

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>
807.600	Amend
807.640	Amend
807.661	Amend
807.662	Amend
807.663	Amend
807.664	Amend
807.665	Amend
800.666	Amend
807.APPENDIX A	
807.ILLUSTRATION A	Amend
807.ILLUSTRATION C	Amend
807.ILLUSTRATION D	Amend
807.ILLUSTRATION E	Amend
807.ILLUSTRATION F	Amend
807.ILLUSTRATION G	Amend
807.ILLUSTRATION H	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: The proposal updates specific segments of the Board's non-hazardous solid waste landfill regulations. The segments relate to financial assurance. The purpose of the financial assurance rules is to establish requirements for performance bonds and other securities insuring closure and post-closure care and corrective action at non-hazardous waste disposal sites and to prescribe the conditions under which the State of Illinois is entitled to collect monies from these instruments.
- 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.

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- 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 rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This proposed rulemaking does not create or enlarge a state mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 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 and be addressed to:

John Therriault
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 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.

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- 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:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER 11: SOLID WASTE AND SPECIAL WASTE HAULING

PART 807
SOLID WASTE

SUBPART A: GENERAL PROVISIONS

Section

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

SUBPART B: SOLID WASTE PERMITS

Section

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

SUBPART C: SANITARY LANDFILLS

Section

807.301 Prohibition
807.302 Compliance with Permit
807.303 Methods of Operation
807.304 Equipment, Personnel and Supervision
807.305 Cover
807.306 Litter
807.307 Salvaging
807.308 Scavenging
807.309 Animal Feeding
807.310 Special Wastes
807.311 Open Burning
807.312 Air Pollution
807.313 Water Pollution
807.314 Standard Requirements
807.315 Protection of Waters of the State
807.316 Application
807.317 Operating Records
807.318 Completion or Closure Requirements

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SUBPART E: CLOSURE AND POST-CLOSURE CARE

Section

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

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

Section

- 807.600 Purpose, Scope and Applicability
- 807.601 Requirement to Obtain Financial Assurance
- 807.602 Time for Submission of Financial Assurance
- 807.603 Upgrading Financial Assurance
- 807.604 Release of Financial Institution
- 807.605 Application of Proceeds and Appeal
- 807.606 Release of the Operator
- 807.620 Current Cost Estimate
- 807.621 Cost Estimate for Closure
- 807.622 Cost Estimate for Post-closure Care
- 807.623 Biennial Revision of Cost Estimate
- 807.624 Interim Formula for Cost Estimate
- 807.640 Mechanisms for Financial Assurance
- 807.641 Use of Multiple Financial Mechanisms
- 807.642 Use of Financial Mechanism for Multiple Sites
- 807.643 Trust Fund for Unrelated Sites
- 807.644 RCRA Financial Assurance
- 807.661 Trust Fund
- 807.662 Surety Bond Guaranteeing Payment
- 807.663 Surety Bond Guaranteeing Performance
- 807.664 Letter of Credit
- 807.665 Closure Insurance
- 807.666 Self-insurance for Non-~~Commercial~~Commercial Sites

SUBPART G: SITE-SPECIFIC RULES AND EXCEPTIONS NOT OF GENERAL APPLICABILITY

Section

807.700 Cretex Pressure Pipe, Inc. Concrete Waste Disposal Site

807.APPENDIX A Financial Assurance Forms

~~807.Illustration A~~ ~~Trust Agreement~~

807.ILLUSTRATION A Trust Agreement

- 807.~~Illustration~~ILLUSTRATION B Certificate of Acknowledgment
- 807.~~Illustration~~ILLUSTRATION C Forfeiture Bond
- 807.~~Illustration~~ILLUSTRATION D Performance Bond
- 807.~~Illustration~~ILLUSTRATION E Irrevocable Standby Letter of Credit
- 807.~~Illustration~~ILLUSTRATION F Certificate of Insurance for Closure and/or Post-closure Care

~~807.Illustration G~~ 807.ILLUSTRATION G Owner's or Operator's Bond Without Surety
~~807.Illustration H~~ 807.ILLUSTRATION H Owner's or Operator's Bond With Parent Surety
807.~~Illustration~~ILLUSTRATION I Letter from Chief Financial Officer
807.APPENDIX B Old Rule Numbers Referenced

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

SOURCE: Adopted as an emergency rule and filed with the Secretary of State July 27, 1973; amended at 2 Ill. Reg. 16, p. 3, effective April 10, 1978; codified at 7 Ill. Reg. 13636; recodified from Subchapter h to Subchapter i at 8 Ill. Reg. 13198; emergency amendment in R84-22A at 9 Ill. Reg. 741, effective January 3, 1985, for a maximum of 150 days; amended in R84-22B at 9 Ill. Reg. 6722, effective April 29, 1985; amended in R84-22C at 9 Ill. Reg. 18942, effective November 25, 1985; amended in R84-45 at 12 Ill. Reg. 15566, effective September 14, 1988; amended in R88-7 at 14 Ill. Reg. 15832, effective September 18, 1990; emergency amendment in R93-25 at 17 Ill. Reg. 17268, effective September 24, 1993, for a maximum of 150 days; amended in R90-26 at 18 Ill. Reg. 12451, effective August 1, 1994; amended in R96-1 at 20 Ill. Reg. 12549, effective August 15, ~~1996~~,1996; amended in R10-9 at 35 Ill. Reg. _____, effective _____.

~~NOTE: Capitalization denotes statutory language.~~

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

Section 807.600 Purpose, Scope and Applicability

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

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

Section 807.640 Mechanisms for Financial Assurance

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

- a) Trust Fund (Section 807.661);
- b) Surety Bond Guaranteeing Payment (Section 807.662);
- c) Surety Bond Guaranteeing Performance (Section 807.663);
- d) Letter of Credit (Section 807.664);
- e) Closure Insurance (Section 807.665); or~~7~~
- f) Self-insurance (Section 807.666).

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

Section 807.661 Trust Fund

a) An operator may satisfy the requirements of this Subpart by establishing a trust fund which conforms to the requirements of this Section and submitting an original, signed duplicate of the trust agreement to the Agency.

b) The trustee must be an entity which has the authority to act as a trustee and:

1) Whose trust operations are regulated by the Department of Financial and Professional ~~Regulation~~Illinois Commissioner of Banks and Trust Companies;
~~or, Regulation; or~~

2) Who complies with the Corporate Fiduciary Act [205 ILCS 620/~~1-1 et seq.~~]~~Foreign Corporations as Fiduciaries Act, (Ill. Rev. Stat. 1983, ch. 17, par. 2801 et seq.)~~.1.

c) The trust agreement must be on forms specified in Appendix A and the trust agreement must be accompanied by a formal certification of acknowledgment. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure and post-closure cost estimates covered by the agreement.

d) Payments into the trust:

1) The operator must make a payment into the trust fund each year during the pay-in period.

2) The pay-in period is the number of years remaining until the site reaches the stage in its expected operating life at which the cost of premature closure would be the greatest, as indicated by its closure plan. Provided, however, that the pay-in period shall not be less than three years nor greater than ten years.

3) Annual payments are determined by the following formula:

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

~~where:-~~

Where:

CE = Current cost ~~estimate~~ CV estimateY = Current value of the trust fund ~~Y~~ =
Number of years remaining in the pay in period.

4) The operator must make the first annual payment prior to the initial receipt of waste for disposal, or prior to March 1, 1985 for sites receiving waste for disposal prior to that date. The operator must also, prior to such initial receipt of waste, submit to the Agency a receipt from the trustee for the first annual payment.

5) Subsequent annual payments must be made no later than 30 days after each anniversary of the first payment.

6) The operator may accelerate payments into the trust fund, or may deposit the full amount of the current cost estimate at the time the fund is established.

e) The trustee must evaluate the trust fund annually as of the day the trust was created, or on ~~such an~~ earlier date as may be provided in the agreement. The trustee must notify the operator and the Agency of the value within 30 days after the evaluation date.

f) Release of excess funds:

1) If the value of the financial assurance is greater than the total amount of the current cost estimate, the operator may submit a written request to the Agency for release from the trust fund of the amount in excess of the current cost estimate.

2) Within 60 days after receiving a request from the operator for release of funds, the Agency will instruct the trustee to release to the operator ~~such those~~ funds ~~as~~ the Agency specifies in writing.

g) Reimbursement for closure and post-closure care expenses:

1) After initiating closure, an operator or any other person authorized to perform closure or post-closure care may request reimbursement for closure or post-closure care expenditures by submitting itemized bills to the Agency.

2) Within 60 days after receiving bills for closure or post-closure care activities, the Agency will determine whether the expenditures are in accordance with the closure or post-closure care plan and if so, it will instruct the trustee to make reimbursement in ~~such amounts as~~ the Agency specifies in writing.

3) If the Agency has reason to believe that the cost of closure and post-closure care will be significantly greater than the value of the trust fund, it may withhold reimbursement of ~~such those~~ amounts as it deems prudent until it determines that the operator is no longer required to maintain financial assurance for closure and post-closure care.

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

Section 807.662 Surety Bond Guaranteeing Payment

a) An operator may satisfy the requirements of this Subpart by obtaining a surety bond ~~which~~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 Financial and Professional Regulation~~Department of Insurance, pursuant to the Illinois Insurance Code [215 ILCS 5], or at a minimum the insurer must be licensed to transact the business of insurance, or approved to provide insurance as an excess or surplus lines insurer, by the insurance department in one or more states, and approved by the U.S. Department of the Treasury as an acceptable surety.

c) The surety bond must be on forms specified in Appendix A.

d) Any payments made under the bond will be placed in the ~~Llandfill-Cellosure- and Ppost-Cellosure Ffund~~Landfill Closure and Post-Closure Fund within the State Treasury.

e) Conditions:

1) The bond must guarantee that the operator will :

A) ~~Pprovide~~Provide closure and post-closure care in accordance with the closure and post-closure care plans in the permit; and

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

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

A) Abandons the site;

B) Is adjudicated bankrupt;

C) Fails to initiate closure of the site or post-closure care when ordered to do so by the Board or a court of competent jurisdiction; ~~or~~

D) Notifies the Agency that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care in accordance with the closure and post-closure care plans; or

E) Fails to provide alternate financial assurance, as specified in ~~the~~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.

f) Penal sum:

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

2) Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate, following written approval by the

Agency. ~~The Agency shall approve a reduction in the penal sum whenever the current cost estimate decreases.~~

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

g) Term:

1) The bond shall be issued for a term of at least four years and shall not be cancelable during that term.

2) The surety bond must provide that, on the current expiration date and on each successive expiration date, the term of the surety bond will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the surety notifies both the operator and the Agency by certified mail of a decision not to renew the bond. Under the terms of the surety bond, the 120 days will begin on the date when both the operator and the Agency have received the notice, as evidenced by the return receipts. ~~If the operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond shall be automatically extended for one twelve month period starting with the date of expiration of the bond. During such extension the bond will not serve as financial assurance satisfying the requirements of this Part, and will not excuse the operator from the duty to provide substitute financial assurance.~~

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

A) An operator substitutes alternate financial assurance, as specified in the Subpart; or

B) The Agency releases the operator from the requirements of this Subpart in accordance with ~~subsection (b) of~~ Section 807.606 (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 ~~which~~that was paid to the Agency by the surety subject to appropriation of funds by the Illinois General Assembly.

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

Section 807.663 Surety Bond Guaranteeing Performance

a) An operator may satisfy the requirements of this Subpart by obtaining a surety bond ~~which~~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 Financial and Professional Regulation~~Department of Insurance, pursuant to the Illinois Insurance Code [215 ILCS 5], or at a minimum the insurer must be licensed to transact the business of insurance, or approved to provide insurance as an excess or surplus lines insurer, by the insurance department in one or more states, and approved by the U.S. Department of the Treasury as an acceptable surety.

c) The surety bond must be on forms specified in Appendix A.

d) Any payments made under the bond will be placed in the ~~Llandfill-Celosure- and Ppost-Celosure Ffund~~Landfill Closure and Post-Closure Fund within the State Treasury.

e) Conditions:

1) The bond must guarantee that the operator will:

A) ~~Pprovide~~Provide closure and post-closure care in accordance with the closure and post-closure care plans in the permit. ~~The surety shall have the option of providing closure and post-closure care in accordance with the closure and post-closure care plans, or of paying the penal sum;~~ and

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

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

A) Abandons the site;

B) Is adjudicated bankrupt;

C) Fails to initiate closure of the site or post-closure care when ordered to do so by the Board or a court of competent jurisdiction; ~~or,~~

D) Notifies the Agency that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care in accordance with the closure and post-closure care plans; or

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

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

f) Penal sum:

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

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

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

g) Term:

1) The bond shall be issued for a term of at least one ~~year~~~~four years~~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. ~~If the operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond shall be automatically extended for one twelve month period starting with the date of expiration of the bond. During such extension the bond will not serve as financial assurance satisfying the requirements of this Part, and will not excuse the operator from the duty to provide substitute financial assurance.~~

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

A) An operator substitutes alternate financial assurance, as specified in ~~the~~this Subpart; or

B) The Agency releases the operator from the requirements of this Subpart in accordance with ~~subsection (b) of~~ 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 ~~which~~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 807.664 Letter of Credit

a) An operator may satisfy the requirements of this Subpart by obtaining an irrevocable standby letter of credit ~~which~~that conforms to the requirements of this Section and submitting the letter to the Agency.

b) The issuing institution must be an entity ~~which~~that has the authority to issue letters of credit and:

1) Whose letter-of-credit operations are regulated by the ~~Illinois Department of Financial and Professional Regulation Commissioner of Banks and Trust Companies; or, Regulation; or~~

2) Whose deposits are insured by the Federal Deposit Insurance Corporation ~~or the Federal Savings and Loan Insurance Corporation.~~

c) Forms:

1) The letter of credit must be on forms specified in Appendix A.

2) The letter of credit must be accompanied by a letter from the operator referring to the letter of credit by number, issuing institution and date and providing the following information: name and address of the site and the amount of funds assured for closure of the site by the letter of credit.

d) Any amounts drawn by the Agency pursuant to the letter of credit will be deposited in the ~~Llandfill Celosure and Ppost Celosure Ffund~~Landfill Closure and Post-Closure Fund within the State Treasury.

e) Conditions on which the Agency ~~shall~~may~~shall~~ draw on the letter of credit:

1) The Agency ~~shall~~may~~shall~~ draw on the letter of credit if the operator fails to perform closure or post-closure care in accordance with the closure and post-closure care plans.

2) The Agency ~~shall~~may~~shall~~ draw on the letter of credit when the operator:

A) Abandons the site;

B) Is adjudicated bankrupt;

C) Fails to initiate closure or post-closure care of the site when ordered to do so by the Board or a court of competent jurisdiction; ~~or~~

D) Notifies the Agency that it has initiated closure, or initiates closure, but fails to provide closure and post-closure care in accordance with the closure and post-closure care plans; or

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

f) Amount:

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

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

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

g) Term:

1) The letter of credit shall be irrevocable and shall be issued for a term of at least one ~~year~~four years.year.

2) The letter of credit must provide that, on the current expiration date and on each successive expiration date, the letter of credit will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the operator and the Agency by certified mail of a decision not to extend the letter of credit for another term. Under the terms of the letter of credit, the 120 days will begin on the date when both the operator and the Agency have received the notice, as evidenced by the return receipts. ~~If the operator fails to substitute alternate financial assurance prior to expiration of a letter of credit, the term of the letter of credit shall be automatically extended for one twelve month period starting with the date of expiration. During such extension the letter of credit will not serve as financial assurance satisfying the requirements of this Part, and will not excuse the operator from the duty to provide substitute financial assurance.~~

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

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

B) The Agency releases the operator from the requirements of this Subpart in accordance with ~~subsection (b) of~~ Section 807.606 (b) of this Part.

h) Cure of default and refunds:

1) The Agency shall release the financial institution if, after the Agency is allowed to draw on the letter of credit, the operator or another person provides

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

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

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

Section 807.665 Closure Insurance

a) An operator may satisfy the requirements of this Subpart by obtaining closure and post-closure care insurance ~~which that~~ conforms to the requirements of this Section and submitting to the Agency an executed duplicate original of ~~such the~~ insurance policy and the certificate of insurance for closure and/or post-closure care specified in ~~appendix~~Appendix A, Illustration F.~~an executed duplicate original of such insurance policy to the Agency.~~

b) The insurer must be licensed to transact the business of insurance by the Illinois Department of ~~Financial and Professional Regulation~~Department of Insurance or at a minimum, the insurer must be licensed to transact the business of insurance, or approved to provide insurance as an excess or surplus lines insurer, by the insurance department in one or more states.

c) The policy must be on forms filed with the Illinois Department ~~of Financial and Professional Regulation~~ Division of Insurance pursuant to Section 143(2) of the Illinois Insurance Code [215 ILCS 5/143(2)] and 50 Ill. Adm. Code 753, or on forms approved by the insurance department of one or more states.~~approved by the Illinois Department of Insurance.~~

d) Face amount:

1) The closure and post-closure care insurance policy must be issued for a face amount at least equal to the current cost estimate. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

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

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

e) The closure and post-closure care insurance policy must guarantee that funds will be available to close the site and to provide post-closure care thereafter. The policy must also guarantee that, once closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the

face amount of the policy, upon the direction of the Agency to ~~such~~ party or parties ~~as~~ the Agency specifies. The insurer will be liable when:

- 1) The operator abandons the site;
- 2) The operator is adjudicated bankrupt;
- 3) The Board or a court of competent jurisdiction orders the site closed;
- 4) The operator notifies the Agency that it is initiating closure; or
- 5) Any person initiates closure with approval of the Agency.

f) After initiating closure, an operator or any other person authorized to perform closure or post-closure care may request reimbursement for closure and post-closure care expenditures by submitting itemized bills to the Agency. Within 60 days after receiving bills for closure or post-closure care activities, the Agency will determine whether the expenditures are in accordance with the closure plan or post-closure care plan, and if so, will instruct the insurer to make reimbursement in such amounts as the Agency specifies in writing. If the Agency has reason to believe that the cost of closure and post-closure care will be significantly greater than the face amount of the policy, it may withhold reimbursement of ~~such those~~ amounts ~~as~~ it deems prudent until it determines that the operator is no longer required to maintain financial assurance.

g) Cancellation:

1) The operator shall maintain the policy in full force and effect until the Agency consents to termination of the policy.

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

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

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

Section 807.666 Self-insurance for Non-~~Commercial~~Commercial Sites

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

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

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

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

"Generally accepted accounting principles" means the accounting and auditing standards incorporated by reference at 35 Ill. Adm. Code 810.104(a)(2).

~~"Generally accepted accounting principles" means Accounting Standards, Financial Accounting Standards Board, June, 1984, which is hereby incorporated by reference. This incorporation includes no later amendments or editions.~~

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

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

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

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

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

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

b) An operator may satisfy the financial assurance requirements of this Part by providing the following:

1) Bond without surety promising to pay the cost estimate (~~paragraph (e)~~ subsection (c)).

2) Proof that the operator meets the gross revenue test (~~paragraph (d)~~ subsection (d)).

3) Proof that the operator meets the financial test (~~paragraph (e)~~ subsection (e)).

c) Bond without surety. An operator utilizing self-insurance must provide a bond without surety on forms provided in Appendix A. The operator must promise to pay the current cost estimate to the Agency unless the operator provides closure and post-closure care in accordance with the closure and post-closure care plans.

d) Gross revenue test. The operator must demonstrate that less than one-half of its gross revenues are derived from waste disposal operations.

e) Financial test:

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

A) The operator must have:

i) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5; and

ii) Net working capital and tangible net worth each at least six times the current cost estimate; and

iii) Tangible net worth of at least \$10 million; and

iv) Assets in the United States amounting to at least 90 percent of the operator's total assets and at least six times the current cost estimate.

B) The operator must have:

i) A current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

ii) Tangible net worth at least six times the current cost estimate; and

iii) Tangible net worth of at least \$10 million; and

iv) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the current cost estimate.

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

A) A letter signed by the operator's chief financial officer and worded as specified in Appendix A; and

B) A copy of the independent certified public accountant's report on examination of the operator's financial statements for the latest completed fiscal year; and

C) A special report from the operator's independent certified public accountant to the operator stating that:

i) The accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

ii) In connection with that procedure, no matters came to the accountant's attention ~~which~~that caused the accountant to believe that the specified data should be adjusted.

f) Updated information:

1) After the initial submission of items specified in ~~paragraphs~~subsections (d) and (e), the operator must send updated information to the Agency within 90 days after the close of each succeeding fiscal year.

2) If the operator no longer meets the requirements of ~~paragraphs~~subsections (d) and (e), the operator must send notice to the Agency of intent to establish alternate financial assurance. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the operator no longer meets the requirements.

g) Qualified opinions. If the opinion required in ~~paragraphs~~subsections (e)(2)(B) and (e)(2)(C) includes an adverse opinion or a disclaimer of opinion, the Agency shall disallow the use of self-insurance. If the opinion includes other qualifications, the Agency shall disallow the use of self-insurance if:

1) The qualifications relate to the numbers ~~which~~that are used in the gross revenue test or the financial test; and,

2) In light of the qualifications, the operator has failed to demonstrate that it meets the gross revenue test or financial test.

h) Parent corporation. An operator may satisfy the financial assurance requirements of this Part by:

1) ~~D-demonstrating~~Demonstrating that a corporation ~~that~~which~~that~~ owns an interest in the operator meets the requirements of this ~~Section~~gross revenue and financial tests; and, Section; and

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

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

Section 807.APPENDIX A Financial Assurance Forms

Section 807.ILLUSTRATION A Trust Agreement

TRUST AGREEMENT

Trust Fund Number _____

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

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

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

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

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

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

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

Section 1. Definitions. As used in this Agreement:

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

~~(b)~~ The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

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

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

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

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

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

- a) Securities or other obligations of the Grantor, or any other owner or operator of the site, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 ~~U.S.C.~~ USC 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal government or the State of Illinois;
- b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by the Federal Deposit Insurance Corporation ~~or Federal Savings & Loan Insurance Corporation.~~
- c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

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

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

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

- a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;
- b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers granted in this agreement;

c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund.

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

e) To compromise or otherwise adjust all claims in favor of or against the Fund.

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

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

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

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

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

resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the IEPA and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

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

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

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

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

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

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

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The

descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

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

Attest: Signature of ~~Grantor~~ _____ Typed _____
Name _____ Title _____ Seal Attest: Signature of _____
Trustee _____ Typed _____
Name _____ Title _____ Seal Grantor Typed _____
Name Title Seal Attest: Signature of Trustee Typed Name Title Seal
(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 807. APPENDIX A Financial Assurance Forms

Section 807. ILLUSTRATION C Forfeiture Bond

FORFEITURE BOND

Date bond executed: _____ Effective date: -
_____ Principal: -

_____ Type of organization: -
_____ State of incorporation: -
_____ Surety: -
_____ Sites:

Name _____

Address _____

City _____ Amount Name Address City Amount
t guaranteed by this bond: - \$ _____

Name _____

Address _____

City _____ Amount \$ Name Address City Amo
unt 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~~ principal provides closure and post-closure care for each site in accordance with the closure and post-closure care plans for that site. To the payment of this obligation the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

Whereas the Principal is required, under Section 21(d) of the Environmental Protection Act [415 ILCS 5/21.1], ~~Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1021.1~~ (d), to have a permit to conduct a waste disposal operation;

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

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

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

The Surety shall pay the penal sum to the IEPA if, during the term of the bond, the Principal fails to provide closure ~~or and/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 Board or a court of competent jurisdiction; or
- d) Notifies the ~~IEPA Agency~~ 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 obtains the IEPA written approval of the assurance provided within 90 days after receipt by both the Principal and the IEPA of a notice from the Surety that the bond will not be renewed for another term.

The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails notice to the Surety that the Principal has met one or more of the conditions described ~~above failed to so provide closure and post-closure care~~ above. Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Post-Closure ~~Closure~~ Closure Fund. The liability of the Surety shall not be discharged by any payment or succession of payments unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

This bond shall expire on the _____ [date] day of _____ [month], _____ [year]; 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 owner or operator by certified mail that the Surety has decided not to extend the term of this surety bond beyond the current expiration date. The 120 days will begin on the date when both the owner or operator and the IEPA have received the notice, as evidenced by the return receipts. ~~provided, however, that if the Principal fails to provide~~

~~substitute financial assurance prior to the expiration date, and the IEPA mails notice of such failure to the Surety within 30 days after such date, the term of this bond shall be automatically extended for one twelve month period starting with the date of expiration of the bond.~~

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

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

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

PrincipalCorporate
~~SuretySignatureName~~ _____ ~~Type~~
~~NameAddress~~ _____ ~~TitleState of~~
~~Incorporation~~ _____ ~~DateSignature~~ _____
_____ ~~Typed~~
~~Name~~ _____ ~~Title~~ _____
~~CorporateSuretySignatureNameTyped NameAddressTitleState of~~
~~IncorporationDateSignatureTyped NameTitleCorporate~~ sealCorporate sealBond
premium: ~~-\$~~ _____ ~~\$~~
(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:

Name _____

Address _____

City _____ Amount NameAddressCityAmount
guaranteed by this bond: ~~-\$~~ _____

Name _____

Address _____

City _____ Amount \$ _____ Name _____ Address _____ City _____ Amount _____

nt 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 ~~Agency~~ Agency ("IEPA") the above penal sum unless the Principal or Surety provides closure and post-closure care for each site in accordance with the closure and post-closure care plans for that site. To the payment of this obligation the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

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

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

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

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

The Surety shall pay the penal sum to the IEPA or provide closure and post-closure care in accordance with the closure and post-closure care plans for the site if, during the term of the bond, the Principal fails to provide closure ~~or and/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 Board or a court of competent jurisdiction; ~~or~~
- d) Notifies the ~~IEPA~~ Agency 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 failed to fulfill one or more of the conditions described ~~above failed to so provide closure and post-closure~~

~~care~~above. Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Post-Closure Closure Fund.

If the Surety notifies the IEPA Agency 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 failed to fulfill one or more of the conditions described above ~~failed to provide closure and post-closure care~~. The Surety must complete closure and post-closure care in accordance with the closure and post-closure care plans, or pay the penal sum.

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

This bond shall expire on the ____ day of _____, _____ [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 operator and the IEPA have received the notice, as evidenced by the return receipts. ~~provided, however, that if the Principal fails to provide substitute financial assurance prior to the expiration date, and the IEPA mails notice of such failure to the Surety within 30 days after such date, the term of this bond shall be automatically extended for one twelve month period starting with the date of expiration of the bond.~~

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

In Witness Whereof, the Principal and Surety have executed this ~~Performance Forfeiture~~ 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 ~~Part~~ 807. Appendix A, Illustration D as such regulation was constituted on the date this bond was executed.

Principal Corporate
~~Surety Signature Name~~ _____ ~~Type~~
~~Name Address~~ _____ ~~Title State of~~
~~Incorporation~~ _____ ~~Date Signature~~ _____

~~Name~~ _____ ~~Title~~ _____
~~Corporate Surety Signature Name Typed Name Address Title State of~~
~~Incorporation Date Signature Typed Name Title Corporate seal Corporate seal Bond~~
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
~~2200 Churchill Road~~
~~Springfield, Illinois 62706~~

Dear Sir or Madam:

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

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

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the State of Illinois

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

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

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

Signature

Typed Name

Title

Date

Name Name Title Date Name and address of issuing institution

This credit is subject to [insert "the most recent edition of the Uniform Commercial 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 _____)

Section 807.APPENDIX A Financial Assurance Forms

Section 807.ILLUSTRATION F Certificate of Insurance for Closure and/or Post-Closure Care

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

Name and Address of Insurer ("Insurer"):

Name and Address of Insured ("Insured"):

Sites Covered:

Name _____

Address _____

City _____ Amount _____ Name _____ Address _____ City _____ Amount _____
insured for this site: \$ _____

Name _____

Address _____

City _____ Amount _____ Name _____ Address _____ City _____ Amount _____
insured for this site: \$ _____ \$Please attach a separate page if
more space is needed for all sites. ~~Face~~

Amount _____ Face _____ Amount _____ Policy Number _____ Effective _____
Date _____

Policy Number _____

Effective Date _____

The Insurer hereby certifies that it is licensed to transact the business of insurance by the Illinois Department of ~~Financial and Professional Regulation~~ Department of Insurance or that it is licensed to transact the business of insurance, or approved to provide insurance as an excess or surplus lines insurer, by the insurance department in one or more states.

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

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

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

Name (Authorized signature for Insurer)

Typed Name Name Title Date

Title

Date

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

Section 807.APPENDIX A Financial Assurance Forms

Section 807.ILLUSTRATION G Owner's or Operator's Bond Without Surety

OWNER'S OR OPERATOR'S BOND WITHOUT SURETY

Date bond executed: _____ Effective date: -

_____ Owner or

Operator: _____ Owner ~~or Operator's~~ or

Operator's address: _____

_____ Site: -

_____ Site address: -

_____ Penal sum: \$ _____

The owner or operator promises to pay the penal sum to the Illinois Environmental Protection Agency unless the owner or ~~Operator~~ operator provides closure and post-closure care of the site in accordance with the closure and post-closure care plans for the site.

Owner or ~~Operator~~ Operator Signature Typed Name Title Date Corporate Seal

~~Signature~~

~~Typed Name~~

~~Title~~

~~Date~~

~~Corporate seal~~

~~Corporate seal~~

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

Section 807.APPENDIX A Financial Assurance Forms

Section 807.ILLUSTRATION H Owner's or Operator's Bond with Parent Surety

OWNER'S OR OPERATOR'S BOND WITH PARENT SURETY

Date bond executed: _____ Effective Date: -

_____ Surety: _____ Surety's address: -

_____ Owner or Operator: _____ Owner or

Operator's address: _____ Site: _____ Site

address: _____ Penal sum: \$ _____

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

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

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

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

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

The Surety shall pay the penal sum to the IEPA if, during the term of the bond, the Owner or Operator fails to provide closure ~~or~~ and/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 Owner or Operator fails to so provide when the Owner or Operator:

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

The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails notice to the Surety that the Owner or Operator has met one or more of the conditions described ~~above failed to so provide closure and post-closure care~~ above. Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Post-~~closure~~ Closure Fund.

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

This bond shall expire on the _____ [date] day of _____ [month], _____ [year]; 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 Owner or Operator by certified mail that the Surety has decided not to extend this surety bond beyond the current expiration date. The 120 days will begin on the date when both the Owner or

Operator and the IEPA have received the notice, as evidenced by the return receipts.

The Owner or Operator may terminate this bond by sending written notice to the Surety; provided, however, that no such notice shall become effective until the Surety received written authorization for termination of the bond from the IEPA in accordance with 35 Ill. Adm. Code 807.604.

In Witness Whereof, the Owner or Operator and Surety have executed this bond and have affixed their seals on the date set forth ~~above~~. below.

The persons whose signatures appear below certify that they are authorized to execute this surety bond on behalf of the Owner or Operator and Surety and that the wording of this surety bond is identical to the wording specified in 35 Ill. Adm. Code, ~~Part~~ 807.Appendix A, Illustration H as such regulation was constituted on the date this bond was executed.

Owner or

~~Operator~~ Surety Signature Name _____ Typed
Name Address _____ Title State of _____
Incorporation _____ Date Signature _____
_____ Typed _____
Name _____ Title _____ Corporate _____
seal Corporate seal Operator Surety Signature Name Typed Name Address Title State of _____
Incorporation Date Signature Typed Name Title Corporate seal Corporate seal

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

JCAR350807-1103199r01

~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

Document comparison done by DeltaView on Friday, February 18, 2011 2:54:34 PM

Input:	
Document 1	file:///I:/Input/35-807-Agency(issue9).doc
Document 2	file:///I:/Input/35-807-JCARr01(issue9).doc
Rendering set	Standard

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

Statistics:	
	Count
Insertions	216
Deletions	298
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	514

1ST NOTICE VERSION

JCAR350807-1103199r01

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
9 SUBPART A: GENERAL PROVISIONS

10		
11	Section	
12	807.101	Authority, Policy and Purposes
13	807.102	Repeals
14	807.103	Severability
15	807.104	Definitions
16	807.105	Relation to Other Rules
17		

18 SUBPART B: SOLID WASTE PERMITS

19		
20	Section	
21	807.201	Development Permits
22	807.202	Operating Permits
23	807.203	Experimental Permits
24	807.204	Former Authorization
25	807.205	Applications for Permit
26	807.206	Permit Conditions
27	807.207	Standards for Issuance
28	807.208	Permit No Defense
29	807.209	Permit Revision
30	807.210	Supplemental Permits
31	807.211	Transfer of Permits
32	807.212	Permit Revocation
33	807.213	Design, Operation and Maintenance Criteria
34	807.214	Revised Cost Estimates
35		

36 SUBPART C: SANITARY LANDFILLS

37		
38	Section	
39	807.301	Prohibition
40	807.302	Compliance with Permit
41	807.303	Methods of Operation
42	807.304	Equipment, Personnel and Supervision
43	807.305	Cover

RECEIVED
CLERK'S OFFICE
FEB 23 2011
STATE OF ILLINOIS
Pollution Control Board

44	807.306	Litter
45	807.307	Salvaging
46	807.308	Scavenging
47	807.309	Animal Feeding
48	807.310	Special Wastes
49	807.311	Open Burning
50	807.312	Air Pollution
51	807.313	Water Pollution
52	807.314	Standard Requirements
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

57

SUBPART E: CLOSURE AND POST-CLOSURE CARE

58

59

60 Section

61	807.501	Purpose, Scope and Applicability
62	807.502	Closure Performance Standard
63	807.503	Closure Plan
64	807.504	Amendment of Closure Plan
65	807.505	Notice of Closure and Final Amendment to Plan
66	807.506	Initiation of Closure
67	807.507	Partial Closure
68	807.508	Certification of Closure
69	807.509	Use of Waste Following Closure
70	807.523	Post-closure Care Plan
71	807.524	Implementation and Completion of Post-closure Care Plan

72

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

73

74

75 Section

76	807.600	Purpose, Scope and Applicability
77	807.601	Requirement to Obtain Financial Assurance
78	807.602	Time for Submission of Financial Assurance
79	807.603	Upgrading Financial Assurance
80	807.604	Release of Financial Institution
81	807.605	Application of Proceeds and Appeal
82	807.606	Release of the Operator
83	807.620	Current Cost Estimate
84	807.621	Cost Estimate for Closure
85	807.622	Cost Estimate for Post-closure Care
86	807.623	Biennial Revision of Cost Estimate

- 87 807.624 Interim Formula for Cost Estimate
- 88 807.640 Mechanisms for Financial Assurance
- 89 807.641 Use of Multiple Financial Mechanisms
- 90 807.642 Use of Financial Mechanism for Multiple Sites
- 91 807.643 Trust Fund for Unrelated Sites
- 92 807.644 RCRA Financial Assurance
- 93 807.661 Trust Fund
- 94 807.662 Surety Bond Guaranteeing Payment
- 95 807.663 Surety Bond Guaranteeing Performance
- 96 807.664 Letter of Credit
- 97 807.665 Closure Insurance
- 98 807.666 Self-insurance for Non-~~Commercial~~ommercial Sites

100 SUBPART G: SITE-SPECIFIC RULES AND
 101 EXCEPTIONS NOT OF GENERAL APPLICABILITY

102
 103 Section

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

105
 106 807.APPENDIX A Financial Assurance Forms

- 107 807.ILLUSTRATION A Trust Agreement
- 108 807.ILLUSTRATION B Certificate of Acknowledgment
- 109 807.ILLUSTRATION C Forfeiture Bond
- 110 807.ILLUSTRATION D Performance Bond
- 111 807.ILLUSTRATION E Irrevocable Standby Letter of Credit
- 112 807.ILLUSTRATION F Certificate of Insurance for Closure and/or Post-closure
 113 Care
- 114 807.ILLUSTRATION G Owner's or Operator's Bond Without Surety
- 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. 12549, effective August 15, 1996; amended in R10-9 at 35 Ill. Reg. _____, effective
132 _____.

133
134 ~~NOTE: Capitalization denotes statutory language.~~

135
136 SUBPART F: FINANCIAL ASSURANCE FOR CLOSURE
137 AND POST-CLOSURE CARE
138

139 **Section 807.600 Purpose, Scope and Applicability**
140

- 141 a) This Subpart provides procedures by which an operator of a waste disposal site
142 can give "financial assurance" satisfying the requirement of Section 21.1(a) of the
143 Act that ~~the~~ operator post with the Agency a performance bond or other
144 security for the purpose of insuring closure of the site and post-closure care in
145 accordance with the Act and Board rules.
146
- 147 b) Each operator must file a closure plan as part of a permit application. The
148 operator of a disposal site or indefinite storage unit must also file a post-closure
149 care plan (Sections 807.205, 807.503 and 807.523). The operator of a disposal
150 site or indefinite storage unit must prepare a cost estimate of closure and post-
151 closure care, and provide financial assurance in this amount (Sections 807.601
152 and 807.620). Financial assurance ~~shall~~ may be given through a combination of a
153 trust agreement, bond guaranteeing payment, bond guaranteeing payment or
154 performance, letter of credit, insurance or self-insurance (Section 807.640). The
155 cost estimate and amount of financial assurance is to be updated at least on a
156 biennial basis (Section 807.623).
157
- 158 c) This Subpart applies only to the non-governmental operators of disposal sites or
159 indefinite storage units (Section 807.601). Whether a site is a disposal site or,
160 alternatively, a treatment or storage site, depends on whether the closure plan
161 provides for removal of all wastes and waste residues from the site prior to
162 completion of closure. Whether a unit is an indefinite storage unit depends on the
163 technical feasibility and economic reasonableness of removal of all wastes and
164 waste residues prior to closure (Section 807.104).
165

166 (Source: Amended at 35 Ill. Reg. _____, effective _____)
167

168 **Section 807.640 Mechanisms for Financial Assurance**
169

170 The operator of a waste disposal site ~~shall~~ may utilize any of the following mechanisms to give
171 financial assurance for closure and post-closure care:
172

- 173 a) Trust Fund (Section 807.661);
- 174
- 175 b) Surety Bond Guaranteeing Payment (Section 807.662);
- 176
- 177 c) Surety Bond Guaranteeing Performance (Section 807.663);
- 178
- 179 d) Letter of Credit (Section 807.664);
- 180
- 181 e) Closure Insurance (Section 807.665); or;
- 182
- 183 f) Self-insurance (Section 807.666).
- 184

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

Section 807.661 Trust Fund

- 188
- 189 a) An operator may satisfy the requirements of this Subpart by establishing a trust
- 190 fund which conforms to the requirements of this Section and submitting an
- 191 original, signed duplicate of the trust agreement to the Agency.
- 192
- 193 b) The trustee must be an entity which has the authority to act as a trustee and:
- 194
- 195 1) Whose trust operations are regulated by the Department of Financial and
- 196 Professional Regulation~~Illinois Commissioner of Banks and Trust~~
- 197 Companies; or;
- 198
- 199 2) Who complies with the Corporate Fiduciary Act [205 ILCS 620]~~Foreign~~
- 200 Corporations as Fiduciaries Act, (Ill. Rev. Stat. 1983, ch. 17, par. 2801 et
- 201 seq.).
- 202
- 203 c) The trust agreement must be on forms specified in Appendix A and the trust
- 204 agreement must be accompanied by a formal certification of acknowledgment.
- 205 Schedule A of the trust agreement must be updated within 60 days after a change
- 206 in the amount of the current closure and post-closure cost estimates covered by
- 207 the agreement.
- 208
- 209 d) Payments into the trust:
- 210
- 211 1) The operator must make a payment into the trust fund each year during the
- 212 pay-in period.
- 213
- 214 2) The pay-in period is the number of years remaining until the site reaches
- 215 the stage in its expected operating life at which the cost of premature

216 closure would be the greatest, as indicated by its closure plan. Provided,
217 however, that the pay-in period shall not be less than three years nor
218 greater than ten years.

219
220 3) Annual payments are determined by the following formula:

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

221
222
223
224 Where:

CE = Current cost estimate

Y = Current value of the trust fund

= Number of years remaining in the pay in period.

226
227 4) The operator must make the first annual payment prior to the initial receipt
228 of waste for disposal, or prior to March 1, 1985 for sites receiving waste
229 for disposal prior to that date. The operator must also, prior to such initial
230 receipt of waste, submit to the Agency a receipt from the trustee for the
231 first annual payment.

232
233 5) Subsequent annual payments must be made no later than 30 days after
234 each anniversary of the first payment.

235
236 6) The operator may accelerate payments into the trust fund, or may deposit
237 the full amount of the current cost estimate at the time the fund is
238 established.

239
240 e) The trustee must evaluate the trust fund annually as of the day the trust was
241 created, or on ansueh earlier date as may be provided in the agreement. The
242 trustee must notify the operator and the Agency of the value within 30 days after
243 the evaluation date.

244
245 f) Release of excess funds:

246
247 1) If the value of the financial assurance is greater than the total amount of
248 the current cost estimate, the operator may submit a written request to the
249 Agency for release from the trust fund of the amount in excess of the
250 current cost estimate.

251
252 2) Within 60 days after receiving a request from the operator for release of
253 funds, the Agency will instruct the trustee to release to the operator
254 thosesueh funds as the Agency specifies in writing.

255

- 256 g) Reimbursement for closure and post-closure care expenses:
 257
 258 1) After initiating closure, an operator or any other person authorized to
 259 perform closure or post-closure care may request reimbursement for
 260 closure or post-closure care expenditures by submitting itemized bills to
 261 the Agency.
 262
 263 2) Within 60 days after receiving bills for closure or post-closure care
 264 activities, the Agency will determine whether the expenditures are in
 265 accordance with the closure or post-closure care plan and if so, it will
 266 instruct the trustee to make reimbursement in ~~such~~ amounts as the Agency
 267 specifies in writing.
 268
 269 3) If the Agency has reason to believe that the cost of closure and post-
 270 closure care will be significantly greater than the value of the trust fund, it
 271 may withhold reimbursement of ~~those~~ such amounts as it deems prudent
 272 until it determines that the operator is no longer required to maintain
 273 financial assurance for closure and post-closure care.
 274

275 (Source: Amended at 35 Ill. Reg. _____, effective _____)
 276

277 **Section 807.662 Surety Bond Guaranteeing Payment**
 278

- 279 a) An operator may satisfy the requirements of this Subpart by obtaining a surety
 280 bond ~~that~~ which conforms to the requirements of this Section and submitting the
 281 bond to the Agency.
 282
 283 b) The surety company issuing the bond must be licensed by the Illinois Department
 284 of Insurance, pursuant to the Illinois Insurance Code [215 ILCS 5], or at a
 285 minimum the insurer must be licensed to transact the business of insurance, or
 286 approved to provide insurance as an excess or surplus lines insurer, by the
 287 insurance department in one or more states, and approved by the U.S. Department
 288 of the Treasury as an acceptable surety~~Department of Insurance.~~
 289
 290 c) The surety bond must be on forms specified in Appendix A.
 291
 292 d) Any payments made under the bond will be placed in the Landfill Closure and
 293 Post-Closure Fund~~landfill closure and post-closure fund~~ within the State Treasury.
 294
 295 e) Conditions:
 296
 297 1) The bond must guarantee that the operator will:
 298

- 299 A) Provide provide closure and post-closure care in accordance with
300 the closure and post-closure care plans in the permit; and
301
302 B) Provide alternate financial assurance, as specified in this Subpart,
303 and obtain the Agency's written approval of the assurance provided
304 within 90 days after receipt by both the operator and the Agency of
305 a notice from the surety that the bond will not be renewed for
306 another term.
307
308 2) The surety will become liable on the bond obligation when, during the
309 term of the bond, the operator fails to perform as guaranteed by the bond.
310 The operator fails to perform when the operator:
311
312 A) Abandons the site;
313
314 B) Is adjudicated bankrupt;
315
316 C) Fails to initiate closure of the site or post-closure care when
317 ordered to do so by the Board or a court of competent jurisdiction;
318 or,
319
320 D) Notifies the Agency that it has initiated closure, or initiates closure,
321 but fails to close the site or provide post-closure care in accordance
322 with the closure and post-closure care plans; or
323
324 E) Fails to provide alternate financial assurance, as specified in this
325 Subpart, and obtain the Agency's written approval of the assurance
326 provided within 90 days after receipt by both the operator and the
327 Agency of a notice from the surety that the bond will not be
328 renewed for another term.
329
330 f) Penal sum:
331
332 1) The penal sum of the bond must be in an amount at least equal to the
333 current cost estimate.
334
335 2) Whenever the current cost estimate decreases, the penal sum may be
336 reduced to the amount of the current cost estimate, following written
337 approval by the Agency. The Agency shall approve a reduction in the penal
338 sum whenever the current cost estimate decreases.
339
340 3) Whenever the current cost estimate increases to an amount greater than the
341 penal sum, the operator, within 90 days after the increase, must either

342 cause the penal sum to be increased to an amount at least equal to the
343 current cost estimate and submit evidence of the increase to the Agency or
344 obtain other financial assurance, as specified in this Subpart, to cover the
345 increase and submit evidence of the alternate financial assurance to the
346 Agency.

347
348 g) Term:

- 349
350 1) The bond shall be issued for a term of at least four years and shall not be
351 cancelable during that term.
352
353 2) The surety bond must provide that, on the current expiration date and on
354 each successive expiration date, the term of the surety bond will be
355 automatically extended for a period of at least one year unless, at least 120
356 days before the current expiration date, the surety notifies both the
357 operator and the Agency by certified mail of a decision not to renew the
358 bond. Under the terms of the surety bond, the 120 days will begin on the
359 date when both the operator and the Agency have received the notice, as
360 evidenced by the return receipts.~~If the operator fails to provide substitute~~
361 ~~financial assurance prior to expiration of a bond, the term of the bond shall~~
362 ~~be automatically extended for one twelve-month period starting with the~~
363 ~~date of expiration of the bond. During such extension the bond will not~~
364 ~~serve as financial assurance satisfying the requirements of this Part, and~~
365 ~~will not excuse the operator from the duty to provide substitute financial~~
366 ~~assurance.~~
367
368 3) The Agency shall release the surety by providing written authorization for
369 termination of the bond to the operator and the surety when either of the
370 following occurs:
371
372 A) An operator substitutes alternate financial assurance, as specified
373 in the Subpart; or
374
375 B) The Agency releases the operator from the requirements of this
376 Subpart in accordance with Section 807.606(b) of this Part.
377

378 h) Cure of default and refunds:

- 379
380 1) The Agency shall release the surety if, after the surety becomes liable on
381 the bond, the operator or another person provides financial assurance for
382 closure and post-closure care of the site, unless the Agency determines
383 that a plan or the amount of substituted financial assurance is inadequate
384 to provide closure and post-closure care as required by this Part.

385
386 2) After closure and post-closure care have been completed in accordance
387 with the plans and requirements of this Part, the Agency shall refund any
388 unspent money ~~that~~which was paid to the Agency by the surety subject to
389 appropriation of funds by the Illinois General Assembly.
390

391 (Source: Amended at 35 Ill. Reg. _____, effective _____)
392

393 **Section 807.663 Surety Bond Guaranteeing Performance**
394

- 395 a) An operator may satisfy the requirements of this Subpart by obtaining a surety
396 bond ~~that~~which conforms to the requirements of this Section and submitting the
397 bond to the Agency.
398
- 399 b) The surety company issuing the bond must be licensed by the Illinois Department
400 of Insurance, pursuant to the Illinois Insurance Code [215 ILCS 5], or at a
401 minimum the insurer must be licensed to transact the business of insurance, or
402 approved to provide insurance as an excess or surplus lines insurer, by the
403 insurance department in one or more states, and approved by the U.S. Department
404 of the Treasury as an acceptable surety~~Department of Insurance.~~
405
- 406 c) The surety bond must be on forms specified in Appendix A.
407
- 408 d) Any payments made under the bond will be placed in the Landfill Closure and
409 Post-Closure Fund~~landfill closure and post-closure fund~~ within the State Treasury.
410
- 411 e) Conditions:
412
- 413 1) The bond must guarantee that the operator will:
414
- 415 A) Provide~~provide~~ closure and post-closure care in accordance with
416 the closure and post-closure care plans in the permit. ~~The surety~~
417 ~~shall have the option of providing closure and post-closure care in~~
418 ~~accordance with the closure and post-closure care plans, or of~~
419 ~~paying the penal sum.; and~~
420
- 421 B) Provide alternate financial assurance, as specified in this Subpart,
422 and obtain the Agency's written approval of the assurance provided
423 within 90 days after receipt by both the operator and the Agency of
424 a notice from the surety that the bond will not be renewed for
425 another term.
426
- 427 2) The surety will become liable on the bond obligation when, during the

428 term of the bond, the operator fails to perform as guaranteed by the bond.
429 The operator fails to perform when the operator:

- 430
- 431 A) Abandons the site;
- 432
- 433 B) Is adjudicated bankrupt;
- 434
- 435 C) Fails to initiate closure of the site or post-closure care when
436 ordered to do so by the Board or a court of competent jurisdiction;
437 or;
- 438
- 439 D) Notifies the Agency that it has initiated closure, or initiates closure,
440 but fails to close the site or provide post-closure care in accordance
441 with the closure and post-closure care plans; or-
- 442
- 443 E) Fails to provide alternate financial assurance, as specified in this
444 Subpart, and obtain the Agency's written approval of the assurance
445 provided within 90 days after receipt by both the operator and the
446 Agency of a notice from the surety that the bond will not be
447 renewed for another term.

448

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

453

454 f) Penal sum:

- 455
- 456 1) The penal sum of the bond must be in an amount at least equal to the
457 current cost estimate.
- 458
- 459 2) Whenever the current cost estimate decreases, the penal sum may be
460 reduced to the amount of the current cost estimate, following written
461 approval by the Agency. ~~The Agency shall approve a reduction in the penal~~
462 sum whenever the current cost estimate decreases.
- 463
- 464 3) Whenever the current cost estimate increases to an amount greater than the
465 penal sum, the operator, within 90 days after the increase, must either
466 cause the penal sum to be increased to an amount at least equal to the
467 current cost estimate and submit evidence of the increase to the Agency or
468 obtain other financial assurance, as specified in this Subpart, to cover the
469 increase and submit evidence of the alternate financial assurance to the
470 Agency.

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g) Term:

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

- 2) The surety bond must provide that, on the current expiration date and on each successive expiration date, the term of the surety bond will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the surety notifies both the operator and the Agency by certified mail of a decision not to renew the bond. Under the terms of the surety bond, the 120 days will begin on the date when both the operator and the Agency have received the notice, as evidenced by the return receipts.~~If the operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond shall be automatically extended for one twelve-month period starting with the date of expiration of the bond. During such extension the bond will not serve as financial assurance satisfying the requirements of this Part, and will not excuse the operator from the duty to provide substitute financial assurance.~~

- 3) The Agency shall release the surety by providing written authorization for termination of the bond to the operator and the surety when either of the following occurs:
 - A) An operator substitutes alternate financial assurance, as specified in 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~~which~~ was paid to the Agency by the surety subject to appropriation of funds by the Illinois General Assembly.

- 514
515 i) The surety will not be liable for deficiencies in the performance of closure by the
516 operator after the Agency releases the operator from the requirements of this
517 Subpart.
518

519 (Source: Amended at 35 Ill. Reg. _____, effective _____)
520

521 **Section 807.664 Letter of Credit**
522

- 523 a) An operator may satisfy the requirements of this Subpart by obtaining an
524 irrevocable standby letter of credit ~~that~~^{which} conforms to the requirements of this
525 Section and submitting the letter to the Agency.
526

- 527 b) The issuing institution must be an entity ~~that~~^{which} has the authority to issue
528 letters of credit and:
529

- 530 1) Whose letter-of-credit operations are regulated by the Department of
531 Financial and Professional Regulation~~Illinois Commissioner of Banks and~~
532 ~~Trust Companies~~; or,
533

- 534 2) Whose deposits are insured by the Federal Deposit Insurance Corporation
535 ~~or the Federal Savings and Loan Insurance Corporation.~~
536

- 537 c) Forms:
538

- 539 1) The letter of credit must be on forms specified in Appendix A.
540

- 541 2) The letter of credit must be accompanied by a letter from the operator
542 referring to the letter of credit by number, issuing institution and date and
543 providing the following information: name and address of the site and the
544 amount of funds assured for closure of the site by the letter of credit.
545

- 546 d) Any amounts drawn by the Agency pursuant to the letter of credit will be
547 deposited in the Landfill Closure and Post-Closure Fund~~landfill closure and post-~~
548 ~~closure fund~~ within the State Treasury.
549

- 550 e) Conditions on which the Agency ~~shall~~^{may} draw on the letter of credit:
551

- 552 1) The Agency ~~shall~~^{may} draw on the letter of credit if the operator fails to
553 perform closure or post-closure care in accordance with the closure and
554 post-closure care plans.
555

- 556 2) The Agency ~~shall~~^{may} draw on the letter of credit when the operator:

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

f) Amount:

- 1) The letter of credit must be issued in an amount at least equal to the current cost estimate.
- 2) Whenever the current cost estimate decreases, the amount of credit may be reduced to the amount of the current cost estimate, following written approval by the Agency. The Agency shall approve a reduction in the amount whenever the current cost estimate decreases.
- 3) Whenever the current cost estimate increases to an amount greater than the amount of the credit, the operator, within 90 days after the increase, must either cause the amount of the credit to be increased to an amount at least equal to the current cost estimate and submit evidence of 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 letter of credit shall be irrevocable and shall be issued for a term of at least one year~~four years~~.
- 2) The letter of credit must provide that, on the current expiration date and on

600 each successive expiration date, the letter of credit will be automatically
 601 extended for a period of at least one year unless, at least 120 days before
 602 the current expiration date, the issuing institution notifies both the operator
 603 and the Agency by certified mail of a decision not to extend the letter of
 604 credit for another term. Under the terms of the letter of credit, the 120
 605 days will begin on the date when both the operator and the Agency have
 606 received the notice, as evidenced by the return receipts. If the operator fails
 607 to substitute alternate financial assurance prior to expiration of a letter of
 608 credit, the term of the letter of credit shall be automatically extended for
 609 one twelve month period starting with the date of expiration. During such
 610 extension the letter of credit will not serve as financial assurance
 611 satisfying the requirements of this Part, and will not excuse the operator
 612 from the duty to provide substitute financial assurance.

613
 614 3) The Agency must return the letter of credit to the issuing institution for
 615 termination when either of the following occurs:

616
 617 A) An operator substitutes alternate financial assurance, as specified
 618 in this Subpart; or

619
 620 B) The Agency releases the operator from the requirements of this
 621 Subpart in accordance with Section 807.606(b) of this Part.

622
 623 h) Cure of default and refunds:

624
 625 1) The Agency shall release the financial institution if, after the Agency is
 626 allowed to draw on the letter of credit, the operator or another person
 627 provides financial assurance for closure and post-closure care of the site,
 628 unless the Agency determines that a plan or the amount of substituted
 629 financial assurance is inadequate to provide closure and post-closure care
 630 as required by this Part.

631
 632 2) After closure and post-closure care have been completed in accordance
 633 with the plans and requirements of this Part, the Agency shall refund any
 634 unspent money which was paid to the Agency by the financial institution
 635 subject to appropriation of funds by the Illinois General Assembly.

636
 637 (Source: Amended at 35 Ill. Reg. _____, effective _____)

638
 639 **Section 807.665 Closure Insurance**

640
 641 a) An operator may satisfy the requirements of this Subpart by obtaining closure and
 642 post-closure care insurance thatwhich conforms to the requirements of this

- 643 Section and submitting to the Agency an executed duplicate original of the
 644 insurance policy and the certificate of insurance for closure and/or post-closure
 645 care specified in Appendix A, Illustration F.~~an executed duplicate original of such~~
 646 ~~insurance policy to the Agency.~~
 647
- 648 b) The insurer must be licensed to transact the business of insurance by the Illinois
 649 Department of Insurance or at a minimum the insurer must be licensed to transact
 650 the business of insurance, or approved to provide insurance as an excess or
 651 surplus lines insurer, by the insurance department in one or more
 652 states~~Department of Insurance.~~
 653
- 654 c) The policy must be on forms filed with the Illinois Department of Insurance
 655 pursuant to Section 143(2) of the Illinois Insurance Code [215 ILCS 5/143(2)] and
 656 50 Ill. Adm. Code 753, or on forms approved by the insurance department of one
 657 or more states.~~approved by the Illinois Department of Insurance.~~
 658
- 659 d) Face amount:
- 660
- 661 1) The closure and post-closure care insurance policy must be issued for a
 662 face amount at least equal to the current cost estimate. The term "face
 663 amount" means the total amount the insurer is obligated to pay under the
 664 policy. Actual payments by the insurer will not change the face amount,
 665 although the insurer's future liability will be lowered by the amount of the
 666 payments.
 667
- 668 2) Whenever the current cost estimate decreases, the face amount may be
 669 reduced to the amount of the current cost estimate following written
 670 approval by the Agency.~~The Agency shall approve a reduction in the~~
 671 ~~amount of the policy whenever the current cost estimate decreases.~~
 672
- 673 3) Whenever the current cost estimate increases to an amount greater than the
 674 face amount, the operator, within 90 days after the increase, must either
 675 cause the face amount to be increased to an amount at least equal to the
 676 current cost estimate and submit evidence of the increase to the Agency or
 677 obtain other financial assurance, as specified in this Subpart, to cover the
 678 increase and submit evidence of the alternate financial assurance to the
 679 Agency.
 680
- 681 e) The closure and post-closure care insurance policy must guarantee that funds will
 682 be available to close the site and to provide post-closure care thereafter. The
 683 policy must also guarantee that, once closure begins, the insurer will be
 684 responsible for paying out funds, up to an amount equal to the face amount of the
 685 policy, upon the direction of the Agency to ~~asuch~~ party or parties as the Agency

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specifies. The insurer will be liable when:

- 1) The operator abandons the site;
 - 2) The operator is adjudicated bankrupt;
 - 3) The Board or a court of competent jurisdiction orders the site closed;
 - 4) The operator notifies the Agency that it is initiating closure; or
 - 5) Any person initiates closure with approval of the Agency.
- f) After initiating closure, an operator or any other person authorized to perform closure or post-closure care may request reimbursement for closure and post-closure care expenditures by submitting itemized bills to the Agency. Within 60 days after receiving bills for closure or post-closure care activities, the Agency will determine whether the expenditures are in accordance with the closure plan or post-closure care plan, and if so, will instruct the insurer to make reimbursement in such amounts as the Agency specifies in writing. If the Agency has reason to believe that the cost of closure and post-closure care will be significantly greater than the face amount of the policy, it may withhold reimbursement of ~~those such~~ amounts as it deems prudent until it determines that the operator is no longer required to maintain financial assurance.
- g) Cancellation:
- 1) The operator shall maintain the policy in full force and effect until the Agency consents to termination of the policy.
 - 2) The policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the operator and the Agency. Cancellation, termination or failure to renew may not occur, however, during the 120 days beginning ~~on~~with the date of receipt of the notice by both the Agency and the operator, as evidenced by the return receipts. Cancellation, termination or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration the premium due is paid.
- h) Each policy must contain a provision allowing assignment of the policy to a

729 successor operator. ~~The~~Such assignment may be conditional upon consent of the
730 insurer, provided ~~that~~such consent is not unreasonably refused.

731
732 (Source: Amended at 35 Ill. Reg. _____, effective _____)
733

734 **Section 807.666 Self-insurance for Non-Commercial Sites**
735

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

740
741 "Assets" means all existing and all probable future economic benefits
742 obtained or controlled by a particular entity.

743
744 "Current assets" means cash or other assets or resources commonly
745 identified as those which are reasonably expected to be realized in cash or
746 sold or consumed during the normal operating cycle of the business.

747
748 "Current liabilities" means obligations whose liquidation is reasonably
749 expected to require the use of existing resources properly classifiable as
750 current assets or the creation of other current liabilities.

751
752 "Generally accepted accounting principles" means the accounting and
753 auditing standards incorporated by reference at 35 Ill. Adm. Code
754 810.104(a)(2).

755
756 ~~"Generally accepted accounting principles" means Accounting Standards,~~
757 ~~Financial Accounting Standards Board, June, 1984, which is hereby~~
758 ~~incorporated by reference. This incorporation includes no later~~
759 ~~amendments or editions.~~

760
761 "Gross Revenue" means total receipts less returns and allowances.

762
763 "Independently audited" refers to an audit performed by an independent
764 certified public accountant in accordance with generally accepted auditing
765 standards.

766
767 "Liabilities" means probable future sacrifices of economic benefits arising
768 from present obligations to transfer assets or provide services to other
769 entities in the future as a result of past transactions or events.

770
771 "Net working capital" means current assets minus current liabilities.

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

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

- b) An operator may satisfy the financial assurance requirements of this Part by providing the following:
 - 1) Bond without surety promising to pay the cost estimate (~~subsection~~paragraph (c)).
 - 2) Proof that the operator meets the gross revenue test (~~subsection~~paragraph (d)).
 - 3) Proof that the operator meets the financial test (~~subsection~~paragraph (e)).
- c) Bond without surety. An operator utilizing self-insurance must provide a bond without surety on forms provided in Appendix A. The operator must promise to pay the current cost estimate to the Agency unless the operator provides closure and post-closure care in accordance with the closure and post-closure care plans.
- d) Gross revenue test. The operator must demonstrate that less than one-half of its gross revenues are derived from waste disposal operations.
- e) Financial test:
 - 1) To pass the financial test, the operator must meet the criteria of either ~~subsection~~paragraph (e)(1)(A) or (e)(1)(B):
 - A) The operator must have:
 - i) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5; and
 - ii) Net working capital and tangible net worth each at least six times the current cost estimate; and

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- iii) Tangible net worth of at least \$10 million; and
 - iv) Assets in the United States amounting to at least 90 percent of the operator's total assets and at least six times the current cost estimate.
- B) The operator must have:
- i) A current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
 - ii) Tangible net worth at least six times the current cost estimate; and
 - iii) Tangible net worth of at least \$10 million; and
 - iv) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the current cost estimate.
- 2) To demonstrate that it meets this test, the operator must submit the following items to the Agency:
- A) A letter signed by the operator's chief financial officer and worded as specified in Appendix A; and
 - B) A copy of the independent certified public accountant's report on examination of the operator's financial statements for the latest completed fiscal year; and
 - C) A special report from the operator's independent certified public accountant to the operator stating that:
 - i) The accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and
 - ii) In connection with that procedure, no matters came to the accountant's attention ~~that which~~ caused the accountant to believe that the specified data should be adjusted.

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- f) Updated information:
 - 1) After the initial submission of items specified in ~~subsections~~paragraphs (d) and (e), the operator must send updated information to the Agency within 90 days after the close of each succeeding fiscal year.
 - 2) If the operator no longer meets the requirements of ~~subsections~~paragraphs (d) and (e), the operator must send notice to the Agency of intent to establish alternate financial assurance. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the operator no longer meets the requirements.

- g) Qualified opinions. If the opinion required in ~~subsections~~paragraphs (e)(2)(B) and (e)(2)(C) includes an adverse opinion or a disclaimer of opinion, the Agency shall disallow the use of self-insurance. If the opinion includes other qualifications, the Agency shall disallow the use of self-insurance if:
 - 1) The qualifications relate to the numbers ~~that~~which are used in the gross revenue test or the financial test; and,
 - 2) In light of the qualifications, the operator has failed to demonstrate that it meets the gross revenue test or financial test.

- h) Parent corporation. An operator may satisfy the financial assurance requirements of this Part by:
 - 1) ~~Demonstrating~~demonstrating that a corporation ~~that~~which owns an interest in the operator meets the requirements of this Section~~gross revenue and financial tests;~~ and
 - 2) Providing a bond to the Agency with the parent corporation as surety on a form specified in Appendix A, Illustration H in accordance with Section 807.662(d), (e), (f), and (g) of this Part.~~The operator must also provide a bond with the parent as surety (Appendix A).~~

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

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

897

898 **Section 807.ILLUSTRATION A Trust Agreement**

899

900 TRUST AGREEMENT

901

902 Trust Fund Number _____

903

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

907

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

913

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

917

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

920

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

923

924 Whereas, Trustee is an entity which has authority to act as a trustee and whose trust operations
925 are regulated by the Illinois Department of Financial and Professional Regulation ~~Commissioner~~
926 ~~of Banks & Trust Companies~~ or who complies with the Corporate Fiduciary Act [205 ILCS
927 620]. ~~Foreign Corporations as Fiduciaries Act (Ill. Rev. Stat. 1983, ch. 17, par. 2801, et seq.)~~
928 (Line through any condition ~~that~~ which does not apply.)

929

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

931

932 Section 1. Definitions. As used in this Agreement:

933

934 a) The term "Grantor" means the operator who enters into this Agreement and any
935 successors or assigns of the operator.

936

937 b) The term "Trustee" means the Trustee who enters into this Agreement and any successor
938 Trustee.

939
940 Section 2. Identification of Sites and Cost Estimates. This Agreement pertains to the sites and
941 cost estimates identified on attached Schedule A (on Schedule A, list the name and address and
942 ~~current~~^{initial} cost estimate of each site for which financial assurance is demonstrated by this
943 agreement).

944
945 Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the
946 "Fund," for the benefit of the IEPA. The Grantor and the Trustee intend that no other third party
947 have access to the Fund except as provided in this agreement. The Fund is established initially
948 as consisting of the property, which is acceptable to the Trustee, described in Schedule B
949 attached to this agreement. Such property and any other property subsequently transferred to the
950 Trustee is referred to as the Fund, together with all earnings and profits on the Fund, less any
951 payments or distributions made by the Trustee pursuant to this agreement. The Fund shall be
952 held by the Trustee, in trust, as provided in this agreement. The Trustee shall not be responsible
953 nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect
954 from the Grantor, any payments necessary to discharge any liabilities of the Grantor.

955
956 Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from
957 the Fund as the IEPA shall direct, in writing, to provide for the payment of the costs of closure
958 and/or post-closure care of the sites covered by this agreement. The Trustee shall reimburse the
959 Grantor or other persons as specified by the IEPA from the Fund for closure and post-closure
960 expenditures in such amounts as the IEPA shall direct in writing. In addition, the Trustee shall
961 refund to the Grantor such amounts as the IEPA specifies in writing. Upon refund, such funds
962 shall no longer constitute part of the Fund.

963
964 Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall
965 consist of cash or securities acceptable to the Trustee.

966
967 Section 6. Trust Management. The Trustee shall invest and reinvest the principal and income of
968 the Fund and keep the Fund invested as a single fund, without distinction between principal and
969 income, in accordance with general investment policies and guidelines which the Grantor may
970 communicate in writing to the Trustee from time to time, subject, however, to the provisions of
971 this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee
972 shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary
973 and with the care, skill, prudence and diligence under the circumstances then prevailing which
974 persons of prudence, acting in a like capacity and familiar with such matters, would use in the
975 conduct of an enterprise of a like character and with like aims; except that:

976
977 a) Securities or other obligations of the Grantor, or any other owner or operator of the site,
978 or any of their affiliates as defined in the Investment Company Act of 1940, as amended,
979 15 USCU.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other
980 obligations of the Federal government or the State of Illinois;

981

982 b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to
983 the extent insured by the Federal Deposit Insurance Corporation or Federal Savings &
984 Loan Insurance Corporation.
985

986 c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for
987 a reasonable time and without liability for the payment of interest thereon.
988

989 Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:
990

991 a) To transfer from time to time any or all of the assets of the Fund to any common,
992 commingled or collective trust fund created by the Trustee in which the Fund is eligible
993 to participate, subject to all of the provisions thereof, to be commingled with the assets of
994 other trusts participating therein; and
995

996 b) To purchase shares in any investment company registered under the Investment Company
997 Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed,
998 underwritten or to which investment advice is rendered or the shares of which are sold by
999 the Trustee. The Trustee may vote such shares in its discretion.
1000

1001 Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions
1002 conferred upon the Trustee by the other provisions of this agreement or by law, the Trustee is
1003 expressly authorized and empowered:
1004

1005 a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by
1006 public or private sale. No person dealing with the Trustee shall be bound to see to the
1007 application of the purchase money or to inquire into the validity or expedience of any
1008 such sale or other disposition;
1009

1010 b) To make, execute, acknowledge and deliver any and all documents of transfer and
1011 conveyance and any and all other instruments that may be necessary or appropriate to
1012 carry out the powers granted in this agreement;
1013

1014 c) To register any securities held in the Fund in its own name or in the name of a nominee
1015 and to hold any security in bearer form or in book entry, or to combine certificates
1016 representing such securities with certificates of the same issue held by the Trustee in
1017 other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a
1018 qualified central ~~depository~~depository even though, when so deposited, such securities
1019 may be merged and held in bulk in the name of the nominee of such ~~depository~~depository
1020 with other securities deposited therein by another person, or to deposit or arrange for the
1021 deposit of any securities issued by the United States Government, or any agency or
1022 instrumentality thereof, with a Federal Reserve Bank, but the books and records of the
1023 Trustee shall at all times show that all such securities are part of the Fund.
1024

- 1025 d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings
1026 certificates issued by the Trustee, in its separate corporate capacity, or in any other
1027 banking institution affiliated with the Trustee, to the extent insured by the Federal
1028 Deposit Insurance Corporation or ~~Federal Savings & Loan Insurance Corporation~~; and
- 1029
- 1030 e) To compromise or otherwise adjust all claims in favor of or against the Fund.
- 1031

1032 Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or
1033 in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the
1034 Fund. All other expenses incurred by the Trustee, to the extent not paid directly by the Grantor,
1035 and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

1036

1037 Section 10. Annual Valuation. The Trustee shall annually furnish to the Grantor and to the
1038 IEPA a statement confirming the value of the Trust. The evaluation day shall be each year on
1039 the _____ day of _____. Any securities in the Fund shall be valued at market value as of
1040 the evaluation day. The Trustee shall mail the evaluation statement to the Grantor and the IEPA
1041 within 30 days after the evaluation day. The failure of the Grantor to object in writing to the
1042 Trustee within 90 days after the statement has been furnished to the Grantor and the IEPA shall
1043 constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any
1044 claim or liability against the Trustee with respect to matters disclosed in the statement.

1045

1046 Section 11. Advice of counsel. The Trustee may from time to time consult with counsel, who
1047 may be counsel to the Grantor, with respect to any question arising as to the construction of this
1048 agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent
1049 permitted by law, in acting upon the advice of counsel.

1050

1051 Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for
1052 its services as agreed upon in writing from time to time with the Grantor.

1053

1054 Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee,
1055 but such resignation or replacement shall not be effective until the Grantor has appointed a
1056 successor trustee and the successor accepts the appointment. The successor trustee shall have the
1057 same powers and duties as those conferred upon the Trustee hereunder. Upon the successor
1058 trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the
1059 successor trustee the funds and properties then constituting the Fund. If for any reason the
1060 Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may
1061 apply to a court of competent jurisdiction for the appointment of a successor trustee or for
1062 instructions. The successor trustee shall specify the date on which it assumes administration of
1063 the trust in a writing sent to the Grantor, the IEPA and the present Trustee by certified mail 10
1064 days before such change becomes effective. Any expenses incurred by the Trustee as a result of
1065 any of the acts contemplated by this Section shall be paid as provided in Section 9.

1066

1067 Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to

1068 the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit
1069 A or such other designees as the Grantor may designate by amendment to Exhibit A. The
1070 Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders,
1071 requests and instructions. All orders, requests and instructions by the IEPA to the Trustee shall
1072 be in writing, signed by the IEPA Director or his/her ~~designee~~designees, and the Trustee shall act
1073 and shall be fully protected in acting in accordance with such orders, requests and instructions.
1074 The Trustee shall have the right to assume, in the absence of written notice to the contrary, that
1075 no event constituting a change or a termination of the authority of any person to act on behalf of
1076 the Grantor or IEPA hereunder has occurred. The Trustee shall have no duty to act in the
1077 absence of such orders, requests and instructions from the Grantor and/or IEPA, except as
1078 provided in this agreement.

1079
1080 Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the IEPA, by
1081 certified mail within 10 days following the expiration of the 30-day period after the anniversary
1082 of the establishment of the Trust, if no payment is received from the Grantor during that period.
1083 After the pay-in period is completed, the Trustee shall not be required to send a notice of
1084 nonpayment.

1085
1086 Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in
1087 writing executed by the Grantor, the Trustee and the IEPA Director or his/her designee, or by the
1088 Trustee and the IEPA Director or his/her designee if the Grantor ceases to exist.

1089
1090 Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this
1091 Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until
1092 terminated at the written agreement of the Grantor, the Trustee and the IEPA Director or his/her
1093 designee, or by the Trustee and the IEPA Director or his/her designee, if the Grantor ceases to
1094 exist. Upon termination of the Trust, all remaining trust property, less final trust administration
1095 expenses, shall be delivered to the Grantor.

1096
1097 Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any
1098 nature in connection with any act or omission, made in good faith, in the administration of this
1099 Trust, or in carrying out any directions by the Grantor or the IEPA Director or his/her designee
1100 issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless
1101 by the Grantor or from the Trust Fund, or both, from and against any personal liability to which
1102 the Trustee may be subjected by reason of any act or conduct in its official capacity, including all
1103 expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

1104
1105 Section 19. Choice of Law. This Agreement shall be administered, construed and enforced
1106 according to the laws of the State of Illinois.

1107
1108 Section 20. Interpretation. As used in this Agreement, words in the singular include the plural
1109 and words in the plural include the singular. The descriptive headings for each Section of this
1110 Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

1111
 1112 In Witness Whereof the parties have caused this Agreement to be executed by their respective
 1113 officers duly authorized and their corporate seals to be hereunto affixed and attested as of the
 1114 date first above written. The parties below certify that the wording of this Agreement is identical
 1115 to the wording specified in 35 Ill. Adm. Code 807.Appendix A, Illustration A as these
 1116 regulations were constituted on the date this Agreement was entered.
 1117
 1118

Attest:

Signature of Grantor

Typed Name

Title

Seal

Attest:

Signature of Trustee

Typed Name

Title

Seal

1119
 1120 (Source: Amended at 35 Ill. Reg. _____, effective _____)
 1121

1122 **Section 807.APPENDIX A Financial Assurance Forms**

1123

1124 **Section 807.ILLUSTRATION C Forfeiture Bond**

1125

1126

1127

FORFEITURE BOND

Date bond executed: _____

Effective date: _____

Principal: _____

Type of organization: _____

State of incorporation: _____

Surety: _____

Sites:

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

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

Total penal sum of bond: \$ _____

Surety's bond number: _____

1128
1129 The Principal and the Surety promise to pay the Illinois Environmental Protection Agency
1130 ("IEPA") the above penal sum unless the principal provides closure and post-closure care for
1131 each site in accordance with the closure and post-closure care plans for that site. To the payment
1132 of this obligation the Principal and Surety jointly and severally bind themselves, their heirs,
1133 executors, administrators, successors and assigns.

1134
1135 Whereas the Principal is required, under Section 21(d) of the Environmental Protection Act [415
1136 ILCS 5/21(d)], Ill. Rev. Stat. 1983, ch. 111½, par. 1021(d) to have a permit to conduct a waste
1137 disposal operation;

1138
1139 Whereas the Principal is required, under Section 21.1 of the Environmental Protection Act [415
1140 ILCS 5/21.1] Ill. Rev. Stat. 1983, ch. 111½, par. 1021.1, to provide financial assurance for
1141 closure and post-closure and post-closure care; and

1142
1143 Whereas the Surety is licensed by the Illinois Department of Insurance or is licensed to transact
1144 the business of insurance, or approved to provide insurance as an excess or surplus lines insurer,
1145 by the insurance department in one or more states;

1146
1147 Whereas the Principal and Surety agree that this bond shall be governed by the laws of the State
1148 of Illinois;

1149
1150 The Surety shall pay the penal sum to the IEPA if, during the term of the bond, the Principal fails
1151 to provide closure ~~or~~ and post-closure care for any site in accordance with the closure and post-
1152 closure care plans for that site as guaranteed by this bond. The Principal fails to so provide when
1153 the Principal:

- 1154
- 1155 a) Abandons the site;
 - 1156
 - 1157 b) Is adjudicated bankrupt;
 - 1158
 - 1159 c) Fails to initiate closure of the site or post-closure care when ordered to do so by
1160 the Board or a court of competent jurisdiction; or
 - 1161
 - 1162 d) Notifies the IEPA Agency that it has initiated closure, or initiates closure, but fails
1163 to close the site or provide post-closure care in accordance with the closure and
1164 post-closure care plans; or
 - 1165
 - 1166 e) Fails to provide alternate financial assurance and obtains the IEPA written
1167 approval of the assurance provided within 90 days after receipt by both the
1168 Principal and the IEPA of a notice from the Surety that the bond will not be
1169 renewed for another term.
- 1170

1171 The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails
1172 notice to the Surety that the Principal has met one or more of the conditions described
1173 above failed to so provide closure and post-closure care. Payment shall be made by check or
1174 draft payable to the State of Illinois, Landfill Closure and Post-Closure Fund. The
1175 liability of the Surety shall not be discharged by any payment or succession of payments unless
1176 and until such payment or payments shall amount in the aggregate to the penal sum of the bond.
1177 In no event shall the obligation of the Surety exceed the amount of the penal sum.

1178
1179 This bond shall expire on the _____ [date] day of _____ [month], _____ [year]; but
1180 such expiration date shall be automatically extended for a period of _____ [at least one
1181 year] on _____ [date] and on each successive expiration date, unless, at least 120 days
1182 before the current expiration date, the Surety notifies both the IEPA and the owner or operator by
1183 certified mail that the Surety has decided not to extend the term of this surety bond beyond the
1184 current expiration date. The 120 days will begin on the date when both the owner or operator
1185 and the IEPA have received the notice, as evidenced by the return receipts provided, however,
1186 that if the Principal fails to provide substitute financial assurance prior to the expiration date, and
1187 the IEPA mails notice of such failure to the Surety within 30 days after such date, the term of this
1188 bond shall be automatically extended for one twelve-month period starting with the date of
1189 expiration of the bond.

1190
1191 The Principal may terminate this bond by sending written notice to the Surety; provided,
1192 however, that no such notice shall become effective until the Surety receives written
1193 authorization for termination of the bond from the IEPA in accordance with 35 Ill. Adm. Code
1194 807.604.

1195
1196 In Witness Whereof, the Principal and Surety have executed this Forfeiture Bond and have
1197 affixed their seals on the date set forth above.

1198
1199 The persons whose signatures appear below certify that they are authorized to execute this surety
1200 bond on behalf of the Principal and Surety and that the wording of this surety bond is identical to
1201 the wording specified in 35 Ill. Adm. Code 807.Appendix A, Illustration C as such regulation
1202 was constituted on the date this bond was executed.

1203
Principal _____ Corporate Surety _____
Signature _____ Name _____

Typed Name _____ Address _____

Title _____ State of Incorporation _____

Date

Signature

Typed Name

Title

Corporate seal

Corporate seal

Bond premium: \$ _____

1204
1205

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

1206 **Section 807.APPENDIX A Financial Assurance Forms**

1207
1208 **Section 807.ILLUSTRATION D Performance Bond**

1209
1210 **PERFORMANCE BOND**

1211

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: _____

1212
1213 The Principal and the Surety promise to pay the Illinois Environmental Protection Agency
1214 ("IEPA") the above penal sum unless the Principal or Surety provides closure and post-closure
1215 care for each site in accordance with the closure and post-closure care plans for that site. To the
1216 payment of this obligation the Principal and Surety jointly and severally bind themselves, their
1217 heirs, executors, administrators, successors and assigns.

1218
1219 Whereas the Principal is required, under Section 21(d) of the Environmental Protection Act [415
1220 ILCS 5/21(d)], Ill. Rev. Stat. 1983, ch. 111½, par. 1021(d) to have a permit to conduct a waste
1221 disposal operation;

1222
1223 Whereas the Principal is required, under Section 21.1 of the Environmental Protection Act [415
1224 ILCS 5/21.1] Ill. Rev. Stat. 1983, ch. 111½, par. 1021.1, to provide financial assurance for
1225 closure and post-closure care; and

1226
1227 Whereas the Surety is licensed by the Illinois Department of Insurance or is licensed to transact
1228 the business of insurance, or approved to provide insurance as an excess or surplus lines insurer,
1229 by the insurance department in one or more states;

1230
1231 Whereas the Principal and Surety agree that this bond shall be governed by the laws of the State
1232 of Illinois;

1233
1234 The Surety shall pay the penal sum to the IEPA or provide closure and post-closure care in
1235 accordance with the closure and post-closure care plans for the site if, during the term of the
1236 bond, the Principal fails to provide closure ~~and~~ post-closure care for any site in accordance
1237 with the closure and post-closure care plans for that site as guaranteed by this bond. The
1238 Principal fails to so provide when the Principal:

- 1239
- 1240 a) Abandons the site;
 - 1241
 - 1242 b) Is adjudicated bankrupt;
 - 1243
 - 1244 c) Fails to initiate closure of the site or post-closure care when ordered to do so by
1245 the Board or a court of competent jurisdiction; ~~or~~
 - 1246
 - 1247 d) Notifies the ~~IEPA~~ Agency that it has initiated closure, or initiates closure, but fails
1248 to close the site or provide post-closure care in accordance with the closure and
1249 post-closure care plans; or
 - 1250
 - 1251 e) Fails to provide alternate financial assurance and obtain the IEPA written
1252 approval of the assurance provided within 90 days after receipt by both the
1253 Principal and the IEPA of a notice from the Surety that the bond will not be
1254 renewed for another term.

1255
1256 The Surety shall pay the penal sum of the bond to the IEPA or notify the IEPA that it intends to
1257 provide closure and post-closure care in accordance with the closure and post-closure care plans
1258 for the site within 30 days after the IEPA mails notice to the Surety that the Principal has failed
1259 to fulfill one or more of the conditions described above~~failed to so provide closure and post-~~
1260 ~~closure care.~~ Payment shall be made by check or draft payable to the State of Illinois, Landfill
1261 Closure and Post-Closure~~closure~~ Fund.

1262
1263 If the Surety notifies the ~~IEPA~~Agency that it intends to provide closure and post-closure care,
1264 then the Surety must initiate closure and post-closure care within 60 days after the IEPA mailed
1265 notice to the Surety that the Principal failed to fulfill one or more of the conditions described
1266 above~~failed to provide closure and post-closure care.~~ The Surety must complete closure and
1267 post-closure care in accordance with the closure and post-closure care plans, or pay the penal
1268 sum.

1269
1270 The liability of the Surety shall not be discharged by any payment or succession of payments
1271 unless and until such payment or payments shall amount in the aggregate to the penal sum of the
1272 bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

1273
1274 This bond shall expire on the _____ day of _____, _____ [date]; but such
1275 expiration date shall be automatically extended for a period of _____ [at least one year] on
1276 _____ [date] and on each successive expiration date, unless, at least 120 days before the
1277 current expiration date, the Surety notifies both the IEPA and the Principal by certified mail that
1278 the Surety has decided not to extend the term of this surety bond beyond the current expiration
1279 date. The 120 days will begin on the date when both the operator and the IEPA have received
1280 the notice, as evidenced by the return receipts.~~provided, however, that if the Principal fails to~~
1281 ~~provide substitute financial assurance prior to the expiration date, and the IEPA mails notice of~~
1282 ~~such failure to the Surety within 30 days after such date, the term of this bond shall be~~
1283 ~~automatically extended for one twelve-month period starting with the date of expiration of the~~
1284 ~~bond.~~

1285
1286 The Principal may terminate this bond by sending written notice to the Surety; provided,
1287 however, that no such notice shall become effective until the Surety receives written
1288 authorization for termination of the bond from the IEPA in accordance with 35 Ill. Adm. Code
1289 807.604.

1290
1291 In Witness Whereof, the Principal and Surety have executed this Performance~~Forfeiture~~ Bond
1292 and have affixed their seals on the date set forth above.

1293
1294 The persons whose signatures appear below certify that they are authorized to execute this surety
1295 bond on behalf of the Principal and Surety and that the wording of this surety bond is identical to
1296 the wording specified in 35 Ill. Adm. Code 807. Appendix A, Illustration D as such regulation
1297 was constituted on the date this bond was executed.

1298

Principal

Corporate Surety

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Title

Corporate seal

Corporate seal

Bond premium: \$ _____

1299

1300

1301

(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
~~2200 Churchill Road~~
~~Springfield, Illinois 62706~~

Dear Sir or Madam:

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

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

1. your sight draft, bearing reference to this letter of credit No. _____; and;
2. your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Environmental Protection Act [415 ILCS 5], Ill. Rev. Stat. 1983, ch. 111½, par. 1001 et seq. 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 [operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. The 120 days will begin on the date when both the operator and the IEPA have received the notice, as evidenced by the return receipts. 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

1345 after the date of receipt by both you and _____ [owner's or operator's name], as shown on
1346 the signed return receipts; ~~but, such expiration date shall be automatically extended for one~~
1347 ~~period of twelve months starting with the expiration date if the operator fails to substitute~~
1348 ~~alternate financial assurance prior to the expiration of this letter of credit and you notify us of~~
1349 ~~such failure within 30 days after the above expiration date.~~

1350
1351 Whenever this letter of credit is drawn on under and in compliance with the terms of this credit,
1352 we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the
1353 draft directly into the State of Illinois Landfill Closure and Post-Closure Fund ~~landfill closure and~~
1354 ~~post-closure fund~~ in accordance with your instructions.

1355
1356 We certify that the wording of this letter of credit is identical to the wording specified in 35 Ill.
1357 Adm. Code 807. Appendix A, Illustration E as such regulations were constituted on the date
1358 shown below. ~~This letter of credit is governed by the Uniform Commercial Code (Ill. Rev. Stat.~~
1359 ~~1983, ch. 26, pars. 1-101 et seq.).~~

1360
1361
1362
1363

Typed Name

Title

Date

Name and address of issuing institution

1364
1365 This credit is subject to [insert "the most recent edition of the Uniform Commercial Customs and
1366 Practice for Documentary Credits, published and copyrighted by the International Chamber of
1367 Commerce," or "the Uniform Commercial Code"].

1368
1369 (Source: Amended at 35 Ill. Reg. _____, effective _____)

1370 **Section 807.APPENDIX A Financial Assurance Forms**

1371
1372 **Section 807.ILLUSTRATION F Certificate of Insurance for Closure and/or Post-Closure**
1373 **Care**

1374
1375 **CERTIFICATE OF INSURANCE FOR CLOSURE AND/OR POST-CLOSURE CARE**
1376

Name and Address of Insurer ("Insurer"):

Name and Address of Insured ("Insured"):

Sites Covered:

Name _____

Address _____

City _____

Amount insured for this site: \$ _____

Name _____

Address _____

City _____

Amount insured for this site: \$ _____

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

Face Amount _____

Policy Number _____

Effective Date _____

1378 The Insurer hereby certifies that it is licensed to transact the business of insurance by the Illinois
1379 Department of Insurance or that it is licensed to transact the business of insurance, or approved
1380 to provide insurance as an excess or surplus lines insurer, by the insurance department in one or
1381 more states~~Department of Insurance.~~

1382
1383 The insurer hereby certifies that it has issued to the Insured the policy of insurance identified
1384 above to provide financial assurance for closure and post-closure care for the sites identified
1385 above. The Insurer further warrants that such policy conforms in all respects with the
1386 requirements of 35 Ill. Adm. Code 807.665, as applicable and as such regulations were
1387 constituted on the date shown immediately below. It is agreed that any provision of the policy
1388 inconsistent with such regulations is hereby amended to eliminate such inconsistency.
1389

1390 Whenever requested by the Illinois Environmental Protection Agency ("IEPA"), the Insurer
1391 agrees to furnish to the IEPA a duplicate original of the policy listed above, including all
1392 endorsements thereon.

1393
1394 I hereby certify that the wording of this certificate is identical to the wording specified in 35 Ill.
1395 Adm. Code 807.Appendix A, Illustration F as such regulations were constituted on the date
1396 shown below.

1397
1398 Name (Authorized signature for Insurer)
1399

Typed Name

Title

Date

1400
1401 (Source: Amended at 35 Ill. Reg. _____, effective _____)

1402 **Section 807.APPENDIX A Financial Assurance Forms**

1403

1404 **Section 807.ILLUSTRATION G Owner's or Operator's Bond Without Surety**

1405

1406 **OWNER'S OR OPERATOR'S BOND WITHOUT SURETY**

1407

Date bond executed: _____

Effective date: _____

Owner or Operator: _____

Owner's or Operator's
address: _____

Site: _____

Site address: _____

Penal sum: \$ _____

1408

1409

1410

1411

1412

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

Owner or Operator

Signature

Typed Name

Title

Date

Corporate Seal

1415 **Section 807.APPENDIX A Financial Assurance Forms**

1416
1417 **Section 807.ILLUSTRATION H Owner's or Operator's Bond with Parent Surety**

1418
1419 **OWNER'S OR OPERATOR'S BOND WITH PARENT SURETY**

1420
Date bond executed: _____

Effective Date: _____

Surety: _____

Surety's address: _____

Owner or Operator: _____

Owner or Operator's address: _____

Site: _____

Site address: _____

Penal sum: \$ _____

1421
1422 The Owner or Operator and Surety promise to pay the above penal sum to the Illinois
1423 Environmental Protection Agency ("IEPA") unless the Owner or Operator provides closure and
1424 post-closure care of the site in accordance with the closure and post-closure care plans for the
1425 site. To the payment of this obligation the Owner or Operator and Surety jointly and severally
1426 bind themselves, their heirs, executors, administrators, successors and assigns.

1427
1428 Whereas the Owner or Operator is required, under Section 21(d) of the Environmental Protection
1429 Act [415 ILCS 5/21(d)], ~~Ill. Rev. Stat. 1983, ch. 111½, par. 1021(d)~~ to have a permit to conduct
1430 a waste disposal operation; and

1431
1432 Whereas the Owner or Operator is required, under Section 21.1 of the Environmental Protection
1433 Act [415 ILCS 5/21.1] ~~Ill. Rev. Stat. 1983, ch. 111½, par. 1021.1~~, to provide financial assurance
1434 for closure and post-closure care; and

1435
1436 Whereas the Owner or Operator and Surety agree that this bond shall be governed by the laws of
1437 the State of Illinois; and

1438
1439 Whereas the Surety is a corporation which owns an interest in the Owner or Operator;

1440

1441 The Surety shall pay the penal sum to the IEPA if, during the term of the bond, the Owner or
1442 Operator fails to provide closure ~~and~~ post-closure care for any site in accordance with the
1443 closure and post-closure care plans for that site as guaranteed by this bond. The Owner or
1444 Operator fails to so provide when the Owner or Operator:

- 1445
- 1446 a) Abandons the site;
 - 1447
 - 1448 b) Is adjudicated bankrupt;
 - 1449
 - 1450 c) Fails to initiate closure of the site or post-closure care when ordered to do so by
 - 1451 the Board or a court of competent jurisdiction; ~~or~~
 - 1452
 - 1453 d) Notifies the Agency that it has initiated closure, or initiates closure, but fails to
 - 1454 close the site or provide post-closure care in accordance with the closure and post-
 - 1455 closure care plans; or
 - 1456
 - 1457 e) Fails to provide alternate financial assurance and obtain the IEPA written
 - 1458 approval of the assurance provided within 90 days after receipt by the IEPA of a
 - 1459 notice from the Surety that the bond will not be renewed for another term.
 - 1460

1461 The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails
1462 notice to the Surety that the Owner or Operator has met one or more of the conditions described
1463 above ~~failed to so provide closure and post-closure care~~. Payment shall be made by check or
1464 draft payable to the State of Illinois, Landfill Closure and Post-Closure ~~closure~~ Fund.

1465

1466 The liability of the Surety shall not be discharged by any payment or succession of payments
1467 unless and until such payment or payments shall amount in the aggregate to the penal sum of the
1468 bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

1469

1470 This bond shall expire on the _____ [date] day of _____ [month], _____ [year]; but
1471 such expiration date shall be automatically extended for a period of _____ [at least one
1472 year] on _____ [date] and on each successive expiration date, unless, at least 120 days
1473 before the current expiration date, the Surety notifies both the IEPA and the Owner or Operator
1474 by certified mail that the Surety has decided not to extend this surety bond beyond the current
1475 expiration date. The 120 days will begin on the date when both the Owner or Operator and the
1476 IEPA have received the notice, as evidenced by the return receipts.

1477

1478 The Owner or Operator may terminate this bond by sending written notice to the Surety;
1479 provided, however, that no such notice shall become effective until the Surety received written
1480 authorization for termination of the bond from the IEPA in accordance with 35 Ill. Adm. Code
1481 807.604.

1482

1483 In Witness Whereof, the Owner or Operator and Surety have executed this bond and have affixed

1484 their seals on the date set forth ~~below~~^{above}.

1485
1486 The persons whose signatures appear below certify that they are authorized to execute this surety
1487 bond on behalf of the Owner or Operator and Surety and that the wording of this surety bond is
1488 identical to the wording specified in 35 Ill. Adm. Code 807.Appendix A, Illustration H as such
1489 regulation was constituted on the date this bond was executed.

<p>1490 <u>Owner or Operator</u></p> <p>Signature</p> <hr/> <p>Typed Name</p> <hr/> <p>Title</p> <hr/> <p>Date</p> <hr/> <p>Corporate seal</p>	<p>Surety</p> <p>Name</p> <hr/> <p>Address</p> <hr/> <p>State of Incorporation</p> <hr/> <p>Signature</p> <hr/> <p>Typed Name</p> <hr/> <p>Title</p> <hr/> <p>Corporate seal</p>
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1491
1492 (Source: Amended at 35 Ill. Reg. _____, effective _____)