

ILLINOIS POLLUTION CONTROL BOARD  
February 4, 1999

IN THE MATTER OF: )  
)  
RCRA SUBTITLE D UPDATE, USEPA ) R99-1  
REGULATIONS (January 1, 1998, through ) (Identical-in-Substance  
June 30, 1998) ) Rulemaking - Land)

Adopted Rule. Final Order.

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

Under Section 22.40(a) of the Environmental Protection Act (Act) (415 ILCS 5/22.40(a) (1996)), the Board adopts amendments to the Illinois regulations that are “identical-in-substance” to municipal solid waste landfill (MSWLF) regulations that the United States Environmental Protection Agency (USEPA) adopted to implement Subtitle D of the Resource Conservation and Recovery Act of 1976, 42 U.S.C §§ 6941-6949, (RCRA Subtitle D). The timeframe of this docket includes federal RCRA Subtitle D amendments that USEPA adopted in the period January 1, 1998, through June 30, 1998. In the single action during that period, USEPA adopted additional mechanisms for financial assurance for use by private owners and operators of MSWLF facilities.

Section 22.40(a) of the Act provides for quick adoption of regulations that are “identical-in-substance” to federal regulations that USEPA adopts to implement Sections 4004 and 4010 of RCRA, 42 U.S.C. §§ 6944 and 6949a (1996). Section 22.40(a) of the Act also provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) (5 ILCS 100/5-35 & 5-40 (1996)) do not apply to the Board’s adoption of identical-in-substance regulations. The federal RCRA Subtitle D regulations are found at 40 C.F.R. 258.

PROCEDURAL BACKGROUND

In July 1998, the Board reserved docket R99-1 for amendments to the federal RCRA Subtitle D municipal solid waste landfill regulations that USEPA adopted in the period of January 1, 1998, through June 30, 1998. Under Section 7.2 of the Act, the deadline for Board adoption of amendments under docket R99-1 is April 10, 1999, which is one year after the only federal amendments that occurred in the timeframe of the docket.

The Board adopted a proposal for public comment in this matter on November 5, 1998. A Notice of Proposed Amendments appeared in the December 11, 1998 issue of the *Illinois Register*, at 22 Ill. Reg. 21276, beginning the 45-day public comment period. The public comment period expired on January 25, 1999, leaving the Board free to adopt amendments based on the November 5, 1998 proposal for public comment. This we do with the present opinion and order.

The Board will file these adopted amendments with the Office of the Secretary of State as soon as possible and cause a Notice of Adopted Amendments to appear in the *Illinois Register*.

### FEDERAL ACTION CONSIDERED IN THIS RULEMAKING

USEPA amended the federal RCRA Subtitle D MSWLF regulations once during the period of January 1, 1998, through June 30, 1998. That single action is summarized as follows:

63 Fed. Reg. 17706 (April 10, 1998)

USEPA adopted amendments that allow private owners and operators of MSWLF facilities to use two additional mechanisms for establishing financial assurance for facility closure, post-closure care, and corrective action. The added mechanisms are a corporate financial test for self-assurance and a corporate guarantee by a guarantor that has a “substantial business relationship” with the owner or operator.

The Board is proposing to amend the Illinois regulations to incorporate the two added financial mechanisms now allowed by USEPA for privately-owned and operated MSWLF facilities.

### PUBLIC COMMENTS

The Board received two public comments on the November 5, 1998 proposal by January 25, 1999, which was 45 days following the publication of the Notice of Proposed Amendments in the *Illinois Register*. During the public comment period, the Board received the following public comments:

PC 1 John H. Turner, Divisional Vice-President, State Government Affairs, BFI (signed December 16, 1998; received December 21, 1998)

PC 2 Susan J. Schroeder, Associate Counsel, Division of Legal Counsel, Illinois Environmental Protection Agency (Agency) (signed January 22, 1999; received January 25, 1999)

In addition to PC 1 and PC 2, the Board received a document from the legislative Joint Committee on Administrative Rules (JCAR) on December 17, 1998, which outlines a number of corrections to the text of the amendments that are recommended by JCAR staff. PC 1, PC 2, and the JCAR-recommended revisions are considered in the discussion segments of this opinion. The discussion of PC 1 and PC 2 appears beginning at page 4 below. The Agency- and JCAR-recommended revisions appear in the tables that both begin on page 8 below.

## DISCUSSION

The federal action that underlies this proceeding requires amendment of the Illinois RCRA Subtitle D MSWLF regulations. USEPA amended its MSWLF rules on April 10, 1998, to add two new mechanisms for use by private facility owners and operators to use to establish financial assurance. The financial assurance requirements are intended to guarantee that sufficient resources are available to ensure that MSWLF facilities receive any appropriate required closure, post-closure care, and corrective action. USEPA amended 40 C.F.R. 258.74 to add the corporate financial test and corporate guarantee to the options available. Persons interested in the details of the federal action and the rationale behind it should read the notice of final rule in the *Federal Register*, at 63 Fed. Reg. 17706 (April 10, 1998).

To revise the Illinois regulations to incorporate the federal amendments, the Board has added new Sections 811.719 and 811.720 to incorporate new federal 40 C.F.R. 258.74(e) and (g), respectively. We opened Section 811.707 to accommodate the minor amendment to federal 40 C.F.R. 258.74(k). We opened Sections 811.706 and 811.Appendix B to complete the addition of the two new financial assurance mechanisms by adding the new mechanisms and their corresponding Section numbers to the listing of available mechanisms at Section 811.706 and the new Section numbers to the entry for 40 C.F.R. 258.74 in the state and federal correlation table in Section 811.Appendix B.

The Board has incorporated the new federal provisions with minimal deviation from the federal text. The tables beginning on page 4 indicate the revisions made in the verbatim wording of the federal amendments and to the base text of the regulations. The minor nature of most of these revisions does not warrant discussion. On the other hand, a small number of the revisions merit explanation.

In adapting federal rules into the Illinois regulations, the Board generally changes citations to requirements under distinct programs to parallel provisions in Illinois rules. In Section 811.719(b)(1)(A)(i), the Board has retained references to certain federal rules. We have retained the reference to the financial assurance provisions of the underground storage tank (UST) program of 40 C.F.R. 280. Although standards for financial responsibility do exist in the Illinois UST provisions under Title XVI of the Act (415 ILCS 5/57 through 57.17 (1996)) Section 22.4(d)(3) (415 ILCS 5/22.4(d)(3) (1996)) limits the Board against establishing financial responsibility requirements comparable to those of 40 C.F.R. 280. It provides: "For purposes of adopting regulations or amendments thereto . . . corrective action shall not include requirements providing for . . . out-of-service systems and their closure or financial responsibility." 415 ILCS 5/22.4(d)(3) (1996). To avoid making elements of the Illinois RCRA Subtitle D MSWLF program less stringent than the federal requirements, the Board has cited the federal UST corrective action requirements. Similarly, the Board has retained the reference to the financial responsibility requirements under the federal polychlorinated biphenyl (PCB) program of 40 C.F.R. 761 because there are no parallel requirements in the Illinois rules.

The Board has made a number of significant grammatical changes in the text. In the several segments of the text where USEPA used “alternate,” as in “alternate financial assurance,” the Board has substituted the word “alternative.” We believe this usage is more grammatically correct. The Board has also changed some passages written in the passive voice so that they appear in the active voice. In another series of changes, we have moved some prepositional phrases to the appropriate locations in certain segments, so that they would not appear offset by commas as parenthetical phrases that encumbered reading the affected provisions. The locations of these grammatical alterations are set forth in the table of revisions beginning on page 4.

One final revision that the Board will discuss is our substitution of a date certain for “on the effective date” language. Two of the new federal provisions, 40 C.F.R. 258.74(e)(2)(ii) and (g)(2), require actions of the facility owner or operator as follows:

before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1997 or October 9, 1997 for MSWLF units meeting the conditions of Sec. 258.1(f)(1)), whichever is later . . . .

The Board has instead used the prospective filing date at corresponding Sections 811.719(b)(2) and 811.720(b) for these amendments, as follows:

before the initial receipt of waste or before February 10, 1999, whichever is later  
 . . . .

The reason for this change is that the use of dates earlier than the effective date of the amendments under consideration would give these provisions a retroactive effect. Retroactive effect is not allowed under Illinois law, under Section 5-10(c) of the Administrative Procedure Act, 5 ILCS 100/5-5-10(c) (1996). The Board has added a Board Note at each provision explaining the deviation in effective date from that used in the federal rules.

In making this revision, the Board observes that the new financial assurance provisions are different from most regulatory requirements. Rather than impose a new duty of compliance on the affected regulated entities, the new financial assurance mechanisms actually reduce the burden of compliance to the extent they provide the community with added flexibility to use two new alternatives for compliance. Thus, the effect of the federal amendments is to deem any entities that had employed these mechanisms in the past to have been in compliance when they did so. It is possible that using the prospective date in place of the past dates set forth in the federal rules may render the Illinois rules more stringent than the corresponding federal provisions from which they are derived.

In our November 5, 1998 proposal for public comment, the Board requested public comment on the financial assurance amendments. We particularly directed attention to the specific issues discussed above. In PC 1, BFI stated that it supports the adoption of the new financial assurance mechanisms. BFI states that the adoption of the new mechanisms “will provide additional cost-effective, environmentally protective methods of ensuring that the costs of facility

closure, post-closure care, and corrective action are not borne by the citizens of Illinois.” PC 1. In PC 2, the Agency recommended a single correction to an internal reference in four segments of the regulations. The Agency-recommended revisions are indicated in the table of revisions to the text of the proposed rules that begins on page 8 of this opinion.

#### DEVIATIONS FROM THE FEDERAL AMENDMENTS AND REVISIONS TO THE TEXT OF THE PROPOSAL FOR PUBLIC COMMENT

In the following tables, the Board indicates the location and nature of the deviations from the text of the federal amendments involved in this proceeding and revisions to the text of the proposal for public comment. The first table includes deviations made in the Proposal for Public Comment from the verbatim text of the federal amendments that are driving this docket. The second table indicates corrections and clarifications that the Board has discovered and made in the base text of the proposal. The amendments listed in this second table are not directly derived from the current federal amendments. The second table begins on page 7 of this opinion. The third table, which begins on page 8 of this opinion, indicates the revisions made to the text of these amendments as proposed in our November 5, 1998, opinion and order. The associated fourth table beginning on page 8 indicates the recommended changes to the proposed text that the Board has not accepted. The source of each recommendation for changes to the proposed text are indicated in the center column of the third and fourth tables. Some of the entries in these tables are discussed further in appropriate segments of the general discussions beginning on 2 of this opinion and order.

#### Deviations from the Text of the Federal Amendments

Illinois Section	40 C.F.R. Section	Revision(s)
811.719 preamble	258.74(e)	Changed “a” to “an;” and added “of an MSWLF” for clarity; added “as follows”
811.719(b)(1)(A)	258.74(e)(2)(i)(A)	Added “includes the following”
811.719(b)(1)(A)(i)	258.74(e)(2)(i)(A)(1)	Changed “lists all the current . . .” to “all the current;” changed commas to semicolons to separate elements of a series with elements containing commas; retained references to federal “40 CFR 280” and 40 CFR 761;” used “or” in place of “and” in reference to “35 Ill. Adm. Code 724 or 725”
811.719(b)(1)(A)(ii)	258.74(e)(2)(i)(A)(2)	Deleted “provides;” dropped “either” in reference to three alternatives; used commas and dropped first “or” to separate elements of a series
811.719(b)(1)(B)	258.74(e)(2)(i)(B)	Used “shall” in place of “must” (twice); used “alternative” in place of “alternate”
811.719(b)(1)(C)	258.74(e)(2)(i)(C)	Used “federal Securities and Exchange Commission” in place of “SEC;” used “must” in place of “shall”

811.719(b)(1)(D)	258.74(e)(2)(i)(D)	Added comma to offset parenthetical “as provided . . .”
811.719(b)(2)	258.74(e)(2)(ii)	Used “shall” in place of “must;” added “in writing;” used “February 10, 1999” in place of “the effective date of the requirements . . .;” used reference to Section 811.324 for selection of corrective action remedy provisions; added explanatory Board Note relating to effective date language
811.719(b)(3)	258.74(e)(2)(iii)	Used “shall” in place of “may”
811.719(b)(4)	258.74(e)(2)(iv)	Added “either of the following occurs”
811.719(b)(4)(A)	258.74(e)(2)(iv)(A)	Used gender-neutral “it” in place of “he;” used “alternative” in place of “alternate”
811.719(b)(4)(B)	258.74(e)(2)(iv)(B)	Used gender-neutral “it” in place of “he” used “Sections 811.700 and 811.706” for reference to requirements to maintain financial assurance
811.719(b)(5)	258.74(e)(2)(v)	Used “shall” in place of “must;” moved the prepositional phrase “within 120 days . . . fiscal year” to avoid parenthetical addition; used “facility’s” in place of “owner or operator’s;” divided run-on sentence, adding “the owner or operator shall also;” changed “this assurance” to “the alternative financial assurance;” added “facility;” deleted unnecessary comma; used “it” in place of “owner or operator;” changed passive to active voice; changed “alternate assurance” to “alternative financial assurance”
811.719(b)(6)	258.74(e)(2)(vi)	Changed “based” to “at any time it has” and moved clause re reasonable belief to avoid parenthetical; changed “must” to “shall;” changed “alternate” to “alternative”
811.719(c)	258.74(e)(3)	Changed “must” to “shall;” changed commas to semicolons to separate elements of a series with elements containing commas
811.720(a)	258.74(g)(1)	Used “Sections 811.700 and 811.706” for reference to requirements to maintain financial assurance; Changed passive to active voice, using “shall” in place of “must;” Changed “copies of . . . and . . .” to “a copy of . . . and copies of the . . .”

811.720(b)	258.74(g)(2)	Used “February 10, 1999” in place of “the effective date of the requirements . . .;” removed unnecessary comma in the middle of a parenthetical; used reference to Section 811.324 for selection of corrective action remedy provisions; added explanatory Board Note relating to effective date language
811.720(c)	258.74(g)(3)	Added “as follows”
811.720(c)(1)	258.74(g)(3)(i)	Used “or” in place of “and/or”
811.720(c)(1)(A)	258.74(g)(3)(i)(A)	Used “and” in place of “and/or;” added comma to offset parenthetical
811.720(c)(1)(B)	258.74(g)(3)(i)(B)	Added comma to offset parenthetical; used “Section 811.709 or 811.710” to reference trust fund requirements
811.720(c)(2)	258.74(g)(3)(ii)	Used “the date on which . . . have both received” in place of “date of receipt . . . by both . . .”
811.720(c)(3)	258.74(g)(3)(iii)	Changed passive to active voice, adding “the guarantor;” changed “must” to “shall;” used “alternative” to “alternate” (five times); moved “within 90 days . . .” to avoid parenthetical; changed “provide” to “obtain;” added “financial”
811.720(d)	258.74(g)(4)	Changed “must” to “shall” (twice); changed “alternate” to “alternative” (three times); moved “within 90 days” to avoid parenthetical
811.729(e)(1)	258.74(g)(5)(i)	Changed “alternate” to “alternative;” added comma to offset parenthetical
811.729(e)(1)	258.74(g)(5)(i)	Used “Sections 811.700 and 811.706” for reference to requirements to maintain financial assurance

#### Board Amendments Not Federally-Derived

Section	Revision(s)
811. Table of Contents	Changed Section 811.Appendix B heading to make it more concise
811.706(a)(1)	Changed text to lower case
811.706(a)(2)	Changed text to lower case
811.706(a)(3)	Changed text to lower case
811.706(a)(4)	Changed text to lower case
811.706(a)(5)	Changed text to lower case
811.706(a)(7)	Changed text to lower case
811.706(a)(8)	Changed text to lower case
811.707	Used “811.713 through 811.720” in place of sequential listing

811.Appendix B	Changed Section heading to make it more concise
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Revisions to the Text of the Proposed Amendments in Final Adoption

Section Revised	Source(s) of Revision(s)	Revision(s)
811.719(a)(2)(B)	JCAR	Added comma before “provided”
811.719(a)(3)	JCAR, Board	Added comma before last element of the series “and any other environmental obligation . . . ;” added comma before parenthetical “as described . . . .”
811.719(b)(1)(A)(i)	JCAR	Changed comma to a semicolon to separate major elements of a series
811.719(b)(1)(B)	JCAR	Added definite article “the” before “owner or operator”
811.719(b)(2)	JCAR	Added a closing comma to complete offsetting the parenthetical “whichever is later”
811.719(b)(3)	JCAR	Corrected to possessive “owner’s”
811.719(b)(4)(A)	Agency, Board	Added commas to offset parenthetical, “as specified in this Subpart G;” corrected “this Section” to “this Subpart G”
811.719(b)(4)(B)	Agency	Corrected “this Section” to “this Subpart G”
811.719(b)(5)	Agency	Corrected “this Section” to “this Subpart G”
811.719(b)(6)	Agency	Corrected “this Section” to “this Subpart G”
811.719(c)	JCAR, Board	Deleted conjunction “or” from before “the sum of . . . ,” since this is not the last element of the series; removed “part” from Code of Federal Register references (twice)
811.720(b)	JCAR	Added a closing comma to complete offsetting the parenthetical “whichever is later;” added comma after “Section 811.324” to offset parenthetical “in the case of . . . .”
811.720(c)(1)(A)	JCAR, Board	Removed two commas offsetting second element of a series “or pay a third party to perform” as a parenthetical
811.720(c)	JCAR	Changed “within 120 days of” to “within 120 days after”

Requested Revisions to the Text of the Proposed Amendments Not Made in  
Final Adoption

Section Affected	Source(s) of Request	Requested Revision(s): Explanation
811.719(a)(3)	JCAR	Add conjunction “and” after post-closure care to complete series: comma added before “and any other environmental obligations,” which actually states the last element
811.719(b)(1)(B)	JCAR	Change “which” to “that”: “which” appropriate usage for a subsequent sequential restrictive relative clause
811.719(b)(2)	JCAR	Add comma between “selected” and “in accordance with . . .”: adding the comma (not present in the federal original) could create confusion that “shall place” is the antecedent for the prepositional clause, rather than “has been selected”
811.719(c)(3)	JCAR	Add conjunction “or” after “post-closure care” to complete series: “corrective action” is not the last element of the series

ORDER

The complete text of the adopted amendments follows:

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

PART 811  
STANDARDS FOR NEW SOLID WASTE LANDFILLS

SUBPART A: GENERAL STANDARDS FOR ALL LANDFILLS

Section	
811.101	Scope and Applicability
811.102	Location Standards
811.103	Surface Water Drainage
811.104	Survey Controls
811.105	Compaction
811.106	Daily Cover
811.107	Operating Standards
811.108	Salvaging
811.109	Boundary Control

- 811.110 Closure and Written Closure Plan
- 811.111 Postclosure Maintenance

#### SUBPART B: INERT WASTE LANDFILLS

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

#### SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS

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

#### SUBPART D: MANAGEMENT OF SPECIAL WASTES AT LANDFILLS

- Section
- 811.401 Scope and Applicability

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

#### SUBPART E: CONSTRUCTION QUALITY ASSURANCE PROGRAMS

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

#### SUBPART G: FINANCIAL ASSURANCE

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

- 811.Appendix A Financial Assurance Forms
  - Illustration A Trust Agreement
  - Illustration B Certificate of Acknowledgment

Illustration C	Forfeiture Bond
Illustration D	Performance Bond
Illustration E	Irrevocable Standby Letter of Credit
Illustration F	Certificate of Insurance for Closure and/or Postclosure Care
Illustration G	Operator's Bond Without Surety
Illustration H	Operator's Bond With Parent Surety
Illustration I	Letter from Chief Financial Officer

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

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

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

NOTE: Capitalization indicates statutory language.

### SUBPART G: FINANCIAL ASSURANCE

#### Section 811.706 Mechanisms for Financial Assurance

- a) The owner or operator of a waste disposal site may utilize any of the mechanisms listed in subsections (a)(1) through ~~(a)(6)~~ (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~~ fund (see Section 811.710);
  - 2) A surety ~~Bond Guaranteeing Payment~~ bond guaranteeing payment (see Section 811.711);

- 3) A surety ~~Bond Guaranteeing Performance~~ bond guaranteeing performance (see Section 811.712);
  - 4) A letter of ~~Credit~~ credit (see Section 811.713);
  - 5) Closure ~~Insurance~~ insurance (see Section 811.714);
  - 6) Self-insurance (see Section 811.715);
  - 7) ~~Local Government Financial Test~~ government financial test (see Section 811.716); ~~or~~
  - 8) ~~Local Government Guarantee~~ 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 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 811.707 Use of Multiple Financial Mechanisms

An owner or operator may satisfy the requirements of this Subpart by establishing more than one financial mechanism per site. These mechanisms are limited to trust funds, surety bonds guaranteeing payment, letters of credit and insurance. The mechanisms must be as specified in 35 Ill. Adm. Code 811.710, 811.711, and 811.713, 811.714, 811.715, 811.716, and 811.717 through 811.720, as applicable, except that it is the combination of mechanisms, rather than the single mechanism, that must provide financial assurance for an aggregate amount at least equal to the current cost estimate for closure, post-closure care or corrective action, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments. The owner or operator may use any or all of the mechanisms to provide for closure and postclosure care of the site or corrective action.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 811.719 Corporate Financial Test

An owner or operator of an MSWLF that satisfies the requirements of this Section may demonstrate financial assurance up to the amount specified in this Section as follows:

- a) Financial component.
  - 1) The owner or operator must satisfy one of the following three conditions:
    - A) A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; or
    - B) A ratio of less than 1.5 comparing total liabilities to net worth; or
    - C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

2) The tangible net worth of the owner or operator must be greater than:

A) The sum of the current closure, post-closure care, corrective action cost estimates and any other environmental obligations, including guarantees, covered by a financial test plus \$10 million except as provided in subsection (a)(2)(B) of this Section.

B) \$10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided all of the current closure, post-closure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Agency.

3) The owner or operator must have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates, and any other environmental obligations covered by a financial test, as described in subsection (c) of this Section.

b) Recordkeeping and reporting requirements.

1) The owner or operator must place the following items into the facility's operating record:

A) A letter signed by the owner's or operator's chief financial officer that includes the following:

i) All the current cost estimates covered by a financial test, including, but not limited to, cost estimates required for municipal solid waste management facilities under this Part; cost estimates required for UIC facilities under 35 Ill. Adm. Code 730, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 35 Ill. Adm. Code 724 or 725, if applicable; and

ii) Evidence demonstrating that the firm meets the conditions of subsection (a)(1)(A), (a)(1)(B), or (a)(1)(C) of this Section and subsection (a)(2) and (a)(3) of this Section.

- B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Agency shall evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Agency deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Agency does not allow use of the test, the owner or operator shall provide alternative financial assurance that meets the requirements of this Section.
- C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subsection (a)(1)(B) or (a)(1)(C) of this Section that are different from data in the audited financial statements referred to in subsection (b)(1)(B) of this Section or any other audited financial statement or data filed with the federal Security Exchange Commission, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report must be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.
- D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations, as provided in subsection (a)(2)(B) of this Section, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.
- 2) An owner or operator shall place the items specified in subsection (b)(1) of this Section in the operating record and notify the Agency in writing that these items have been placed in the operating record before the initial

receipt of waste or before February 10, 1999, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Section 811.324.

BOARD NOTE: Corresponding 40 CFR 258.74(e)(2)(ii) provides that this requirement is effective “before the initial receipt of waste or before the effective date of the requirements of this Section (April 9, 1997 or October 9, 1997 for MSWLF units meeting the conditions of Sec. 258.1(f)(1)), whichever is later.” The Board has instead inserted the date on which these amendments are to be filed and become effective in Illinois.

- 3) After the initial placement of items specified in subsection (b)(1) of this Section in the operating record, the owner or operator must annually update the information and place updated information in the operating record within 90 days following the close of the owner’s or operator’s fiscal year. The Agency shall provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in subsection (b)(1) of this Section.
- 4) The owner or operator is no longer required to submit the items specified in this subsection (b) or comply with the requirements of this Section when either of the following occurs:
  - A) It substitutes alternative financial assurance, as specified in this Subpart G, that is not subject to these recordkeeping and reporting requirements; or
  - B) It is released from the requirements of this Subpart G in accordance with Sections 811.700 and 811.706.
- 5) If the owner or operator no longer meets the requirements of subsection (a) of this Section, the owner or operator shall obtain alternative financial assurance that meets the requirements of this Subpart G within 120 days following the close of the facility’s fiscal year. The owner or operator shall also place the required submissions for the alternative financial assurance in the facility operating record and notify the Agency that it no longer meets the criteria of the financial test and that it has obtained alternative financial assurance.
- 6) The Agency may require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation specified in subsection (b) of this Section at any time it has a reasonable belief that the owner or operator may no longer meet the

requirements of subsection (a) of this Section. If the Agency finds that the owner or operator no longer meets the requirements of subsection (a) of this Section, the owner or operator shall provide alternative financial assurance that meets the requirements of this Subpart G.

- c) Calculation of costs to be assured. When calculating the current cost estimates for closure, post-closure care, corrective action, the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in this Section, the owner or operator shall include cost estimates required for municipal solid waste management facilities under this Part, as well as cost estimates required for the following environmental obligations, if it assures them through a financial test: obligations associated with UIC facilities under 35 Ill. Adm. Code 730; 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 or 725.

(Source: Added at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 811.720 Corporate Guarantee

- a) An owner or operator of an MSWLF may meet the requirements of 35 Ill. Adm. Code 811.700 and 811.706 by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a “substantial business relationship” with the owner or operator. The guarantor must meet the requirements for owners or operators in Section 811.719 and must comply with the terms of the guarantee. The owner or operator shall place a certified copy of the guarantee in the facility’s operating record along with a copy of the letter from the guarantor’s chief financial officer and copies of the accountants’ opinions. If the guarantor’s parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor’s chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a “substantial business relationship” with the owner or operator, this letter must describe this “substantial business relationship” and the value received in consideration of the guarantee.
- b) The guarantee must be effective and all required submissions placed in the operating record before the initial receipt of waste or before February 10, 1999, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Section 811.324, in the case of corrective action.

BOARD NOTE: Corresponding 40 CFR 258.74(g)(2) provides that this requirement is effective “before the initial receipt of waste or before the effective date of the requirements of this Section (April 9, 1997 or October 9, 1997 for

MSWLF units meeting the conditions of Sec. 258.1(f)(1)), whichever is later.”  
The Board has instead inserted the date on which these amendments are to be filed and become effective in Illinois.

c) The terms of the guarantee must provide as follows:

1) If the owner or operator fails to perform closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor will:

A) Perform or pay a third party to perform closure, post-closure care, and corrective action, as required (performance guarantee); or

B) Establish a fully funded trust fund, as specified in Section 811.709 or 811.710, in the name of the owner or operator (payment guarantee).

2) The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this Subpart unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date on which the owner or operator and the Agency have both received the notice of cancellation, as evidenced by the return receipts.

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

d) If a corporate guarantor no longer meets the requirements of Section 811.719(a), the owner or operator shall obtain alternative assurance, place evidence of the alternative assurance in the facility operating record, and notify the Agency within 90 days. If the owner or operator fails to provide alternative financial assurance within the 90-day period, the guarantor shall provide that alternative assurance within the next 30 days.

e) The owner or operator is no longer required to meet the requirements of this Section when:

1) The owner or operator substitutes alternative financial assurance, as

specified in this Subpart G; or

- 2) The owner or operator is released from the requirements of this Subpart G in accordance with Sections 811.700 and 811.706.

(Source: Added at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

RCRA SUBTITLE D REGULATIONS	ILLINOIS LANDFILL REGULATIONS
I. SUBPART A: General	
1) Purpose, Scope, and Applicability (40 CFR 258.1)	1) NL <sup>1</sup> : Sections 811.101, 811.301, 811.401, 811.501, and 811.700. EL <sup>2</sup> : Section 814.101.
2) Definitions (40 CFR 258.2)	2) Section 810.103.
II. SUBPART B: Location Restrictions	
1) Airport safety (40 CFR 258.10)	1) NL <sup>1</sup> : Section 811.302(e). EL <sup>2</sup> : Section 814.302(c) and 814.402(c).
2) Floodplains. (40 CFR 258.11)	2) NL <sup>1</sup> : Section 811.102(b). EL <sup>2</sup> : Section 814.302 and 814.402.
3) Wetlands. (40 CFR 258.12)	3) NL <sup>1</sup> : Sections 811.102(d), 811.102(e), and 811.103. EL <sup>2</sup> : Section 814.302 and 814.402.
4) Fault areas. (40 CFR 258.13)	4) NL <sup>1</sup> : Sections 811.304 and 811.305. EL <sup>2</sup> : Section 814.302 and 814.402.
5) Seismic impact zones. (40 CFR 258.14)	5) Same as above.
6) Unstable areas. (40 CFR 258.15)	6) NL <sup>1</sup> : Sections 811.304 and 811.305. EL <sup>2</sup> : Sections 811.302(c) and 811.402(c).
7) Closure of existing MSWL units. (40	7) EL <sup>2</sup> : Sections 814.301 and 814.401.

CFR 258.16)

III. SUBPART C: Operating Criteria

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| 1)  | Procedures for excluding the receipt of hazardous waste. (40 CFR 258.20) | 1)  | NL <sup>1</sup> : Section 811.323. EL <sup>2</sup> : Sections 814.302 and 814.402.                           |
| 2)  | Cover material requirements. (40 CFR 258.21)                             | 2)  | NL <sup>1</sup> : Section 811.106. EL <sup>2</sup> : Sections 814.302 and 814.402.                           |
| 3)  | Disease vector control. (40 CFR 258.22)                                  | 3)  | NL <sup>1</sup> : Section 811.107(i). EL <sup>2</sup> : Sections 814.302 and 814.402.                        |
| 4)  | Explosive gas control. (40 CFR 258.23)                                   | 4)  | NL <sup>1</sup> : Sections 811.310, 811.311, and 811.312. EL <sup>2</sup> : Sections 814.302 and 814.402.    |
| 5)  | Air criteria. (40 CFR 258.24)  | 5)  | NL <sup>1</sup> : Sections 811.107(b), 811.310, and 811.311. EL <sup>2</sup> : Sections 814.302 and 814.402. |
| 6)  | Access requirements. (40 CFR 258.25)                                     | 6)  | NL <sup>1</sup> : Section 811.109. EL <sup>2</sup> : Sections 814.302 and 814.402.                           |
| 7)  | Run-on/run-off control system. (40 CFR 258.26)                           | 7)  | NL <sup>1</sup> : Section 811.103. EL <sup>2</sup> : Sections 814.302 and 814.402.                           |
| 8)  | Surface water requirements. (40 CFR 258.27)                              | 8)  | Same as above.   |
| 9)  | Liquids restrictions. (40 CFR 258.28)                                    | 9)  | NL <sup>1</sup> : Section 811.107(m). EL <sup>2</sup> : Sections 814.302 and 814.402.                        |
| 10) | Recordkeeping requirements. (40 CFR 258.29)                              | 10) | NL <sup>1</sup> : Sections 811.112, and Parts 812 and 813. EL <sup>2</sup> : Sections 814.302 and 814.402.   |

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| IV. | SUBPART D: Design criteria (40 CFR 258.40) | IV) | NL <sup>1</sup> : 811.303, 811.304, 811.305, 811.306, 811.307, 811.308, 811.309, 811.315, 811.316, 811.317, and 811.Subpart E. EL <sup>2</sup> : Sections 814.302 and 814.402. |
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V. SUBPART E: Groundwater Monitoring and Corrective Action

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

814.402.

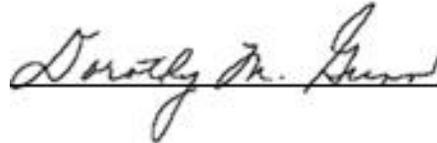
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| 3) | Financial assurance for post-closure.<br>(40 CFR 258.72)      | 3) | Same as (2).  |
| 4) | Financial assurance for corrective<br>action. (40 CFR 258.73) | 4) | Same as (2).  |
| 5) | Allowable mechanisms. (40 CFR<br>258.74 and 258.75)           | 5) | NL <sup>1</sup> : Section 811.706 through<br><del>811.717</del> 811.720. EL <sup>2</sup> : Sections<br>814.302 and 814.402. |

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

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above proposed opinion and order was adopted on the 4th day of February 1999 by a vote of 7-0



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board