of the State of Illinois.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 35 Ill. Adm. Code, Part 811. Appendix A, Illustration A as such regulations were constituted on the date first above written.

Attest: Signature of Grantor _____

Typed Name _____

Title _____

Seal

Attest: Signature of Trustee _____

Typed Name _____

Title _____

Seal

(Source: Amended at Ill. Reg. _____, effective _____ Amended in R93-10 at 18 Ill. Reg. 1308, effective January 13, 1994)

**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 [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 [415 ILCS 5/21.1], to provide financial assurance for closure and postclosure care or corrective action; and

Whereas the Surety is licensed by the Illinois Department of Financial and Professional Regulation~~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 IEPA 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; or,
- f) Fails to provide alternative financial assurance and obtain the IEPA written approval of the assurance provided within 90 days after receipt by both the Principal and the IEPA of a notice from the Surety that the bond will not be renewed for another term.

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 fulfill one or more of the conditions described above~~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 Post-Closure 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 _____, _____; but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, the Surety notifies both the IEPA and the Principal by certified mail that the Surety has decided not to extend the term of this surety bond beyond the current expiration date. The 120 days will begin on the date when both the owner or operator and the IEPA have received the notice, as evidenced by the return receipts. 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 accordance with 35 Ill. Adm. Code 811.702.

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 and that the wording of this surety bond is identical to the wording specified in 35 Ill. Adm. Code Part 811. Appendix A, Illustration C as such regulation was constituted on the date this bond was executed.

<u>PRINCIPAL</u>	<u>SURETY</u>
<u>Signature</u>	<u>Name</u>
<u>Typed Name</u>	<u>Address</u>
<u>Title</u>	<u>State of Incorporation</u>
<u>Date</u>	<u>Signature</u>
	<u>Typed Name</u>
	<u>Title</u>
<u>Corporate Seal</u>	<u>Corporate Seal</u>
	<u>Bond Premium:\$</u>

~~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 Ill. Reg. _____, effective _____ Amended-
at 21 Ill. Reg. 15831, effective November 25, 1997)

**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 [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 [415 ILCS 5/21.1], to provide financial assurance for closure and postclosure care or corrective action; and

Whereas the Surety is licensed by the Illinois Department of Financial and Professional Regulation~~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 ~~or~~ 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 IEPA~~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; or,
- f) Fails to provide alternative financial assurance and obtain the IEPA written approval of the assurance provided within 90 days after receipt by both the Principal and the IEPA of a notice from the Surety that the bond will not be renewed for another term.

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 fulfill one or more of the conditions described above~~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 Post-Closure Fund.

If the Surety notifies the ~~IEPA 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 fulfill one or more of the conditions described above~~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 _____, _____; but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, the Surety notifies both the IEPA and the Principal by certified mail that the Surety has decided not to extend the term of this surety bond beyond the current expiration date. The 120 days will begin on the date when both the owner or operator and the IEPA have received the notice, as evidenced by the return receipts. 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 accordance with 35 Ill. Adm. Code 811.702.

In Witness Whereof, the Principal and Surety have executed this Performance 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 and that the wording of this surety bond

is identical to the wording specified in 35 Ill. Adm. Code Part 811. Appendix A, Illustration D as such regulation was constituted on the date this bond was executed.

PRINCIPAL

SURETY

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Title

Corporate Seal

Corporate Seal

Bond Premium: \$

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 Ill. Reg. _____, effective _____ Amended
at 21 Ill. Reg. 15831, effective November 25, 1997)

**Section 811. Appendix A Financial Assurance Forms
Illustration E Irrevocable Standby Letter of Credit**

IRREVOCABLE STANDBY LETTER OF CREDIT

Director
Illinois Environmental Protection Agency
C/O Bureau of Land #24
Financial Assurance Program
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
~~2200 Churchill Road~~
~~Springfield, Illinois 62706~~

Dear Sir or Madam:

We have authority to issue letters of credit. Our letter-of-credit operations are regulated by the Illinois Department of Financial and Professional Regulation ~~Commissioner of Banks and Trusts~~ or our deposits are insured by the Federal Deposit Insurance Corporation. (Omit language ~~that~~ which 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 Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1001 et seq. [415 ILCS 5/1 et seq.]) and 35 Ill. Adm. Code 811.713(e).

This letter of credit is effective as of _____ and shall expire on _____; ~~but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. The 120 days will begin on the date when both the owner or operator and the IEPA have received the notice, as evidenced by the return receipts.~~ but, such expiration date shall be automatically extended for one period of twelve months starting with the expiration date if the operator fails to substitute alternative financial assurance prior to the expiration of this letter of credit and you notify us of such failure within 30 days after the above-expiration date.

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 the State of Illinois Landfill Closure and Post-Closure or Corrective Action Fund in accordance with your instructions.

~~This letter of credit is governed by the Uniform Commercial Code (Ill. Rev. Stat. 1991, ch. 26, pars. 1-101 et seq. [810 ILCS 5/1-101 et seq.]).~~

We certify that the wording of this letter of credit is identical to the wording specified in 35 Ill. Adm. Code, Part 811. Appendix A, Illustration E as such regulations were constituted on the date shown immediately below.

Signature _____

Typed Name _____

Title _____

Date _____

Name and address of issuing institution _____

This credit is subject to [insert “the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce,” or “the Uniform Commercial Code”].

(Source: Amended at Ill. Reg. _____, effective _____
Amended in R93-10 at 18 Ill. Reg. 1308, effective January 13, 1994)

Section 811. ILLUSTRATION F Certificate of Insurance for Closure and/or Postclosure Care

**CERTIFICATE OF INSURANCE FOR CLOSURE AND/OR POSTCLOSURE
CARE OR CORRECTIVE ACTION**

Name and Address of Insurer ("Insurer"): _____

Name and Address of Insured ("Insured"): _____

Sites Covered:

Name _____

Address _____

City _____

Amount insured for this site: \$ _____

Name _____

Address _____

City _____

Amount insured for this site: \$ _____

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

Face Amount _____

Policy Number _____

Effective Date _____

The Insurer hereby certifies that it is licensed to transact the business of insurance by the Illinois Department of Financial and Professional Regulation or that it 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 ~~Department of Insurance.~~

The insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for closure and postclosure care for the sites identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 35 Ill. Adm. Code 811.714, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Illinois Environmental Protection Agency ("IEPA"), the Insurer agrees to furnish to the IEPA a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 35 Ill. Adm. Code, 811.Appendix A, Illustration F as such regulations were constituted on the date shown immediately below.

Name (Authorized signature for Insurer) _____

Typed Name _____

Title _____

Date _____

Section 811.ILLUSTRATION G Operator's Bond Without Surety

OWNER'S OR OPERATOR'S BOND WITHOUT SURETY

Date bond executed: _____

Effective date: _____

Owner or Operator: _____

Owner's or Operator's address: _____

Site: _____

Site address: _____

Penal sum: \$ _____

The owner or operator promises to pay the penal sum to the Illinois Environmental Protection Agency unless the owner or oOperator provides closure and postclosure care_ or corrective action for -of the site in accordance with the closure and postclosure care or corrective action plans for the site.

Owner or Operator _____

Signature _____

Typed Name _____

Title _____

Date _____

Corporate seal

Section 811.ILLUSTRATION H Operator's Bond With Parent Surety

OWNER'S OR OPERATOR'S BOND WITH PARENT SURETY

Date bond executed: _____

Effective Date: _____

Surety: _____

Surety's address: _____

Owner or Operator: _____

Owner's or Operator's address: _____

Site: _____

Site address: _____

Penal sum: \$ _____

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

Whereas the Owner or Operator is required under Section 21(d) of the Environmental Protection Act [415 ILCS 5/21(d)], Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1021(d) to have a permit to conduct a waste disposal operation; and

Whereas the Owner or Operator is required under Section 21.1 of the Environmental Protection Act [415 ILCS 5/21.1] to provide financial assurance for closure and postclosure care; and

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

Whereas the Surety is a corporation which owns an interest in the Owner or Operator;

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

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or postclosure care when ordered to do so by the Board or a court of competent jurisdiction; or
- d) Notifies the IEPA Agency that it has initiated closure, or initiates closure, but fails to close the site or provide postclosure care in accordance with the closure and postclosure care plans;
- 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; or,
- f) Fails to provide alternative financial assurance and obtain the IEPA written approval of the assurance provided within 90 days after receipt by the Owner or Operator and the IEPA of a notice from the Surety that the bond will not be renewed for another term.

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 Owner or Operator has failed to fulfill one or more of the conditions described above~~failed to so provide closure and postclosure care~~. Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Post-Closure 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 _____, _____; but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, the Surety notifies both the IEPA and the Owner or Operator by certified mail that the Surety has decided not to extend the term of this surety bond beyond the current expiration date. The 120 days will begin on the date when both the owner or operator and the IEPA have received the notice, as evidenced by the return receipts.

The Owner or Operator 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 accordance with 35 Ill. Adm. Code 811.702.

In Witness Whereof, the Owner or Operator and Surety have executed this 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 Owner or Operator and Surety and that the wording of this surety bond is identical to the wording specified in 35 Ill. Adm. Code Part 811. Appendix A, Illustration H as such regulation was constituted on the date this bond was executed.

OWNER OR OPERATOR

SURETY

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Title

Corporate Seal

Corporate Seal

Operator

Surety

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature _____

Typed Name _____

Title _____

~~Corporate seal~~ ~~Corporate seal~~

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Appearance of Attorney, Motion for Acceptance, Motion Regarding Incorporations by Reference, Certification of Origination, Statement of Reasons and the Proposed Amendments upon the persons to whom they are directed, by placing a copy of each in an envelope addressed to:

John Therriault, Assistant Clerk
Pollution Control Board
James R. Thompson Center
100 W. Randolph, Ste. 11-500
Chicago, Illinois 60601

General Counsel
Office of Legal Counsel
IL. Dept of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271

Matthew J. Dunn
Environmental Bureau Chief
Office of the Attorney General
Environmental Bureau North
69 W. Washington Street, Ste 1800
Chicago, Illinois 60602

and mailing them (First Class Mail) from Springfield, Illinois on 7-24-09, with sufficient postage affixed as indicated above.

Naomi-Sian Gordon

SUBSCRIBED AND SWORN TO BEFORE ME
This 24th day of July-2009

Brenda Boehner
Notary Public

