

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Solid Waste
- 2) Code Citation: 35 Ill. Adm. Code 807
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
807.663	Amend
807.APPENDIX A	Amend
807.ILLUSTRATION D	Amend
807.ILLUSTRATION E	Amend
- 4) Statutory Authority: Implementing Section 22 of the Environmental Protection Act [415 ILCS 5/22] and Section 8 of the Illinois Groundwater Protection Act [415 ILCS 55/8], and authorized by Sections 22, 27, and 28 of the Illinois Environmental Protection Act [415 ILCS 5/10, 27, 28] and Section 8 of the Illinois Groundwater Protection Act [415 ICLS 55/8]
- 5) A Complete Description of the Subjects and Issues Involved: This proposal incorporates technical corrections to the Board's prior rulemaking docketed as R10-9, In the Matter of: Financial Assurance Instruments – Renewal and Terms: Amendments to 35 Ill. Adm. Code 807 Subpart F and Appendix A, 810.104 and 811 Subparts C, G and Appendix A.
- 6) Published studies or reports and sources of underlying data, used to compose this rulemaking: No published study or research report was used in developing the proposed amendments to 35 Ill. Adm. Code 807.
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed amendments pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This proposed rule does not create or enlarge a state mandate as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of 45 days after the date of publication in the Illinois Register. Comments should refer to docket R10-09(A) and be addressed to:

R 10-9(A)

RECEIVED
CLERK'S OFFICE
JUL 06 2011
STATE OF ILLINOIS
Pollution Control Board

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Clerk's Office
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Interested persons may request copies of the Board's opinion and order in R10-09(A) by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us. For more information, contact hearing officer Daniel Robertson at 312/814-6931 or e-mail robertsd@ipcb.state.il.us.

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: 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.
- B) Reporting, bookkeeping or other procedures required for compliance: Are etailed in the rule and include submitting to the Illinois Environmental Protection Agency.
- C) Types of Professional skills necessary for compliance: Professional skills held by financial advisors/planners such as accountants, bookkeepers.

14) Regulatory Agenda in which this rulemaking was summarized: January 2011.

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

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE G: WASTE DISPOSAL
3 CHAPTER I: POLLUTION CONTROL BOARD
4 SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING
5

6 PART 807
7 SOLID WASTE
8

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10

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14	807.103	Severability
15	807.104	Definitions
16	807.105	Relation to Other Rules

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28	807.208	Permit No Defense
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30	807.210	Supplemental Permits
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51	807.313	Water Pollution
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53	807.315	Protection of Waters of the State
54	807.316	Application
55	807.317	Operating Records
56	807.318	Completion or Closure Requirements

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

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83	807.620	Current Cost Estimate
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- 93 807.661 Trust Fund
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SUBPART G: SITE-SPECIFIC RULES AND
EXCEPTIONS NOT OF GENERAL APPLICABILITY

103 Section
104 807.700 Cretex Pressure Pipe, Inc. Concrete Waste Disposal Site

- 106 807.APPENDIX A Financial Assurance Forms
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- 115 807.ILLUSTRATION H Owner's or Operator's Bond With Parent Surety
- 116 807.ILLUSTRATION I Letter from Chief Financial Officer
- 117 807.APPENDIX B Old Rule Numbers Referenced

118
119 AUTHORITY: Implementing Sections 5, 21.1 and 22 and authorized by Section 27 of the
120 Environmental Protection Act [415 ILCS 5/5, 21.1, 22, and 27].

121
122 SOURCE: Adopted as an emergency rule and filed with the Secretary of State July 27, 1973;
123 amended at 2 Ill. Reg. 16, p. 3, effective April 10, 1978; codified at 7 Ill. Reg. 13636; recodified
124 from Subchapter h to Subchapter i at 8 Ill. Reg. 13198; emergency amendment in R84-22A at 9
125 Ill. Reg. 741, effective January 3, 1985, for a maximum of 150 days; amended in R84-22B at 9
126 Ill. Reg. 6722, effective April 29, 1985; amended in R84-22C at 9 Ill. Reg. 18942, effective
127 November 25, 1985; amended in R84-45 at 12 Ill. Reg. 15566, effective September 14, 1988;
128 amended in R88-7 at 14 Ill. Reg. 15832, effective September 18, 1990; emergency amendment in
129 R93-25 at 17 Ill. Reg. 17268, effective September 24, 1993, for a maximum of 150 days;

130 amended in R90-26 at 18 Ill. Reg. 12451, effective August 1, 1994; amended in R96-1 at 20 Ill.
131 Reg. 12459, effective August 15, 1996; amended in R10-9 at 35 Ill. Reg. 10784, effective June
132 22, 2011; amended in R10-09(A) at 35 Ill. Reg. _____, effective _____.

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

136
137 **Section 807.663 Surety Bond Guaranteeing Performance**

- 138
139 a) An operator may satisfy the requirements of this Subpart by obtaining a surety
140 bond that conforms to the requirements of this Section and submitting the bond to
141 the Agency.
142
143 b) The surety company issuing the bond must be licensed by the Illinois Department
144 of Insurance, pursuant to the Illinois Insurance Code [215 ILCS 5], or at a
145 minimum the insurer must be licensed to transact the business of insurance, or
146 approved to provide insurance as an excess or surplus lines insurer, by the
147 insurance department in one or more states, and approved by the U.S. Department
148 of the Treasury as an acceptable surety.

149
150 BOARD NOTE: The U.S. Department of the Treasury lists acceptable sureties in
151 its Circular 570.

- 152
153 c) The surety bond must be on the form specified in Appendix A, Illustration D.
154
155 d) Any payments made under the bond will be placed in the Landfill Closure and
156 Post-Closure Fund within the State Treasury.
157
158 e) Conditions:
159
160 1) The bond must guarantee that the operator will:
161
162 A) Provide closure and post-closure care in accordance with the
163 closure and post-closure care plans in the permit; and
164
165 B) Provide alternate financial assurance, as specified in this Subpart,
166 and obtain the Agency's written approval of the assurance provided
167 within 90 days after receipt by both the operator and the Agency of
168 a notice from the surety that the bond will not be renewed for
169 another term.
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171 2) The surety will become liable on the bond obligation when, during the
172 term of the bond, the operator fails to perform as guaranteed by the bond.

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

g) Term:

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- 1) The bond shall be issued for a term of at least one year 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.
 - 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 this Subpart; or
 - B) The Agency releases the operator from the requirements of this Subpart in accordance with Section 807.606(b) 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 that 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 35 Ill. Reg. _____, effective _____)

256 **Section 807.APPENDIX A Financial Assurance Forms**

257
258 **Section 807.ILLUSTRATION D Performance Bond**

259
260 **PERFORMANCE BOND**

261
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: _____

262
263 The Principal and the Surety promise to pay the Illinois Environmental Protection Agency
264 ("IEPA") the above penal sum unless the Principal or Surety provides closure and post-closure
265 care for each site in accordance with the closure and post-closure care plans for that site. To the
266 payment of this obligation the Principal and Surety jointly and severally bind themselves, their
267 heirs, executors, administrators, successors and assigns.

268
269 Whereas the Principal is required, under Section 21(d) of the Environmental Protection Act [415
270 ILCS 5/21(d)], to have a permit to conduct a waste disposal operation;

271
272 Whereas the Principal is required, under Section 21.1 of the Environmental Protection Act [415
273 ILCS 5/21.1], to provide financial assurance for closure and post-closure care; and

274
275 Whereas the Surety is licensed by the Illinois Department of Insurance or is licensed to transact
276 the business of insurance, or approved to provide insurance as an excess or surplus lines insurer,
277 by the insurance department in one or more states; and

278
279 Whereas the Principal and Surety agree that this bond shall be governed by the laws of the State
280 of Illinois;

281
282 The Surety shall pay the penal sum to the IEPA or provide closure and post-closure care in
283 accordance with the closure and post-closure care plans for the site if, during the term of the
284 bond, the Principal fails to provide closure or post-closure care for any site in accordance with
285 the closure and post-closure care plans for that site as guaranteed by this bond. The Principal
286 fails to so provide when the Principal:

- 287
288 a) Abandons the site;
289
290 b) Is adjudicated bankrupt;
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292 c) Fails to initiate closure of the site or post-closure care when ordered to do so by
293 the Illinois Pollution Control Board or a court of competent jurisdiction;
294
295 d) Notifies the IEPA that it has initiated closure, or initiates closure, but fails to close
296 the site or provide post-closure care in accordance with the closure and post-
297 closure care plans; or
298
299 e) Fails to provide alternate financial assurance and obtain the IEPA written
300 approval of the assurance provided within 90 days after receipt by both the
301 Principal and the IEPA of a notice from the Surety that the bond will not be
302 renewed for another term.

303
304 The Surety shall pay the penal sum of the bond to the IEPA or notify the IEPA that it intends to

305 provide closure and post-closure care in accordance with the closure and post-closure care plans
306 for the site within 30 days after the IEPA mails notice to the Surety that the Principal has met
307 ~~one or more of the conditions described above~~ failed to fulfill one or more of the conditions
308 ~~described above~~. Payment shall be made by check or draft payable to the State of Illinois,
309 Landfill Closure and Post-Closure Fund.

310
311 If the Surety notifies the IEPA that it intends to provide closure and post-closure care, then the
312 Surety must initiate closure and post-closure care within 60 days after the IEPA mailed notice to
313 the Surety that the Principal met one or more of the conditions described above. The Surety
314 must complete closure and post-closure care in accordance with the closure and post-closure care
315 plans, or pay the penal sum.

316
317 The liability of the Surety shall not be discharged by any payment or succession of payments
318 unless and until such payment or payments shall amount in the aggregate to the penal sum of the
319 bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

320
321 This bond shall expire on the _____ day of _____, _____ [date]; but such
322 expiration date shall be automatically extended for a period of _____ [at least one year] on
323 _____ [date] and on each successive expiration date, unless, at least 120 days before the
324 current expiration date, the Surety notifies both the IEPA and the Principal by certified mail that
325 the Surety has decided not to extend the term of this surety bond beyond the current expiration
326 date. The 120 days will begin on the date when both the Principal and the IEPA have received
327 the notice, as evidenced by the return receipts.

328
329 The Principal may terminate this bond by sending written notice to the Surety; provided,
330 however, that no such notice shall become effective until the Surety receives written
331 authorization for termination of the bond from the IEPA in accordance with 35 Ill. Adm. Code
332 807.604.

333
334 In Witness Whereof, the Principal and Surety have executed this Performance Bond and have
335 affixed their seals on the date set forth above.

336
337 The persons whose signatures appear below certify that they are authorized to execute this surety
338 bond on behalf of the Principal and Surety and that the wording of this surety bond is identical to
339 the wording specified in 35 Ill. Adm. Code 807.Appendix A, Illustration D as such regulation
340 was constituted on the date this bond was executed.

341

Principal

Corporate Surety

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Title

Corporate seal

Corporate seal

Bond premium: \$ _____

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(Source: Amended at 35 Ill. Reg. _____, effective _____)

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Section 807.APPENDIX A Financial Assurance Forms

Section 807.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

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 or our deposits are insured by the Federal Deposit Insurance Corporation. (Omit language that does not apply.)

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

1. your sight draft, bearing reference to this letter of credit No. _____; and
2. your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Environmental Protection Act [415 ILCS 5] and 35 Ill. Adm. Code 807.664(e)."

This letter of credit is effective as of _____ [date] and shall expire on _____ [date at least one year later], but, such expiration date shall be automatically extended for a period of _____ [at least one 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 _____ [owner's or operator's name] and the IEPA have received the notice, as evidenced by the return receipts. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and _____ [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit,

388 we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the
389 draft directly into the State of Illinois Landfill Closure and Post-Closure Fund in accordance with
390 your instructions.

391
392 We certify that the wording of this letter of credit is identical to the wording specified in 35 Ill.
393 Adm. Code 807.Appendix A, Illustration E as such regulations were constituted on the date
394 shown below.

395
396
397
398

Signature

Typed Name

Title

Date

Name and address of issuing institution

399
400 This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for
401 Documentary Credits, published and copyrighted by the International Chamber of Commerce,"
402 or "the Uniform Commercial Code"].

403
404 (Source: Amended at 35 Ill. Reg. _____, effective _____)

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

PART 807
SOLID WASTE

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SUBPART C: SANITARY LANDFILLS

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SUBPART E: CLOSURE AND POST-CLOSURE CARE

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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
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807.700 Cretex Pressure Pipe, Inc. Concrete Waste
Disposal Site

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

Section 807.663 Surety Bond Guaranteeing Performance

- a) An operator may satisfy the requirements of this Subpart by obtaining a surety bond that 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 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.

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

- c) The surety bond must be on the form specified in Appendix A, Illustration D.
- 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;

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.

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

g) Term:

1) The bond shall be issued for a term of at least one year 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.

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 this Subpart; or

B) The Agency releases the operator from the requirements of this Subpart in accordance with Section 807.606(b) 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 that 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 35 Ill. Reg. _____, effective _____)

Section 807.APPENDIX A Financial Assurance Forms

Section 807.ILLUSTRATION D Performance Bond

PERFORMANCE BOND

Date bond executed:Effective date:Principal:Type of organization:State of incorporation:Surety:Sites:NameAddressCityAmount guaranteed by this bond:\$NameAddressCityAmount 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)], 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 post-closure care; ~~and-~~

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

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

The Surety shall pay the penal sum to the 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 or 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 Illinois Pollution Control Board or a court of competent jurisdiction;
- d) Notifies the IEPA 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 met one or more of the conditions described ~~above failed to fulfill one or more of the conditions described~~ above. 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 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 met one or more of the conditions described above. 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 _____, _____ [date]; but such expiration date shall be automatically extended for a period of _____ [at least one 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 Principal and the IEPA have received the notice, as evidenced by the return receipts.

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 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 807.Appendix A, Illustration D as such regulation was constituted on the date this bond was executed.

PrincipalCorporate SuretySignatureNameTyped NameAddressTitleState of
IncorporationDateSignatureTyped NameTitleCorporate sealCorporate sealBond
premium:\$

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 807.APPENDIX A Financial Assurance Forms

Section 807.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

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 or our deposits are insured by the Federal Deposit Insurance Corporation. (Omit language that does not apply.)

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

1. your sight draft, bearing reference to this letter of credit No. _____;
and
2. your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Environmental Protection Act [415 ILCS 5] and 35 Ill. Adm. Code 807.664(e)."

This letter of credit is effective as of _____ [date] and shall expire on _____ [date at least one year later], but, such expiration date shall be automatically extended for a period of _____ [at least one 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 _____ [owner's or operator's name] and the IEPA have received the notice, as evidenced by the return receipts. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and _____ [owner's or operator's name], as shown on the signed return receipts.

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 Closure and Post-Closure Fund in accordance with your instructions.

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

Signature

~~Typed~~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 35 Ill. Reg. _____, effective _____)

~~ILLINOIS REGISTER~~

JCAR350807-1110490r01

~~POLLUTION CONTROL BOARD~~

~~NOTICE PROPOSED AMENDMENTS~~

Document comparison done by DeltaView on Friday, July 01, 2011 1:56:44 PM

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Document 1	file:///I:/Input/35-807-Agency(issue28).doc
Document 2	file:///I:/Input/35-807-JCAR(R01)(issue28).doc
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Insertions	7
Deletions	15
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	22

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

R10-9(A)

- 1) Heading of the Part: Standards for New Solid Waste Landfills
- 2) Code Citation: 35 Ill. Adm. Code 811
- 3) Section Numbers:
811.712
811.APPENDIX A.ILLUSTRATION D
- Proposed Action:
Amend
Amend
- 4) Statutory Authority: Implementing Section 22 of the Environmental Protection Act [415 ILCS 5/22] and Section 8 of the Illinois Groundwater Protection Act [415 ILCS 55/8], and authorized by Sections 22, 27, and 28 of the Illinois Environmental Protection Act [415 ILCS 5/10, 27, 28] and Section 8 of the Illinois Groundwater Protection Act [415 ICLS 55/8]
- 5) A Complete Description of the Subjects and Issues Involved: This proposal incorporates technical corrections to the Board's prior rulemaking docketed as R10-9, In the Matter of: Financial Assurance Instruments – Renewal and Terms: Amendments to 35 Ill. Adm. Code 807 Subpart F and Appendix A, 810.104 and 811 Subparts C, G and Appendix A.
- 6) Published studies or reports and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed amendments pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This proposed rule does not create or enlarge a state mandate as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of 45 days after the date of publication in the Illinois Register. Comments should refer to docket R10-09(A) and be addressed to:

RECEIVED
CLERK'S OFFICE

JUL 26 2011

STATE OF ILLINOIS
Pollution Control BoardClerk's Office
Illinois Pollution Control Board

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Interested persons may request copies of the Board's opinion and order in R10-09(A) by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us. For more information, contact hearing officer Daniel Robertson at 312/814-6931 or e-mail robertsd@ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: 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.
 - B) Reporting, bookkeeping or other procedures required for compliance: Are detailed in the rule and include submitting to the Illinois Environmental Protection Agency.
 - C) Types of Professional skills necessary for compliance: Professional skills held by financial advisors/planners such as accountants, bookkeepers.
- 14) Regulatory Agenda in which this rulemaking was summarized: January 2011

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

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE G: WASTE DISPOSAL
3 CHAPTER I: POLLUTION CONTROL BOARD
4 SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING
5

6 PART 811
7 STANDARDS FOR NEW SOLID WASTE LANDFILLS
8

9 SUBPART A: GENERAL STANDARDS FOR ALL LANDFILLS
10

11	Section	
12	811.101	Scope and Applicability
13	811.102	Location Standards
14	811.103	Surface Water Drainage
15	811.104	Survey Controls
16	811.105	Compaction
17	811.106	Daily Cover
18	811.107	Operating Standards
19	811.108	Salvaging
20	811.109	Boundary Control
21	811.110	Closure and Written Closure Plan
22	811.111	Postclosure Maintenance
23	811.112	Recordkeeping Requirements for MSWLF Units
24	811.113	Electronic Reporting

25
26 SUBPART B: INERT WASTE LANDFILLS
27

28	Section	
29	811.201	Scope and Applicability
30	811.202	Determination of Contaminated Leachate
31	811.203	Design Period
32	811.204	Final Cover
33	811.205	Final Slope and Stabilization
34	811.206	Leachate Sampling
35	811.207	Load Checking

36
37 SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS
38

39	Section	
40	811.301	Scope and Applicability
41	811.302	Facility Location
42	811.303	Design Period
43	811.304	Foundation and Mass Stability Analysis

- 44 811.305 Foundation Construction
- 45 811.306 Liner Systems
- 46 811.307 Leachate Drainage System
- 47 811.308 Leachate Collection System
- 48 811.309 Leachate Treatment and Disposal System
- 49 811.310 Landfill Gas Monitoring
- 50 811.311 Landfill Gas Management System
- 51 811.312 Landfill Gas Processing and Disposal System
- 52 811.313 Intermediate Cover
- 53 811.314 Final Cover System
- 54 811.315 Hydrogeologic Site Investigations
- 55 811.316 Plugging and Sealing of Drill Holes
- 56 811.317 Groundwater Impact Assessment
- 57 811.318 Design, Construction, and Operation of Groundwater Monitoring Systems
- 58 811.319 Groundwater Monitoring Programs
- 59 811.320 Groundwater Quality Standards
- 60 811.321 Waste Placement
- 61 811.322 Final Slope and Stabilization
- 62 811.323 Load Checking Program
- 63 811.324 Corrective Action Measures for MSWLF Units
- 64 811.325 Selection of remedy for MSWLF Units
- 65 811.326 Implementation of the corrective action program at MSWLF Units

66
67 SUBPART D: MANAGEMENT OF SPECIAL WASTES AT LANDFILLS

- 68
- 69 Section
 - 70 811.401 Scope and Applicability
 - 71 811.402 Notice to Generators and Transporters
 - 72 811.403 Special Waste Manifests
 - 73 811.404 Identification Record
 - 74 811.405 Recordkeeping Requirements
 - 75 811.406 Procedures for Excluding Regulated Hazardous Wastes

76
77 SUBPART E: CONSTRUCTION QUALITY ASSURANCE PROGRAMS

- 78
- 79 Section
 - 80 811.501 Scope and Applicability
 - 81 811.502 Duties and Qualifications of Key Personnel
 - 82 811.503 Inspection Activities
 - 83 811.504 Sampling Requirements
 - 84 811.505 Documentation
 - 85 811.506 Foundations and Subbases
 - 86 811.507 Compacted Earth Liners

- 87 811.508 Geomembranes
- 88 811.509 Leachate Collection Systems

89

90 SUBPART G: FINANCIAL ASSURANCE

91

- 92 Section
- 93 811.700 Scope, Applicability and Definitions
- 94 811.701 Upgrading Financial Assurance
- 95 811.702 Release of Financial Institution
- 96 811.703 Application of Proceeds and Appeals
- 97 811.704 Closure and Post-Closure Care Cost Estimates
- 98 811.705 Revision of Cost Estimate
- 99 811.706 Mechanisms for Financial Assurance
- 100 811.707 Use of Multiple Financial Mechanisms
- 101 811.708 Use of a Financial Mechanism for Multiple Sites
- 102 811.709 Trust Fund for Unrelated Sites
- 103 811.710 Trust Fund
- 104 811.711 Surety Bond Guaranteeing Payment
- 105 811.712 Surety Bond Guaranteeing Performance
- 106 811.713 Letter of Credit
- 107 811.714 Closure Insurance
- 108 811.715 Self-Insurance for Non-Commercial Sites
- 109 811.716 Local Government Financial Test
- 110 811.717 Local Government Guarantee
- 111 811.718 Discounting
- 112 811.719 Corporate Financial Test
- 113 811.720 Corporate Guarantee

- 114
- 115 811.APPENDIX A Financial Assurance Forms
- 116 811.ILLUSTRATION A Trust Agreement
- 117 811.ILLUSTRATION B Certificate of Acknowledgment
- 118 811.ILLUSTRATION C Forfeiture Bond
- 119 811.ILLUSTRATION D Performance Bond
- 120 811.ILLUSTRATION E Irrevocable Standby Letter of Credit
- 121 811.ILLUSTRATION F Certificate of Insurance for Closure and/or Post-Closure
- 122 Care or Corrective Action
- 123 811.ILLUSTRATION G Owner's or Operator's Bond Without Surety
- 124 811.ILLUSTRATION H Owner's or Operator's Bond With Parent Surety
- 125 811.ILLUSTRATION I Letter from Chief Financial Officer
- 126 811.APPENDIX B Section-by-Section correlation between the Standards of the RCRA
- 127 Subtitle D MSWLF regulations and the Board's nonhazardous waste
- 128 landfill regulations.
- 129 811.APPENDIX C List of Leachate Monitoring Parameters

130
 131 AUTHORITY: Implementing Sections 7.2, 21, 21.1, 22, 22.17, and 22.40 and authorized by
 132 Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 21, 21.1, 22, 22.17, 22.40, and
 133 27].
 134

135 SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15861, effective September 18, 1990; amended in
 136 R92-19 at 17 Ill. Reg. 12413, effective July 19, 1993; amended in R93-10 at 18 Ill. Reg. 1308,
 137 effective January 13, 1994; expedited correction at 18 Ill. Reg. 7504, effective July 19, 1993;
 138 amended in R90-26 at 18 Ill. Reg. 12481, effective August 1, 1994; amended in R95-13 at 19 Ill.
 139 Reg. 12257, effective August 15, 1995; amended in R96-1 at 20 Ill. Reg. 12000, effective
 140 August 15, 1996; amended in R97-20 at 21 Ill. Reg. 15831, effective November 25, 1997;
 141 amended in R98-9 at 22 Ill. Reg. 11491, effective June 23, 1998; amended in R99-1 at 23 Ill.
 142 Reg. 2794, effective February 17, 1999; amended in R98-29 at 23 Ill. Reg. 6880, effective July
 143 1, 1999; amended in R04-5/R04-15 at 28 Ill. Reg. 9107, effective June 18, 2004; amended in
 144 R05-1 at 29 Ill. Reg. 5044, effective March 22, 2005; amended in R06-5/R06-6/R06-7 at 30 Ill.
 145 Reg. 4136, effective February 23, 2006; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1435,
 146 effective December 20, 2006; amended in R07-8 at 31 Ill. Reg. 16172, effective November 27,
 147 2007; amended in R10-9 at 35 Ill. Reg. 10842, effective June 22, 2011; amended in R10-09(A) at
 148 35 Ill. Reg. _____, effective _____.
 149

150 SUBPART G: FINANCIAL ASSURANCE

151
 152 **Section 811.712 Surety Bond Guaranteeing Performance**
 153

- 154 a) An owner or operator may satisfy the requirements of this Subpart by obtaining a
 155 surety bond which conforms to the requirements of this Section and submitting
 156 the bond to the Agency. A surety bond obtained by an owner or operator of an
 157 MSWLF unit must be effective before the initial receipt of waste or before April
 158 9, 1997 (the effective date of the financial assurance requirements under RCRA
 159 Subtitle D regulations), or such later date granted pursuant to Section 811.700(g),
 160 whichever is later, in the case of closure and post-closure care, or no later than
 161 120 days after the remedy has been selected in accordance with the requirements
 162 of Section 811.325.
 163
- 164 b) The surety company issuing the bond shall be *licensed to transact the business of*
 165 *insurance by the Department of Insurance*, pursuant to the Illinois Insurance Code
 166 [215 ILCS 5], *or at a minimum the insurer must be licensed to transact the*
 167 *business of insurance or approved to provide insurance as an excess or surplus*
 168 *lines insurer by the insurance department in one or more states*, and approved by
 169 the U.S. Department of the Treasury as an acceptable surety. [415 ILCS
 170 5/21.1(a.5)]
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172 BOARD NOTE: The U.S. Department of the Treasury lists acceptable sureties in

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its Circular 570.

- c) The surety bond must be on the forms specified in Appendix A, Illustration D.
- 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 post-closure care in accordance with the closure and post-closure care plans in the permit and, if the bond is a corrective action bond, provide 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 post-closure care or corrective action when ordered to do so by the Board pursuant to Title VIII 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 post-closure care or corrective action in accordance with the closure and post-closure 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

- 216 F) Fails to provide alternative financial assurance, as specified in this
217 Subpart, and obtain the Agency's written approval of the assurance
218 provided within 90 days after receipt by both the owner or operator
219 and the Agency of a notice from the surety that the bond will not
220 be renewed for another term.
221
- 222 3) Upon failure of the owner or operator to perform as guaranteed by the
223 bond, the surety shall have the option of:
224
- 225 A) providing closure and post-closure care in accordance with the
226 closure and post-closure care plans; or
227
- 228 B) carrying out corrective action in accordance with the corrective
229 action plan; or
230
- 231 C) paying the penal sum.
232
- 233 f) Penal sum:
234
- 235 1) The penal sum of the bond must be in an amount at least equal to the
236 current cost estimate.
237
- 238 2) Whenever the current cost estimate decreases, the penal sum may be
239 reduced to the amount of the current cost estimate following written
240 approval by the Agency.
241
- 242 3) Whenever the current cost estimate increases to an amount greater than the
243 penal sum, the owner or operator, within 90 days after the increase, must
244 either cause the penal sum to be increased to an amount at least equal to
245 the current cost estimate and submit evidence of that increase to the
246 Agency or obtain other financial assurance, as specified in this Subpart, ~~to~~
247 ~~cover the increase~~ and submit evidence of the alternative financial
248 assurance to the Agency.
249
- 250 g) Term:
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- 252 1) The bond must be issued for a term of at least one year and must not be
253 cancelable during that term.
254
- 255 2) The surety bond must provide that, on the current expiration date and on
256 each successive expiration date, the term of the surety bond will be
257 automatically extended for a period of at least one year unless, at least 120
258 days before the current expiration date, the surety notifies both the owner

259 or operator and the Agency by certified mail of a decision not to renew the
260 bond. Under the terms of the surety bond, the 120 days will begin on the
261 date when both the owner or operator and the Agency have received the
262 notice, as evidenced by the return receipts.

263
264 3) The Agency shall release the surety by providing written authorization for
265 termination of the bond to the owner or operator and the surety when
266 either of the following occurs:

267
268 A) An owner or operator substitutes alternative financial assurance, as
269 specified in this Subpart; or

270
271 B) The Agency releases the owner or operator from the requirements
272 of this Subpart in accordance with 35 Ill. Adm. Code 813.403(b).

273
274 h) Cure of default and refunds:

275
276 1) The Agency shall release the surety if, after the surety becomes liable on
277 the bond, the owner or operator or another person provides financial
278 assurance for closure and post-closure care of the site or corrective action
279 at an MSWLF unit, unless the Agency determines that the closure or post-
280 closure care plan, corrective action at an MSWLF unit, or the amount of
281 substituted financial assurance is inadequate to provide closure and post-
282 closure care or implement corrective action at an MSWLF unit in
283 compliance with this Part.

284
285 2) After closure and post-closure care have been completed in accordance
286 with the closure and post-closure care plans and the requirements of this
287 Part or after the completion of corrective action at an MSWLF unit in
288 accordance with Section 811.326, the Agency shall refund any unspent
289 money which was paid into the "Landfill Closure and Post-Closure Fund"
290 by the surety, subject to appropriation of funds by the Illinois General
291 Assembly.

292
293 i) The surety will not be liable for deficiencies in the performance of closure by the
294 owner or operator after the Agency releases the owner or operator from the
295 requirements of this Subpart.

296
297 BOARD NOTE: MSWLF corrective action language at subsection (a) is derived from 40
298 CFR 258.74(b)(1) (1996). P.A. 89-200, signed by the Governor on July 21, 1995 and
299 effective January 1, 1996, amended the deadline for financial assurance for MSWLFs
300 from April 9, 1995 to the date that the federal financial assurance requirements actually
301 become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg.

302 60337), USEPA added 40 CFR 258.70(c) (1996), codified here as Section 811.700(g), to
303 allow states to waive the compliance deadline until April 9, 1998. The other clarifying
304 changes reflect the inclusion of financial assurance requirements for implementing
305 corrective action at MSWLF units under this Section.

306
307 (Source: Amended at 35 Ill. Reg. _____, effective _____)

308 **Section 811.APPENDIX A Financial Assurance Forms**

309

310 **Section 811.ILLUSTRATION D Performance Bond**

311

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: _____

312
313 The Principal and the Surety promise to pay the Illinois Environmental Protection Agency

314 ("IEPA") the above penal sum unless the Principal or Surety provides closure and post-closure
315 care or corrective action for each site in accordance with the closure and post-closure care or
316 corrective action plans for that site. To the payment of this obligation the Principal and Surety
317 jointly and severally bind themselves, their heirs, executors, administrators, successors and
318 assigns.
319

320 Whereas the Principal is required, under Section 21(d) of the Environmental Protection Act [415
321 ILCS 5/21(d)], to have a permit to conduct a waste disposal operation.
322

323 Whereas the Principal is required, under Section 21.1 of the Environmental Protection Act [415
324 ILCS 5/21.1], to provide financial assurance for closure and post-closure care or corrective
325 action.
326

327 Whereas the Surety is licensed by the Illinois Department of Insurance or is licensed to transact
328 the business of insurance or approved to provide insurance as an excess or surplus lines insurer
329 by the insurance department in one or more states.
330

331 Whereas the Principal and Surety agree that this bond shall be governed by the laws of the State
332 of Illinois.
333

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

- 340
- 341 a) Abandons the site;
 - 342
 - 343 b) Is adjudicated bankrupt;
 - 344
 - 345 c) Fails to initiate closure of the site or post-closure care or corrective action when
346 ordered to do so by the Illinois Pollution Control Board or a court of competent
347 jurisdiction;
 - 348
 - 349 d) Notifies the IEPA that it has initiated closure, or initiates closure, but fails to close
350 the site or provide post-closure care or corrective action in accordance with the
351 closure and post-closure care or corrective action plans;
 - 352
 - 353 e) For corrective action, fails to implement corrective action at a municipal solid
354 waste landfill unit in accordance with 35 Ill. Adm. Code 811.326; or
355
 - 356 f) Fails to provide alternative financial assurance and obtain the IEPA written

357 approval of the assurance provided within 90 days after receipt by both the
358 Principal and the IEPA of a notice from the Surety that the bond will not be
359 renewed for another term.
360

361 The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails
362 notice to the Surety that the Principal met one or more of the conditions described above~~has~~
363 ~~failed to fulfill one or more of the conditions described in this document.~~ Payment shall be made
364 by check or draft payable to the State of Illinois, Landfill Closure and Post-Closure Fund.
365

366 If the Surety notifies the IEPA that it intends to provide closure and post-closure care or
367 corrective action, then the Surety must initiate closure and post-closure care or corrective action
368 within 60 days after the IEPA mailed notice to the Surety that the Principal met one or more of
369 the conditions described above. The Surety must complete closure and post-closure care or
370 corrective action in accordance with the closure and post-closure care or corrective action plans,
371 or pay the penal sum.
372

373 The liability of the Surety shall not be discharged by any payment or succession of payments
374 unless and until such payment or payments shall amount in the aggregate to the penal sum of the
375 bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.
376

377 This bond shall expire on the ____ day of _____, _____ [date], but that expiration
378 date shall be automatically extended for a period of [at least one year] on [date] and on each
379 successive expiration date, unless, at least 120 days before the current expiration date, the Surety
380 notifies both the IEPA and the Principal by certified mail that the Surety has decided not to
381 extend the term of this surety bond beyond the current expiration date. The 120 days will begin
382 on the date when both the Principal and the IEPA have received the notice, as evidenced by the
383 return receipts.
384

385 The Principal may terminate this bond by sending written notice to the Surety; provided,
386 however, that no such notice shall become effective until the Surety receives written
387 authorization for termination of the bond from the IEPA in accordance with 35 Ill. Adm. Code
388 811.702.
389

390 In Witness Whereof, the Principal and Surety have executed this Performance Bond and have
391 affixed their seals on the date set forth above.
392

393 The persons whose signatures appear below certify that they are authorized to execute this surety
394 bond on behalf of the Principal and Surety and that the wording of this surety bond is identical to
395 the wording specified in 35 Ill. Adm. Code 811. Appendix A, Illustration D as that regulation was
396 constituted on the date this bond was executed.
397
398

PRINCIPAL

SURETY

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Corporate Seal

Title

Corporate Seal

Bond Premium: \$ _____

(Source: Amended at 35 Ill. Reg. _____, effective _____)

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

PART 811
STANDARDS FOR NEW SOLID WASTE LANDFILLS

SUBPART A: GENERAL STANDARDS FOR ALL LANDFILLS

Section	
811.101	Scope and Applicability
811.102	Location Standards
811.103	Surface Water Drainage
811.104	Survey Controls
811.105	Compaction
811.106	Daily Cover
811.107	Operating Standards
811.108	Salvaging
811.109	Boundary Control
811.110	Closure and Written Closure Plan
811.111	Postclosure Maintenance
811.112	Recordkeeping Requirements for MSWLF Units
811.113	Electronic Reporting

SUBPART B: INERT WASTE LANDFILLS

Section	
811.201	Scope and Applicability
811.202	Determination of Contaminated Leachate
811.203	Design Period
811.204	Final Cover
811.205	Final Slope and Stabilization
811.206	Leachate Sampling
811.207	Load Checking

SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS

Section	
811.301	Scope and Applicability
811.302	Facility Location
811.303	Design Period
811.304	Foundation and Mass Stability Analysis
811.305	Foundation Construction
811.306	Liner Systems
811.307	Leachate Drainage System
811.308	Leachate Collection System
811.309	Leachate Treatment and Disposal System
811.310	Landfill Gas Monitoring
811.311	Landfill Gas Management System
811.312	Landfill Gas Processing and Disposal System
811.313	Intermediate Cover
811.314	Final Cover System
811.315	Hydrogeologic Site Investigations
811.316	Plugging and Sealing of Drill Holes
811.317	Groundwater Impact Assessment

811.318 Design, Construction, and Operation of Groundwater Monitoring
Systems
811.319 Groundwater Monitoring Programs
811.320 Groundwater Quality Standards
811.321 Waste Placement
811.322 Final Slope and Stabilization
811.323 Load Checking Program
811.324 Corrective Action Measures for MSWLF Units
811.325 Selection of remedy for MSWLF Units
811.326 Implementation of the corrective action program at MSWLF Units

SUBPART D: MANAGEMENT OF SPECIAL WASTES AT LANDFILLS

Section

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

SUBPART E: CONSTRUCTION QUALITY ASSURANCE PROGRAMS

Section

811.501 Scope and Applicability
811.502 Duties and Qualifications of Key Personnel
811.503 Inspection Activities
811.504 Sampling Requirements
811.505 Documentation
811.506 Foundations and Subbases
811.507 Compacted Earth Liners
811.508 Geomembranes
811.509 Leachate Collection Systems

SUBPART G: FINANCIAL ASSURANCE

Section

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

811.720 Corporate Guarantee

811.APPENDIX A Financial Assurance Forms

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

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

811.APPENDIX C List of Leachate Monitoring Parameters

AUTHORITY: Implementing Sections 7.2, 21, 21.1, 22, 22.17, and 22.40 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 21, 21.1, 22, 22.17, 22.40, and 27].

SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15861, effective September 18, 1990; amended in R92-19 at 17 Ill. Reg. 12413, effective July 19, 1993; amended in R93-10 at 18 Ill. Reg. 1308, effective January 13, 1994; expedited correction at 18 Ill. Reg. 7504, effective July 19, 1993; amended in R90-26 at 18 Ill. Reg. 12481, effective August 1, 1994; amended in R95-13 at 19 Ill. Reg. 12257, effective August 15, 1995; amended in R96-1 at 20 Ill. Reg. 12000, effective August 15, 1996; amended in R97-20 at 21 Ill. Reg. 15831, effective November 25, 1997; amended in R98-9 at 22 Ill. Reg. 11491, effective June 23, 1998; amended in R99-1 at 23 Ill. Reg. 2794, effective February 17, 1999; amended in R98-29 at 23 Ill. Reg. 6880, effective July 1, 1999; amended in R04-5/R04-15 at 28 Ill. Reg. 9107, effective June 18, 2004; amended in R05-1 at 29 Ill. Reg. 5044, effective March 22, 2005; amended in R06-5/R06-6/R06-7 at 30 Ill. Reg. 4136, effective February 23, 2006; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1435, effective December 20, 2006; amended in R07-8 at 31 Ill. Reg. 16172, effective November 27, 2007; amended in R10-9 at 35 Ill. Reg. ~~10842~~, effective ~~June 22, 2011~~; amended in R10-09(A+) at 35 Ill. Reg. ~~10842~~, effective ~~June 22, 2011~~.

SUBPART C: ~~POTRESCIBLE AND CHEMICAL WASTE LANDFILLS~~SG: FINANCIAL ASSURANCE

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 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. [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 D.

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 post-closure care in accordance with the closure and post-closure care plans in the permit and, if the bond is a corrective action bond, provide 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 post-closure care or corrective action when ordered to do so by the Board pursuant to Title VIII 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 post-closure care or corrective action in accordance with the closure and post-closure 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:

A) providing closure and post-closure care in accordance with the closure and post-closure care plans; or

B) carrying out corrective action in accordance with the corrective action plan; or

C) 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.

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

g) Term:

1) The bond must be issued for a term of at least one year 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.

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 post-closure care of the site or corrective action at an MSWLF unit, unless the Agency determines that the closure or post-closure care plan, corrective action at an MSWLF unit, or the amount of substituted financial assurance is inadequate to provide closure and post-closure care or implement corrective action at an MSWLF unit in compliance with this Part.

2) After closure and post-closure care have been completed in accordance with the closure and post-closure 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 35 Ill. Reg. _____, effective _____)

Section 811.APPENDIX A Financial Assurance Forms

Section 811.ILLUSTRATION D Performance Bond

PERFORMANCE BOND

Date bond executed:Effective date:Principal:Type of organization:State of incorporation:Surety:Sites:NameAddressCityAmount guaranteed by this bond:\$NameAddressCityAmount 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 or corrective action for each site in accordance with the closure and post-closure 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 post-closure care or corrective action.

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

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

The Surety shall pay the penal sum to the IEPA or provide closure and post-closure care or corrective action in accordance with the closure and post-closure care or corrective action plans for the site if, during the term of the bond, the Principal fails to provide closure or post-closure care or corrective action for any site in accordance with the closure and post-closure 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 post-closure care or corrective action when ordered to do so by the Illinois Pollution Control Board or a court of competent jurisdiction;
- d) Notifies the IEPA that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care or corrective action in accordance with the closure and post-closure care or corrective action 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 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 met one or more of the conditions described ~~above has failed to fulfill one or more of the conditions described in this document~~above. 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 that it intends to provide closure and post-closure care or corrective action, then the Surety must initiate closure and post-closure care or corrective action within 60 days after the IEPA mailed notice to the Surety that the Principal met one or more of the conditions described above. The Surety must complete closure and post-closure care or corrective action in accordance with the closure and post-closure 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 _____, _____ [date], but that expiration date shall be automatically extended for a period of [at least one 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 Principal and the IEPA have received the notice, as evidenced by the return receipts.

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 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 811.Appendix A, Illustration D as that regulation was constituted on the date this bond was executed.

PRINCIPALSURETYSignatureNameTyped NameAddressTitleState of
IncorporationDateSignatureCorporate SealTyped NameTitleCorporate SealBond
Premium: \$
(Source: Amended at 35 Ill. Reg. _____, effective _____)

JCAR350811-1110505r01

~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE PROPOSED AMENDMENTS~~

Document comparison done by DeltaView on Friday, July 01, 2011 2:05:42 PM

Input:	
Document 1	file:///I:/Input/35-811-Agency(issue28).doc
Document 2	file:///I:/Input/35-811-JCARr01(issue28).doc
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Insertions	6
Deletions	11
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	17