

ILLINOIS POLLUTION CONTROL BOARD
April 21, 2011

IN THE MATTER OF:)
)
FINANCIAL ASSURANCE) R10-9
INSTRUMENTS—RENEWAL AND) (Rulemaking - Land)
TERMS: AMENDMENTS TO 35 ILL. ADM.)
CODE 807.SUBPART F AND APPENDIX A,)
810.104, 811.SUBPARTS C, G AND)
APPENDIX A.)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by G.L. Blankenship)

The Board today proposes for second notice review by the Joint Commission on Administrative Rules (JCAR) amendments to its waste disposal regulations. *See* 35 Ill. Adm. Code 807.Subpart F and Appendix A, 810.104, and 811.Subparts C and G and Appendix A.

The Illinois Environmental Protection Agency (Agency or IEPA) initiated this proceeding by filing a rulemaking proposal on July 27, 2009. (Ag. Prop.). 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 landfill sites. The proposal updates the rules to correspond with the hazardous waste financial assurance standards derived from the federal Resource Conservation and Recovery Act (RCRA) Subtitle C (42 U.S.C. 6921 *et seq.* (2007)) hazardous waste regulations and the Board's other financial assurance programs. In addition to the changes proposed by the Agency, the Board on its own motion corrected a typographical error under 35 Ill. Adm. Code Part 811 Subpart C.

After conducting two public hearings in this matter and considering the entire record, the Board on February 3, 2011, proposed for first notice publication the amendments to its waste disposal regulations.

In the opinion below, the Board first provides the procedural history of this rulemaking. The Board then summarizes the Agency's original proposal, testimony and pre-filed testimony for both hearings, and *Errata* sheet filed on June 15, 2010. The Board then discusses the issues raised in the record of this proceeding and finally concludes this opinion.

The order following this opinion sets forth the proposed amendments for second notice review by JCAR.

PROCEDURAL HISTORY

On July 27, 2009, the IEPA filed a proposal for a statewide general rulemaking, requesting that the Board update specific segments of the Illinois non-hazardous solid waste landfill regulations. In an August 6, 2009 order, the Board accepted the Agency's proposal for hearing and granted the Agency leave to file fewer than four copies of each document proposed for incorporation by reference.

In a letter dated October 5, 2009, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study of the Agency's rulemaking proposal. *See* 415 ILCS 5/27(b) (2008). As of the date of this order, the DCEO has not responded to this request.

On March 26, 2010, hearing officer Daniel Robertson scheduled a hearing to be held on May 11, 2010, in Springfield, Sangamon County. On April 21, 2010, the Agency submitted the pre-filed testimony of Mr. Brian S. White. No other filings were received. The hearing took place as scheduled on May 11, 2010. During the hearing, the hearing officer admitted Mr. White's pre-filed testimony as the only exhibit into the record (Hearing Exh. 1).

In an order dated May 14, 2010, the hearing officer scheduled a second hearing on July 15, 2010 in Chicago, Cook County. On June 15, 2010, the Agency pre-filed the testimony of Mr. White and Errata Sheet Number 1. No other filings were received.

During the hearing, the hearing officer admitted two exhibits into the record. Those exhibits were: *Errata* Sheet Number 1 (Hearing Exh. 2) (herein referred to as ES#1); and Pre-Filed testimony of Brian S. White (Hearing Exh. 3).

Final comments were due by August 16, 2010. No final comments nor any other filings were received. On February 3, 2011, the Board adopted the proposal for first notice publication. This notice was published in the *Illinois Register* on February 25, 2011.

On February 23, 2011, JCAR filed its changes to the proposal.

The Board received one public comment during the public comment filing period filed by the Agency on April 11, 2011 (PC).

RELATION TO FEDERAL RCRA REGULATIONS

The proposed amendments update specified segments of Illinois' non-hazardous waste rules to more nearly correspond with the financial assurance standards derived from the federal Resource Conservation and Recovery Act (RCRA) Subtitle C (42 U.S.C. 6921 *et seq.* (2007)) hazardous waste regulations.

By way of background, the Agency explained that the proposed language for the financial instruments was derived from the language in the federal rules at 40 CFR §§ 264 and 265, Subpart H as well as 40 CFR § 258.74. Hearing Exh. 1 at 4. More specifically, these parts are:

- 1) 40 CFR § 258 Criteria for Municipal Solid Waste Landfills

Subpart G Financial Assurance Criteria

258.74 Allowable Mechanisms

- 2) 40 CFR § 264 Standards for owners and operators of hazardous waste treatment, storage, and disposal facilities

Subpart H Financial Requirements (264.140-264.151)

- 3) 40 CFR § 265 Interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities

Subpart H Financial Requirements (265.140-265.150)

SUMMARY OF AGENCY'S ORIGINAL PROPOSAL

The Agency's proposal summarized the main purpose of the financial assurance rules as follows:

[T]o 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. Ag. Prop. at 1-2.

The proposed amendments are intended to bring consistency throughout the Board's financial assurance programs. Ag. Prop. at 2. The financial assurance rules under the Board's non-hazardous waste provisions were adopted in 1985 for Part 807, Subpart F (R84-22C) and in 1990 for Part 811, Subpart G (R88-7). Besides three identical in substance rulemakings in 1993 (R93-10), 1997 (R97-20), and 1999 (R99-1), the Agency stated that the rules have remained substantially unchanged since they were adopted. Ag. Prop. at 1.

One of the primary reasons for the proposed amendments is to add "evergreen" renewal language and reduce terms in bonds and letters of credit. Ag. Prop. at 2-3. The Agency anticipated this will "result in an increase in the availability of these instruments as a financial assurance option for more landfills." Hearing Exh. 1 at 3.

Addition of Evergreen Renewal Language

The proposed amendments add "evergreen" renewal language to the bonds and letters of credit that are obtained by waste disposal sites. Ag. Prop. at 2-3. The proposed "evergreen renewal" language would provide for an automatic extension of the expiration date for a period of at least one year, unless the issuing institution provides notification that the issuer will not

extend the bond or letter of credit beyond the expiration date. (*See generally* Proposed Language in Parts 807 and 811, Appendix A, Financial Assurance Forms.)

The Agency explained that the addition of evergreen renewal language would shift the responsibility and costs for maintaining continuous financial assurance from the Agency to the owners, operators, and sureties. The Agency explained:

Currently, under Parts 807 and 811, if a bond or letter of credit is not renewed at the expiration of a four or five year term, the bond or letter of credit will expire unless the Illinois EPA acts to preserve it. The existing regulations provide for an automatic extension of the financial assurance for an additional twelve months but only if the Illinois EPA provides notice to the issuing institution within 30 days after expiration of the instrument. This imposes additional administrative responsibility and costs on the Illinois EPA for tracking and notification and is inconsistent with the Board's other financial assurance programs. Under the Board's other financial assurance programs at Parts 724, 725, 704 and 848 the responsibility and costs for ensuring continuous financial assurance coverage fall on the facility owners, operators and the sureties. Ag. Prop. at 3-4.

Therefore, the Agency proposed that the financial assurance mechanism for bonds and letters of credit be automatically renewed for at least one year unless the financial institution or surety notifies the owner or operator and the Agency at least 120 days before the expiration date that it will not renew. Hearing Exh. 1 at 5. (*See also* proposed amendments for 807.662(g)(2), 807.663(g)(2), 807.664(g)(2), 811.711(g)(2), 811.712(g)(2), and 811.713(g)(2) and the corresponding illustrations in Appendix A).

If the financial assurance is not renewed, the proposed amendments would require the owner or operator to provide alternative financial assurance. Hearing Exh. 1 at 4. (*See also* proposed amendments for 807.662(e)(1)(B), 807.663(e)(1)(B), 811.711(e)(1)(B), and 811.712(e)(1)(B)). In the event alternative financial assurance is not provided and approved by the Agency before the expiration of the current financial assurance, the amendments would require the Agency to collect on the current financial assurance mechanism. Hearing Exh. 1 at 4-5. (*See also* proposed amendments for 807.662(e)(2)(E), 807.663(e)(2)(E), 807.664(e)(2)(E), 811.711(e)(2)(F), 811.712(e)(2)(F), and 811.713(e)(2)(F)).

The Agency stated that these amendments would "protect the public, environment and the State against an expiration of coverage that could leave a landfill without funds for closure and post-closure care or corrective action." Ag. Prop. at 3.

Reduction in Term

The amendments would also reduce the required term of the instruments from the current minimum of four or five years to at least one year. Currently, the term is four years for landfills subject to Part 807 and five years for landfills subject to Part 811. Hearing Exh. 1 at 5. (*See also* proposed amendments for 807.662(g)(1), 807.663(g)(1), 811.711(g)(1), 811.712(g)(1), and 811.713(g)(1)).

Trust Agreements

For trust agreements, the current rules do not require cost estimates for closure and post-closure care to be updated. The proposed amendments would require that cost estimates be updated so that funding of the trust would reflect current estimates and protect against a shortage. Hearing Exh. 1 at 5-6. (*See also* 811.710(c), 807.661(c), and corresponding Illustration A in 807 and 811). The current rules also designate the Agency Director as the only person responsible for approving minor changes in trust agreements. Hearing Exh. 1 at 5. The proposed amendments would allow the Agency Director to appoint a designee to approve minor changes and improve efficiency within the Agency. *Id.* at 5-6. (*See also* 807 and 811, Illustration A).

Self-Insurance

For the self-insurance option, if a unit of local government fails the required financial test, the current rules do not require the unit of local government to provide evidence of alternative financial assurance to the Agency. Hearing Exh. 1 at 6. The proposed amendments would require a unit of local government to provide evidence of alternative financial assurance to the Agency to protect against a shortage of funds for closure and post-closure care. *Id.* (*See also* 811.716(c)(5)).

Sureties and Insurers in Other States

Currently, Part 807 limits surety companies and insurers to those licensed only in Illinois. However, Part 811 allows sureties and insurers licensed by other states. The proposed amendments would allow surety companies and excess or surplus lines insurers that are licensed in other states to also be used for Part 807 permits. Hearing Exh. 1 at 6.

Updates and Corrections

The amendments are also proposed to update citations, incorporations by reference, editions, definitions, various State agency information, and language based on administrative rules or guidelines. Hearing Exh. 1 at 9-11. Several corrections to errors found in the original rulemaking have also been proposed. *Id.* at 11-13, ES #1 at 1-2.

Other Revisions

Several other revisions are proposed that “do not change the substantive intent of the law but are a reworking of the language of the regulations that makes the intent of the law clearer or more accurate. Administration of the financial assurance programs for over 25 years has identified certain language that has been problematic or misunderstood.” Hearing Exh. 1 at 6.

Agency’s Public Outreach and Comments Received

The Agency indicated that it contacted the following associations in its outreach efforts:

- Illinois Bankers Association
- Community Bankers Association of Illinois
- Illinois League of Financial Institutions
- Illinois Counties Solid Waste Management Association
- Solid Waste Association of North America
- Waste Management
- Allied Waste
- National Solid Wastes Management Association

The Agency's proposal included the comments of three associations:

- Jay Stevenson, Illinois League of Financial Institutions (Ag. Prop. Exh. 1.)
- Bruce Baker, Illinois Bankers Association (IBA) (Ag. Prop. Exh. 2.)
- Michael Damewood, St. Paul Travelers Bond (Ag. Prop. Exh. 3.)

Speaking for the Illinois League of Financial Institutions, Mr. Stevenson stated, "The changes, as they may relate to our industry, will have a positive impact and are supported by the Illinois League of Financial Institutions." Ag. Prop. Exh. 1.

On behalf of St. Paul Travelers Bond (SPTB), Mr. Damewood also commented in support of the Agency's proposal, stating:

Reducing the length of closure assurance from five years would have several beneficial impacts. First, more waste companies would be able to obtain surety bonding as an alternative form of financial assurance. As the current law stands, only the largest companies can obtain surety credit for the five year term required. Secondly, the cost of the financial assurance would become much more in line with the risk being undertaken. The risk of a one to two year bond is simply much easier to quantify than that of a five year obligation. Ag. Prop. Exh. 3 at 1.

On behalf of the Illinois Bankers Association (IBA), Mr. Baker identified the potential for increased costs resulting from the Agency's proposal and proposed alternate wording for the letters of credit, stating:

The proposed change would, in many cases, result in the EPA drawing on letters of credit issued to landfill operators based on an event (the failure to arrange alternative financial assurance) that cannot be determined at the time the underwriting decision is made. Consequently, the proposed change, if adopted, will make it more difficult for landfill operators to obtain such letters of credit. Alternatively, to the extent these letters of credit remain available, the proposed change would result in increased costs for the letters of credit. Ag. Prop. Exh. 2 at 1.

AGENCY TESTIMONY

May 11, 2010 Hearing Prefiled Testimony of Brian S. White

The Agency offered the testimony of Brian S. White. Mr. White is the manager of the Compliance Unit in the Waste Reduction and Compliance Section of the Bureau of Land (Compliance Unit) at the IEPA. Hearing Exh. 1 at 2. The Compliance Unit is generally responsible for “compliance tracking activities in the Bureau of Land and for reviewing and evaluating compliance with the financial assurance requirements of the [Act] and the Board adopted rules.” *Id.* Mr. White’s history includes graduating from Illinois State University with a B.S. in Environmental Health in 1983, 44 hours of postgraduate work for a Master’s in Public Administration from the University of Illinois Springfield, working for the Menard and Cass County Health Departments as a Sanitarian and Environmental Health Director from 1985 through 1987, and working for the Illinois Department of Public Health in the Asbestos Program in 1987. *Id.* Mr. White began working in the IEPA’s Compliance Unit in 1988 and became manager in 1991. *Id.* Mr. White has been responsible for the financial assurance program since 2002. *Id.* Mr. White’s testimony includes substantive changes, revisions, reiterations, updates and corrections to Parts 807, 810 and 811.

Mr. White stated that the substantive changes that have been proposed are a result of the Bureau of Land’s administration of the financial assurance program for the past 25 years. Hearing Exh. 1 at 3. Mr. White stated that adding the evergreen renewal language to the financial assurance letters of credits and bonds and reducing the required term for these bonds and letters of credit “should result in an increase in the availability of these instruments as a financial assurance option for more landfills.” *Id.* Mr. White also believed that the evergreen renewal language will “protect against an expiration of coverage that would leave an abandoned landfill without funds for closure, post-closure care, and corrective action.” *Id.* Under the current language, bonds or letters of credit that are not renewed at the expiration of their terms are only automatically renewed for an additional twelve month period if the IEPA provides notice to the issuing institution within 30 days after the instrument has expired. *Id.* Mr. White believed that the proposed amendments would take this tracking burden off the IEPA and place it on the financial institution to provide notice to the IEPA and the owner or operator if it intends not to renew the bond or letter of credit. *Id.* at 3-4. Mr. White noted that this is consistent with the IEPA’s other financial assurance programs and financial assurance programs in the Code of Federal Regulations for similar programs. *Id.* at 4.

Mr. White stated that the one-year term and evergreen renewal language was derived from existing language in the other financial assurance programs (Parts 704, 724, 725 and 848) and that the language in Parts 724 and 725 was derived from the federal language at 40 CFR, Parts 264 and 265, Subpart H. *Id.* Mr. White stated that the language is further consistent with the allowable bonds and letters of credit language in 40 CFR § 258.74.¹ Mr. White also noted that the changes correspond to the generally accepted practices at the Federal and State levels for regulated sites subject to financial assurance. Hearing Exh. 1 at 4. Mr. White then outlined the

¹ 40 CFR § 258 is the “Criteria for Municipal Solid Waste Landfills” and 40 CFR § 258.74 refers to the allowable financial assurance mechanisms.

substantive changes of the Agency's proposal, as discussed in the "Summary of Agency's Original Proposal" above.

Mr. White also indicated revisions in the proposal that do not change the substantive intent of the law but "are a reworking of the language of the regulations that makes the intent of the law clearer or more accurate[.]" as certain language has been identified as problematic or misunderstood. *Id.* at 6.

Mr. White summarized reiterations in the Agency's proposal that he believed will "promote efficiency" and "provide consistent language throughout the various financial assurance programs of the [Bureau of Land] and will be consistent with federal financial assurance language as well." *Id.* at 8-9.

The proposal also included a number of updates made to Parts 807 and 811 which include "changes to citations, current editions, Agency names or titles, and changes of language based upon administrative rules or guidelines." *Id.* at 9. Finally, Mr. White offered a summary of the corrections that the Agency had proposed to address a number of errors found in the original rulemaking. *Id.* at 11.

May 11, 2010 Hearing

Based on questions presented by the Board, the Agency made a number of statements at the first hearing held on May 11, 2010 regarding the proposed changes. The Agency previously noted in its proposal that changes suggested by the Illinois Banker's Association were not substantive. Most notably, the IBA requested that the Agency craft language clarifying that the revisions applied only to Irrevocable Standby Letters of Credit issued after the affected date of the amendment. May 11, 2010 Hearing Transcript (Tr. 1) at 7. Mr. White testified that the language was not crafted because the letters of credit and bonds issued right now can still be extended for a twelve month period, but after expiration they will be replaced with the new letters of credit and bonds. Tr. 1 at 7-8.

The Agency testified that it would address an inconsistency regarding revisions to the definition of Generally Accepted Accounting Principles in Part 807.666 and Part 811.715(a). Tr. 1 at 9. The Agency further stated it would expand certain acronyms and titles to further help clarify the proposed language. *Id.* at 11-12. At the Board's request, the Agency agreed to review Part 727.240 to ensure that it was consistent with the requirements throughout the Board's financial assurance programs. Tr. 1 at 13.

The Board also addressed a concern regarding a revision to the financial assurance forms where the Agency added language that allows for the expiration date to be automatically extended for a period of at least one year unless someone is notified 120 days prior. *Id.* at 13. This proposed language appears in Parts 807 and 811 for Illustration C, D, E and H. Tr. 1 at 13. The Agency's proposal would have the 120 days begin on the date when both the owner and operator and the IEPA have received the notice as evidenced by return receipts. *Id.* at 14. However, the federal language in 40 CFR §§ 144.70 and 264.151 appears substantively different, in which the language states that "[i]n 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 or operator's name], as shown on the signed return receipt." Tr. 1 at 14. The Board's concern regarded the federal wording providing that the unused credit be made available whereas the proposed Illinois letter of credit language for Illustration E in Parts 807 and 811 does not include this provision. *Id.* The Board also noted that the language under Part 848 does follow the federal language. *Id.* at 15-16. The Agency agreed to review its proposed language regarding these concerns. *Id.* at 16.

July 15, 2010 Hearing Prefiled Testimony of Brian S. White

Mr. White's testimony addressed questions raised by the Board at the first hearing that the Agency does not address in its *Errata* sheet, summarized below.

The Board initially asked Mr. White at hearing whether the financial assurance rules of Part 727 were consistent with the Agency's proposal. Hearing Exh. 2 at 1. Mr. White indicated that Part 727 had not been intentionally excluded from the Agency's reference to the Board's financial assurance rules, but rather it was adopted after work on the amendments to Parts 807 and 811 had begun and had therefore been unintentionally omitted. *Id.* Mr. White stated that Part 727 is consistent with the proposed amendments to Parts 807 and 811. *Id.*

The Board questioned why the letter of credit language, although taken from 40 CFR §§ 144.70 and 264.151, is not identical to the wording of the letter of credit at 40 CFR § 264.151 regarding the 120-day notice. Hearing Exh. 2 at 2. Mr. White stated that the Agency does not object to the following language being added to the letter of credit:

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 of both you and [owner's or operator's name] as shown on the signed return receipts. *Id.* 2.

Mr. White stated that the Agency did not add this language previously in order to keep the letter of credit language consistent with the bonds where that language would not make sense. *Id.*

AGENCY'S ERRATA SHEET

On June 15, 2010, the Agency filed *Errata* Sheet Number 1 (ES#1), which proposed amendments to the text of rules it had submitted to the Board in response to comments from the Board's staff at the May 11, 2010 hearing. ES#1 at 1.

The Agency *Errata* Sheet proposed to replace the definition of "generally accepted accounting principles" in Section 811.715(a) and 807.666(a) as shown below:

35 Ill. Adm. Code 811.715(a)

~~“Generally accepted accounting principles” means Auditing Standards—Current Text, incorporated by reference at 35 Ill. Adm. Code 810.104.~~

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

35 Ill. Adm. Code 807.666(a)

~~“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.”~~

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

ES#1 at 1-2.

Under the incorporations by reference, the Agency proposed additional language to identify the acronyms “FASB” and “AICPA” used in the Agency’s initial proposal at Part 810.104(a)(2) as “Financial Accounting Standards Board” and “American Institute of Certified Public Accountants,” respectively. ES#1 at 2. The Agency also proposed additional language to more fully identify another incorporation by reference in the current rules under Part 810.104(a)(4):

GASB. Governmental ~~Government~~-Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk CT 06856-5116:

Statement 18 Accounting for Municipal Solid Waste Landfill Closure and Postclosure Care Costs, August 1993.

ES#1 at 2.

PUBLIC COMMENT

On April 11, 2011, the Agency filed its Comments of the Illinois Environmental Protection Agency (PC). The Agency supports the rules proposed by the Board in its first notice proposal and requested that the Board proceed with adopting the rules. PC at 1. The Agency also requested a number of non-substantive changes to the rule, which the Board will not delineate here. *Id.* at 1-10.

DISCUSSION

The Agency’s proposal stated, “[t]he main purpose of the amendments . . . is to provide consistency throughout the Board’s financial assurance programs . . .” Ag. Prop. at 2-3. The Agency noted the financial assurance rules have remained substantially unchanged since they were adopted and the amendments reflect several updates and revisions to bring consistency. *Id.*

at 1. In addition, based on the past 25 years of administering the financial assurance program, the Agency proposed amendments to language it identified as problematic or misunderstood. Hearing Exh. 1 at 6.

Agency Outreach

The Agency's outreach efforts drew three comments, one each from the Illinois League of Financial Institutions (Ag. Prop. Exh. 1.), Illinois Bankers Association (Ag. Prop. Exh. 2.) and St. Paul Travelers Bond (Ag. Prop. Exh. 3). The Illinois League of Financial Institutions was supportive of the proposed amendments. Ag. Prop. Exh. 1. St. Paul Travelers Bond was also supportive, noting that more waste companies would be able to obtain surety bonding and the cost of the financial assurance would be more in line with the risk being undertaken. Ag. Prop. Exh. 3.

The IBA identified an increase in costs to the regulated community for letters of credit resulting from the Agency's proposal. Ag. Prop. Exh. 2 at 1. IBA explained that the proposed change would allow IEPA to draw on letters of credit based on events that cannot be determined at the time underwriting decisions are made, thus resulting in increased costs for letters of credit. *Id.* IBA requested language to clarify that the Agency's proposed revisions would apply only to Irrevocable Standby Letters of Credit that are issued after the effective date of the amendments. IBA also proposed alternate language for the letters of credit. *Id.* at 2. The Agency declined to make any changes to the language as IBA suggested, finding the changes were not substantive. Ag. Prop. at 2. At the first hearing, the Agency clarified that once the current letters expire, the parties are supposed to get a new letter of credit or new bonds that follow the new format. Tr. 1 at 6-7.

Forfeiture Bond (Part 808.Appendix A, Illustration C)

The Agency proposed revising the following language in Part 807.Appendix A, Illustration C Forfeiture Bond and similarly for Part 811.Appendix A, Illustration H (Operator's Bond With Parent Surety) as follows:

... 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 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:

The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails notice to the Surety that the Principal has failed to fulfill one or more of the conditions described above~~failed to so provide closure and post closure care.~~

The Board noted that although the phrase "failed to fulfill the conditions described above" is consistent with federal wording for bonds [*See* 40 CFR § 264.151.], "the conditions

described above” in the federal wording are of actions to faithfully perform closure, whereas the “conditions described above” in the Illinois wording refer to specific conditions that determine when a principal fails to provide closure or post-closure care. Therefore, the last sentence of the revision above appears to be more appropriately worded as follows:

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.~~

The Board made this change at first notice for Part 807.Appendix A, Illustration C, and similarly for Part 811.Appendix A, Illustration H.

Use of “Owner or Operator” Language in Financial Assurance Forms

The Agency also proposed to insert “owner or” in front of each instance of “operator” in Part 811.Appendix A, Illustrations C, G and H. The Agency explained that this “would allow [the] form to be consistent with the body of the rules.” Ag. Prop., “Description of Proposed Amendments” Table at 10.

The Board noted that Parts 807.602(a) and 811.700(b) place responsibility for financial assurance upon “the owner or operator” as follows:

For sites first receiving waste for disposal after March 1, 1985, the owner or operator must provide financial assurance before receipt of waste for disposal. 35 Ill. Adm. Code Part 807.602(a).

... The owner or operator shall provide financial assurance to the Agency before the receipt of the waste. 35 Ill. Adm. Code Part 811.700(b).

Although the Agency has proposed adding “owner or” before “operator” in Part 811.Appendix A, Illustrations C, G and H, the Board noted that the Agency had not proposed the same for the corresponding forms in Part 807.Appendix A, Illustrations C, G & H. In addition, both Parts 807 and 811 contain several other references to “operator” alone that the Agency had not proposed revising with the addition of “owner or.” For example, the Agency had not proposed adding “owner or” before “operator” in Sections 807.666(b), (c) and (h) which state the provisions for Illustrations G & H. Currently, only the corresponding sections in 811.715(b), (c) and (h) refer to “owner or operator” in conjunction with provisions for Illustrations G & H.

The Board noted that Part 811.101(b) specifies, “[a]ll general provisions of 35 Ill. Adm. Code 810 apply to this Part.” 35 Ill. Adm. Code Part 811.101(b). 35 Ill. Adm. Code Part 810.103 defines “owner” and “operator” as follows:

“Operator” means the person responsible for the operation and maintenance of a solid waste disposal facility.

“Owner” means a person who has an interest, directly or indirectly, in land, including a leasehold interest, on which a person operates and maintains a solid waste disposal facility. The “owner” is the “operator” if there is no other person who is operating and maintaining a solid waste disposal facility.

In its first notice order, the Board added “owner or” before operator to 811.Appendix A, Illustrations C, G and H as proposed by the Agency as well as the corresponding 807.Appendix A, Illustrations C, G and H.

Other Board Revisions to Agency Proposal

Under Parts 807 and 811.Appendix A, Illustration E, the Agency proposed capitalizing “Your” at the beginning of each phrase under subsections (1) and (2) in the form for the Irrevocable Standby Letter of Credit. The Board noted the federal wording does not use capital “Y” as suggested, so the Board retained the current capitalization at first notice.

The Board also noted that a change corresponding to the Agency’s proposed amendments at 811.716(c)(5) would be appropriate for 811.719(b)(5), and the following amendment was included at first notice:

- 5) If the owner or operator no longer meets the requirements of subsection (a) of this Section, the owner or operator must obtain alternative financial assurance that meets the requirements of this Subpart G within 120 days following the close of the facility’s fiscal year. The owner or operator must also place the required submissions for the alternative financial assurance in the facility operating record and notify the Agency that it no longer meets the criteria of the financial test and that it has obtained alternative financial assurance, and submit evidence of such alternative financial assurance to the Agency. 35 Ill. Adm. Code Part 811.719(b).

The Board further noted that the proposed amendment at 811.716(c)(5) should also revise the current reference from “210 days” to “120 days” consistent with 811.719(b)(5) as follows:

- (5) A unit of local government must satisfy the requirements of the financial test at the close of each fiscal year. If the unit of local government owner or operator no longer meets the requirements of the local government financial test it must, within ~~210~~¹²⁰ days following the close of the owner or operator’s fiscal year, obtain alternative financial assurance that meets the requirements of this Subpart, place the required submissions for that assurance in the operating record, and notify the Agency that the owner or operator no longer meets the criteria of the financial test and that alternative assurance has been obtained, and submit evidence of such alternative financial assurance to the Agency. 35 Ill. Adm. Code Part 811.716(c).

The Agency's *Errata* Sheet Number 1 did not mention specific revisions to Parts 807 and 811. Appendix A, Illustration E that are suggested in the pre-filed testimony for the hearing held July 15, 2010. (See Hearing Exh. 2, Answer to #2.) The pre-filed testimony refers to adding a sentence regarding the "unused portion of the credit" in Answer #2 to parallel federal wording in 40 CFR 144.70 and 264.151. See Hearing Exh. 2, Answer to #2. The Board will add the following sentence to Parts 807 and 811, Appendix A, Illustration E (Irrevocable Standby Letter of Credit):

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 of both you and [owner's or operator's name] as shown on the signed return receipts.

Part 811 Subpart C, Section 811.309 Leachate Treatment and Disposal Systems

When the Agency filed this rulemaking proposal, the Board became aware of a small typographical error in Section 811.309(h)(5)(iii) under Part 811 Subpart C. Although Part 811 Subpart C was not part of the original rulemaking proposal, the Board opened this subpart in this docket to make the necessary revision. The error appears in 811.309(h)(5)(iii) as a reference to "811.130" that should be "811.310" for Gas Monitoring. At the May 11, 2010 hearing, the Hearing Officer pointed out the error and noted the Board's intention to correct the error in this rulemaking. Tr. 1 at 16-17. The Board made the correction in its first notice and to date has not received any public comments on the changed language.

Technical Feasibility and Economic Reasonableness

The Board requested that the DCEO determine whether it would conduct an economic impact study of the Agency's rulemaking proposal in a letter dated October 5, 2009. See 415 ILCS 5/27(b) (2008). The DCEO did not respond to the Board's request. At the second hearing, the hearing officer noted the Board's request to the DCEO and the absence of a response to it. July 15, 2010 Hearing (Transcript 2) at 4, 17. No participant at the hearing offered testimony regarding the DCEO's response. Tr. 2 at 17.

During the Agency's outreach process, the Illinois Bankers Association indicated that "the proposed change would result in increased costs for the letters of credit." Ag. Prop., Exh. 2 at 1. IBA explained that the proposed revisions would allow IEPA to draw on letters of credit based on events (such as the proposed amendment regarding the failure to arrange alternative financial assurance) that would not be evident at the time the underwriting decision is made. *Id.* Consequently, IBA states that letters of credit will be more difficult and costly to obtain. *Id.*

With regard to surety bonding, St. Paul Travelers Bond indicated the proposed amendments to reduce the term from four or five years to at least one year would allow more waste companies to obtain surety bonding as an alternative form of financial assurance. Ag. Prop. Exh. 3 at 1. SPTB also noted that the cost of the financial assurance would be more in line with the risk being undertaken. *Id.*

In its Statement of Reasons, the Agency addressed the issues of technical feasibility and economic reasonableness. Ag. Prop. at 5. The Agency recognized IBA's assertion regarding increased costs for letters of credit but also noted SPTB's comment regarding the greater availability of bonds with one-year term limits. *Id.* at 2. Specifically, the Agency stated that:

"No new technical requirements are created by the proposed amendments. Economic costs to the State of Illinois due to the amendments are minimal and may include updated forms and employee procedural training. For economic costs to the regulated community due to the amendments[,] please see the attached comments regarding increased costs for letters of credit with proposed evergreen renewal language and also the greater availability of bonds with one-year term limits." Ag. Prop. at 5.

The Board concurred with the Agency that compliance with the proposed amendments does not impose any new technical requirements.

As to the economic reasonableness, the Board took note of the comment made by the IBA which indicated the amendments would make letters of credit more difficult and costly to obtain. The IBA indicated this was because the amendments would allow the Agency to draw on letters of credit based on events that would not be evident at the time the underwriting decision is made. In particular, IBA refers to the proposed amendment that would allow the Agency to draw on a letter of credit in the event an operator fails to provide alternate financial assurance as required. The Board noted that the proposed amendments pertaining to the Agency's authority when an operator fails to provide alternative financial assurance is not only found in the revisions to the letters of credit, but also in the revisions to bonds. (*See* 807.662(e)(2)(E), 807.663(e)(2)(E), 807.664(e)(2)(E), 811.711(e)(2)(F), 811.712(E)(2)(F), 811.713(e)(2)(F), as well as Part 807 and 811.App. A, Illustration D "Performance Bond" and Illustration H "[Owner's or] Operator's Bond with Parent Surety".) The proposed revisions would allow the Agency to draw on a letter of credit or require the bond surety pay the penal sum to IEPA if an operator fails to provide alternative financial assurance as required. Currently, as the Agency points out,

"...there is no authority for the Illinois EPA to draw on existing bonds or letters of credit to prevent a lapse in financial assurance coverage. The Illinois EPA is only able to draw on the instrument if the owner/operator has abandoned the site, is adjudicated bankrupt, fails to initiate closure or post-closure or corrective action when ordered to do so by the Board or the courts, or fails to perform closure, post-closure or corrective action in accordance with applicable requirements." Ag. Prop. at 4.

The Board recognized, as IBA suggests, that the amendments allowing the Agency to draw on bonds and letters of credit for failure to provide alternate financial assurance may make these instruments more difficult and costly to obtain. The Board also recognized, as St. Paul Travelers Bond suggests, that the reduction in term from four or five years to at least one year would allow more waste companies to obtain surety bonding as an alternative form of financial assurance, and the cost of the financial assurance would be more in line with the risk being

undertaken. The Board found that the proposed amendments allowing the Agency to draw on bonds or letters of credit for failure to provide alternate financial assurance will protect the public, environment, and the State against a lack of coverage that could leave a landfill or used/waste tire site without funds for closure and post-closure care or corrective action. Therefore, the Board found the proposed order below is both technically feasible and economically reasonable.

Accordingly, the Board proposed the Agency's proposal with the revisions discussed in this opinion for first-notice publication in an order on February 3, 2011. The Board found that the proposed revisions reflect the Agency's general intent to update the financial assurance rules to more nearly correspond with the hazardous waste financial assurance standards derived from the federal Resource Conservation and Recovery Act (RCRA) Subtitle C (42 U.S.C. 6921 *et seq.* (2007)) hazardous waste regulations and the Board's other financial assurance programs.

Part 848 Management of Used and Waste Tires

In the Agency's statement of reasons, the Agency stated, "[t]he main purpose of the amendments . . . is to provide consistency throughout the Board's financial assurance programs . . ." Ag. Prop. at 2. The Agency went on to cite the Board's other financial assurance programs regulated in Parts 704, 724, 725, 727 and 848. Ag. Prop. at 2-3, ES#1 at 1. As the Agency expressed intent to provide consistency in the Board's financial assurance programs, the Board found the revisions proposed by the Agency for Parts 807, 810 and 811 may also be well suited for the financial assurance requirements applicable to used tire management under Part 848.

Specifically, the Board noted that language in the following sections of Part 848 may appear inconsistent with the changes proposed in this order:

35 Ill. Adm. Code Part 848.105 Incorporation by Reference

35 Ill. Adm. Code Part 848.406 Mechanisms for Financial Assurance

35 Ill. Adm. Code Part 848.410 Trust Fund

35 Ill. Adm. Code Part 848.413 Letter of Credit

35 Ill. Adm. Code Part 848.415 Self-Insurance for Non-Commercial Sites

35 Ill. Adm. Code Part 848.Appendix A, Illustration A Trust Agreement

35 Ill. Adm. Code Part 848.Appendix A, Illustration C Irrevocable Standby Letter of Credit

35 Ill. Adm. Code Part 848.Appendix A, Illustration E Owner or Operator's Bond with Parent Surety

For purposes of efficiency, the Board moved forward with first notice regarding the current proposed language. The Board welcomed comments from the Agency and other participants on the best procedural approach for addressing these potential changes to the used tire regulations during the first notice public comment period, but no comments were received.

The Board noted the *Illinois Register's* January 2011 Pollution Control Board Regulatory Agenda indicates that the Agency is:

[P]lanning to propose amendments to the Board's regulations that will allow better implementation of the used and waste tire management program. The proposal will include, among others, changes necessary to make the Board's rules consistent with legislative amendments to Title XIV of the Environmental Protection Act [415 ILCS 5/53 *et seq.*] resulting from Public Act 92-0024. 34 Ill. Reg. 19623-19711 (Dec. 17, 2010) (referring to Subsection KK, pages 19708-09).

The Board stated that this upcoming proposal may present an opportunity for the Agency to address this matter if it so chooses.

CONCLUSION

The Board proposes to update waste disposal regulations in Parts 807, 810 and 811. This second notice proposal incorporates changes recommended by JCAR and the Agency following the Board's first notice publication. In its order below, the Board directs the Clerk to file the proposed amendments with JCAR for second notice review.

ORDER

The Board directs the Clerk to file the following proposed amendments for second notice review with the Joint Commission on Administrative Rules. Proposed additions are underlined, and proposed deletions appear stricken.

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

PART 807
SOLID WASTE

SUBPART A: GENERAL PROVISIONS

Section	
807.101	Authority, Policy and Purposes
807.102	Repeals
807.103	Severability
807.104	Definitions

807.105 Relation to Other Rules

SUBPART B: SOLID WASTE PERMITS

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

SUBPART C: SANITARY LANDFILLS

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

SUBPART E: CLOSURE AND POST-CLOSURE CARE

Section	
807.501	Purpose, Scope and Applicability

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

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

Section	
807.600	Purpose, Scope and Applicability
807.601	Requirement to Obtain Financial Assurance
807.602	Time for Submission of Financial Assurance
807.603	Upgrading Financial Assurance
807.604	Release of Financial Institution
807.605	Application of Proceeds and Appeal
807.606	Release of the Operator
807.620	Current Cost Estimate
807.621	Cost Estimate for Closure
807.622	Cost Estimate for Post-closure Care
807.623	Biennial Revision of Cost Estimate
807.624	Interim Formula for Cost Estimate
807.640	Mechanisms for Financial Assurance
807.641	Use of Multiple Financial Mechanisms
807.642	Use of Financial Mechanism for Multiple Sites
807.643	Trust Fund for Unrelated Sites
807.644	RCRA Financial Assurance
807.661	Trust Fund
807.662	Surety Bond Guaranteeing Payment
807.663	Surety Bond Guaranteeing Performance
807.664	Letter of Credit
807.665	Closure Insurance
807.666	Self-insurance for Non- Commercial 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 B	Certificate of Acknowledgment
807.ILLUSTRATION C	Forfeiture Bond
807.ILLUSTRATION D	Performance Bond
807.ILLUSTRATION E	Irrevocable Standby Letter of Credit
807.ILLUSTRATION F	Certificate of Insurance for Closure and/or Post-closure Care
807.ILLUSTRATION G	<u>Owner's or Operator's Bond Without Surety</u>
807.ILLUSTRATION H	<u>Owner's or Operator's Bond With Parent Surety</u>
807.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; 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 ~~thesuch~~ operator post with the Agency a performance bond or other security for the purpose of insuring closure of the site and post-closure care in accordance with the Act and Board rules.
- b) Each operator must file a closure plan as part of a permit application. The operator of a disposal site or indefinite storage unit must also file a post-closure care plan (Sections 807.205, 807.503 and 807.523). The operator of a disposal site or indefinite storage unit must prepare a cost estimate of closure and post-closure care, and provide financial assurance in this amount (Sections 807.601 and 807.620). Financial assurance ~~shall~~~~may~~ be given through a combination of a trust agreement, bond guaranteeing payment, bond guaranteeing payment or

performance, letter of credit, insurance or self-insurance (Section 807.640). The cost estimate and amount of financial assurance is to be updated at least on a biennial basis (Section 807.623).

- c) This Subpart applies only to the non-governmental operators of disposal sites or indefinite storage units (Section 807.601). Whether a site is a disposal site or, alternatively, a treatment or storage site, depends on whether the closure plan provides for removal of all wastes and waste residues from the site prior to completion of closure. Whether a unit is an indefinite storage unit depends on the technical feasibility and economic reasonableness of removal of all wastes and waste residues prior to closure (Section 807.104).

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

Section 807.640 Mechanisms for Financial Assurance

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

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

(Source: Amended at 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,
 - 2) Who complies with the Corporate Fiduciary Act [205 ILCS 620]~~Foreign~~

~~Corporations as Fiduciaries Act, (Ill. Rev. Stat. 1983, ch. 17, par. 2801 et seq.).~~

- c) The trust agreement must be on the form forms specified in Appendix A, Illustration A, and the trust agreement must be accompanied by a formal certification of acknowledgment on the formal certification of acknowledgement, on the form specified in Appendix A, Illustration B. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure and post-closure cost estimates covered by the agreement.
- d) Payments into the trust:
- 1) The operator must make a payment into the trust fund each year during the pay-in period.
 - 2) The pay-in period is the number of years remaining until the site reaches the stage in its expected operating life at which the cost of premature closure would be the greatest, as indicated by its closure plan. Provided, however, that the pay-in period shall not be less than three years nor greater than ten years.
 - 3) Annual payments are determined by the following formula:

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

Where:

CE = Current cost estimate

Y = Current value of the trust fund

= 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 ansuch 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 those~~such~~ funds as the Agency specifies in writing.

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

(Source: Amended at 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 ~~that~~~~which~~ conforms to the requirements of this Section and submitting the bond to the Agency.

- b) The surety company issuing the bond must be licensed by the Illinois Department of 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 ~~Department of Insurance~~.

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

- c) The surety bond must be on ~~the form~~ forms specified in Appendix A, Illustration C.
- d) Any payments made under the bond will be placed in the Landfill Closure and Post-Closure Fund ~~landfill closure and post-closure fund~~ within the State Treasury.
- e) Conditions:
 - 1) The bond must guarantee that the operator will:
 - A) Provide ~~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 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 the increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of the alternate financial assurance to the Agency.

g) Term:

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

(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 ~~that which~~ conforms to the requirements of this Section and submitting the bond to the Agency.
- b) The surety company issuing the bond must be licensed by the Illinois Department of 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~~Department of Insurance.~~

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

- c) The surety bond must be on ~~the form~~forms specified in Appendix A, Illustration D.
- d) Any payments made under the bond will be placed in the Landfill Closure and Post-Closure Fund~~landfill closure and post-closure fund~~ within the State Treasury.
- e) Conditions:
 - 1) The bond must guarantee that the operator will:
 - A) Provide~~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 the increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of the alternate financial assurance to the Agency.

g) Term:

- 1) The bond shall be issued for a term of at least ~~one year~~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.
- 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 ~~that~~which conforms to the requirements of this Section and submitting the letter to the Agency.
- b) The issuing institution must be an entity ~~that~~which has the authority to issue letters of credit and:
 - 1) Whose letter-of-credit operations are regulated by the Department of Financial and Professional Regulation~~Illinois Commissioner of Banks and Trust Companies~~; or,
 - 2) Whose deposits are insured by the Federal Deposit Insurance Corporation ~~or the Federal Savings and Loan Insurance Corporation~~.
- c) Forms:
 - 1) The letter of credit must be on ~~the form~~forms specified in Appendix A, Illustration E.
 - =
 - 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 and post-closure care of the site by the letter of credit.
- d) Any amounts drawn by the Agency pursuant to the letter of credit will be deposited in the Landfill Closure and Post-Closure Fund~~landfill closure and post-closure fund~~ within the State Treasury.
- e) Conditions on which the Agency ~~shall~~may draw on the letter of credit:

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

Section and submitting to the Agency an executed duplicate original of the insurance policy and the certificate of insurance for closure and/or post-closure care specified in Appendix A, Illustration F, an executed duplicate original of such insurance policy to the Agency.

- b) The insurer must be licensed to transact the business of insurance by the Illinois Department of 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~~Department of Insurance.~~
- c) The policy must be on forms filed with the Illinois Department 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 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.
- 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 ~~a~~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 ~~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 successor operator. ~~The~~Such assignment may be conditional upon consent of the insurer, provided ~~that~~such consent is not unreasonably refused.

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

Section 807.666 Self-insurance for Non-Commercialommercial Sites

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

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

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

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

"Generally accepted accounting principles" means 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 (~~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 ~~the form~~forms provided in Appendix A, Illustration G. 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
 - 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, Illustration I; 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.
- 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 _____)

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 Companies~~ or who complies with the Corporate Fiduciary Act [205 ILCS 620]. Foreign Corporations as Fiduciaries Act (Ill. Rev. Stat. 1983, ch. 17, par. 2801, et seq.) (Line through any condition ~~that~~ which does not apply.)

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

Section 1. Definitions. As used in this Agreement:

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

Section 2. Identification of Sites and Cost Estimates. This Agreement pertains to the sites and cost estimates identified on attached Schedule A (on Schedule A, list the name and address and

~~current~~ initial 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 ~~USC~~U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal government or the State of Illinois;
- b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by the Federal Deposit Insurance Corporation or ~~Federal Savings & Loan Insurance Corporation.~~
- c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

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

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

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

- a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;
- b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers granted in this agreement;
- c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central ~~depository~~depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such ~~depository~~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~~ designees, 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 designee, or by the Trustee and the IEPA Director or his/her 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 designee, or by the Trustee and the IEPA Director or his/her 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 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 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 807. Appendix A, Illustration A as these regulations were constituted on the date this Agreement was entered.

Attest:

Signature of 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 guaranteed by this bond: \$ _____

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

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

Total penal sum of bond: \$ _____

Surety's bond number: _____

The Principal and the Surety promise to pay the Illinois Environmental Protection Agency ("IEPA") the above penal sum unless the principal provides closure and post-closure care for

each site in accordance with the closure and post-closure care plans for that site. To the payment of this obligation the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

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

Whereas the Principal is required, under Section 21.1 of the Environmental Protection Act [415 ILCS 5/21.1] Ill. Rev. Stat. 1983, ch. 111½, 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 Insurance or is licensed to transact the business of insurance, or approved to provide insurance as an excess or surplus lines insurer, by the insurance department in one or more states;

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

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

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

The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails notice to the Surety that the Principal has met one or more of the conditions described above ~~failed to so provide closure and post-closure care~~. Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Post-Closure ~~closure~~ Fund. The liability of the Surety shall not be discharged by any payment or succession of payments unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond.

In no event shall the obligation of the Surety exceed the amount of the penal sum.

This bond shall expire on the _____ day of _____, _____ [date]; ~~_____ [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 ~~Principal 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 ~~Principal 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 807. Appendix A, Illustration C as such regulation was constituted on the date this bond was executed.

Principal

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 D Performance Bond

PERFORMANCE BOND

Date bond executed: _____

Effective date: _____

Principal: _____

Type of organization: _____

State of incorporation: _____

Surety: _____

Sites:

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

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

Total penal sum of bond: \$ _____

Surety's bond number: _____

The Principal and the Surety promise to pay the Illinois Environmental Protection Agency (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. 111½, par. 1021(d) to have a permit to conduct a waste disposal operation;

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

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

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

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

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

The Surety shall pay the penal sum of the bond to the IEPA or notify the IEPA that it intends to provide closure and post-closure care in accordance with the closure and post-closure care plans for the site within 30 days after the IEPA mails notice to the Surety that the Principal has met one or more of the conditions described above ~~failed to fulfill one or more of the conditions described above~~ failed to provide closure and post-closure care ~~failed to so provide closure and~~

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

If the Surety notifies the ~~IEPA Agency~~ that it intends to provide closure and post-closure care, then the Surety must initiate closure and post-closure care within 60 days after the IEPA mailed notice to the Surety that the Principal met one or more of the conditions described above~~failed to fulfill one or more of the conditions described above~~ ~~failed to provide closure and post-closure care~~ 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 Principal operator and the IEPA have received the notice, as evidenced by the return receipts.~~provided, however, that if the Principal fails to provide substitute financial assurance prior to the expiration date, and the IEPA mails notice of such failure to the Surety within 30 days after such date, the term of this bond shall be automatically extended for one twelve month period starting with the date of expiration of the bond.~~

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

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

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

Principal

Corporate Surety

Signature

Name

Typed Name

Address

Title

Date

Corporate seal

State of Incorporation

Signature

Typed Name

Title

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~~ 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 _____ [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. The 120 days will begin on the date when both ~~the operator~~ _____ [owner's or operator's name], and the IEPA have received the notice, as evidenced by the return receipts. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and _____ [owner's or operator's name], as shown on the signed return receipts; 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.

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

Typed 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 insured for this site: \$ _____

Name _____

Address _____

City _____

Amount insured for this site: \$ _____

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

Face Amount _____

Policy Number _____

Effective Date _____

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

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

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

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

Name (Authorized signature for Insurer)

Typed Name

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'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

Signature

Typed Name

Title

Date

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. 111½, 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. 111½, 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 ~~and~~ post-closure care for any site in accordance with the closure and post-closure care plans for that site as guaranteed by this bond. The 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 Illinois Pollution Control Board or a court of competent jurisdiction;~~or~~
- d) Notifies the ~~IEPA Agency~~ that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care in accordance with the closure and post-closure care plans; or
- e) Fails to provide alternate financial assurance and obtain the IEPA written approval of the assurance provided within 90 days after receipt by the IEPA of a notice from the Surety that the bond will not be renewed for another term.

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

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

This bond shall expire on the _____ day of _____, _____ [date]; ~~===== [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 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

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

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

PART 810
SOLID WASTE DISPOSAL: GENERAL PROVISIONS

Section

810.101

Scope and Applicability

810.102

Severability

810.103	Definitions
810.104	Incorporations by Reference
810.105	Electronic Reporting

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

SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15838, effective September 18, 1990; amended in R93-10 at 18 Ill. Reg. 1268, effective January 13, 1994; amended in R90-26 at 18 Ill. Reg. 12457, effective August 1, 1994; amended in R95-9 at 19 Ill. Reg. 14427, effective September 29, 1995; amended in R96-1 at 20 Ill. Reg. 11985, effective August 15, 1996; amended in R97-20 at 21 Ill. Reg. 15825, effective November 25, 1997; amended in R04-5/R04-15 at 28 Ill. Reg. 9090, effective June 18, 2004; amended in R05-1 at 29 Ill. Reg. 5028, effective March 22, 2005; amended in R06-5/R06-6/R06-7 at 30 Ill. Reg. 4130, effective February 23, 2006; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1425, effective December 20, 2006; amended in R07-8 at 31 Ill. Reg. 16166, effective November 27, 2007; amended in R10-9 at 35 Ill. Reg. _____, effective _____.

Section 810.104 Incorporations by Reference

a) The Board incorporates the following material by reference:

1) Code of Federal Regulations:

40 CFR 3.2, as added at 70 Fed. Reg. 59848 (Oct. 13, 2005) (How Does This Part Provide for Electronic Reporting?), referenced in Section 810.105.

40 CFR 3.3, as added at 70 Fed. Reg. 59848 (Oct. 13, 2005) (What Definitions Are Applicable to This Part?), referenced in Section 810.105.

40 CFR 3.10, as added at 70 Fed. Reg. 59848 (Oct. 13, 2005) (What Are the Requirements for Electronic Reporting to EPA?), referenced in Section 810.105.

40 CFR 3.2000, as added at 70 Fed. Reg. 59848 (Oct. 13, 2005) (What Are the Requirements Authorized State, Tribe, and Local Programs' Reporting Systems Must Meet?), referenced in Section 810.105.

40 CFR 141.40 (2005) (Monitoring Requirements for Unregulated Contaminants).

40 CFR 258.Appendix I (2006).

40 CFR 258.Appendix II (2006).

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

Financial Accounting Standards Board (FASB) Accounting Standards – Current Text, 2008 Edition.

American Institute of Certified Public Accountants (AICPA) Professional Standards – Statements on Auditing Standards, June 1, 2008 Edition.

~~Auditing Standards – Current Text, August 1, 1990 Edition.~~

- 3) ASTM. American Society for Testing and Materials, 1976 Race Street, Philadelphia PA 19103 215-299-5585:

Method D2234-76, "Test Method for Collection of Gross Samples of Coal," approved 1976.

Method D3987-85, "Standard Test Method for Shake Extraction of Solid Waste with Water," approved 1985.

- 4) GASB. ~~Governmental~~Government Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk CT 06856-5116:

Statement 18, Accounting for Municipal Solid Waste Landfill Closure and Post-Closure ~~Postclosure~~ Care Costs, August 1993.

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

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

- 6) U.S. Government Printing Office, Washington ~~DC, D.C.~~ 20402, Ph: 202-783-3238:

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA publication number EPA-530/SW-846 (Third Edition, 1986; Revision 6, January 2005), as amended by Update I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), IIIA (April 1998), and IIIB (November 2004) (document number 955-001-00000-1).

b) This incorporation includes no later amendments or editions.

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

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

PART 811
 STANDARDS FOR NEW SOLID WASTE LANDFILLS

SUBPART A: GENERAL STANDARDS FOR ALL LANDFILLS

Section

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

SUBPART B: INERT WASTE LANDFILLS

Section

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

SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS

Section

811.301	Scope and Applicability
811.302	Facility Location

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

SUBPART D: MANAGEMENT OF SPECIAL WASTES AT LANDFILLS

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

SUBPART E: CONSTRUCTION QUALITY ASSURANCE PROGRAMS

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

811.509 Leachate Collection Systems

SUBPART G: FINANCIAL ASSURANCE

Section

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

811.APPENDIX A Financial Assurance Forms

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

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

811.APPENDIX C List of Leachate Monitoring Parameters

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

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

SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS

Section 811.309 Leachate Treatment and Disposal Systems

- a) Leachate shall be allowed to flow freely from the drainage and collection system. The operator is responsible for the operation of a leachate management system designed to handle all leachate as it drains from the collection system. The leachate management system shall consist of any combination of storage, treatment, pretreatment, and disposal options designed and constructed in compliance with the requirements of this Section.
- b) The leachate management system shall consist of any combination of multiple treatment and storage structures, to allow the management and disposal of leachate during routine maintenance and repairs.
- c) Standards for Onsite Treatment and Pretreatment
 - 1) All onsite treatment or pretreatment systems shall be considered part of the facility.
 - 2) The onsite treatment or pretreatment system shall be designed in accordance with the expected characteristics of the leachate. The design may include modifications to the system necessary to accommodate changing leachate characteristics.
 - 3) The onsite treatment or pretreatment system shall be designed to function for the entire design period.
 - 4) All of the facility's unit operations, tanks, ponds, lagoons and basins shall be designed and constructed with liners or containment structures to control seepage to groundwater.

- 5) All treated effluent discharged to waters of the State shall meet the requirements of 35 Ill. Adm. Code 309.
- 6) The treatment system shall be operated by an operator certified under the requirements of 35 Ill. Adm. Code 312.

d) Standards for Leachate Storage Systems

- 1) Except as otherwise provided in subsection (d)(6) of this Section, the leachate storage facility must be able to store a minimum of at least five days' worth of accumulated leachate at the maximum generation rate used in designing the leachate drainage system in accordance with Section 811.307. The minimum storage capacity may be built up over time and in stages, so long as the capacity for five consecutive days of accumulated leachate is available at any time during the design period of the facility.
- 2) All leachate storage tanks shall be equipped with secondary containment systems equivalent to the protection provided by a clay liner 0.61 meter (2 feet thick) having a permeability no greater than 10^{-7} centimeters per second.
- 3) Leachate storage systems shall be fabricated from material compatible with the leachate expected to be generated and resistant to temperature extremes.
- 4) The leachate storage system shall not cause or contribute to a malodor.
- 5) The leachate drainage and collection system shall not be used for the purpose of storing leachate.
- 6) A facility may have less than five days' worth of storage capacity for accumulated leachate as required by subsection (d)(1) of this Section, if the owner or operator of the facility demonstrates that multiple treatment, storage and disposal options in the facility's approved leachate management system developed in accordance with subsection (b) of this Section will achieve equivalent performance. Such options shall consist of not less than one day's worth of storage capacity for accumulated leachate plus at least two alternative means of managing accumulated leachate through treatment or disposal, or both treatment and disposal, each of which means is capable of treating or disposing of all leachate generated at the maximum generation rate on a daily basis.

e) Standards for Discharge to an Offsite Treatment Works

- 1) Leachate may be discharged to an offsite treatment works that meets the

following requirements:

- A) All discharges of effluent from the treatment works shall meet the requirements of 35 Ill. Adm. Code 309.
 - B) The treatment systems shall be operated by an operator certified under the requirements of 35 Ill. Adm. Code 312.
 - C) No more than 50 percent of the average daily influent flow can be attributable to leachate from the solid waste disposal facility. Otherwise, the treatment works shall be considered a part of the solid waste disposal facility.
- 2) The operator is responsible for securing permission from the offsite treatment works for authority to discharge to the treatment works.
 - 3) All discharges to a treatment works shall meet the requirements of 35 Ill. Adm. Code 310.
 - 4) Pumps, meters, valves and monitoring stations that control and monitor the flow of leachate from the unit and which are under the control of the operator shall be considered part of the facility and shall be accessible to the operator at all times.
 - 5) Leachate shall be allowed to flow into the sewage system at all times; however, if access to the treatment works is restricted or anticipated to be restricted for longer than five days, then an alternative leachate management system shall be constructed in accordance with subsection (c).
 - 6) Where leachate is not directly discharged into a sewage system, the operator shall provide storage capacity sufficient to transfer all leachate to an offsite treatment works. The storage system shall meet the requirements of subsection (d).
- f) Standards for Leachate Recycling Systems
- 1) Leachate recycling systems may be utilized only at permitted waste disposal units that meet the following requirements:
 - A) The unit must have a liner designed, constructed and maintained to meet the minimum standards of Section 811.306.
 - B) The unit must have a leachate collection system in place and operating in accordance with Section 811.307.

- C) A gas management system, equipped with a mechanical device such as a compressor to withdraw gas, must be implemented to control odors and prevent migration of methane in accordance with Section 811.311.
 - D) The topography must be such that any accidental leachate runoff can be controlled by ditches, berms or other equivalent control means.
- 2) Leachate shall not be recycled during precipitation events or in volumes large enough to cause runoff or surface seeps.
 - 3) The amount of leachate added to the unit shall not exceed the ability of the waste and cover soils to transmit leachate flow downward. All other leachate shall be considered excess leachate, and a leachate management system capable of disposing of all excess leachate must be available.
 - 4) The leachate storage and distribution system shall be designed to avoid exposure of leachate to air unless aeration or functionally equivalent devices are utilized.
 - 5) The distribution system shall be designed to allow leachate to be evenly distributed beneath the surface over the recycle area.
 - 6) Daily and intermediate cover shall be permeable to the extent necessary to prevent the accumulation of water and formation of perched watertables and gas buildup; alternatively cover shall be removed prior to additional waste placement.
 - 7) Daily and intermediate cover shall slope away from the perimeter of the site to minimize surface discharges.
- g) Leachate Monitoring
- 1) Representative samples of leachate shall be collected from each established leachate monitoring location in accordance with subsection (g)(5) and tested for the parameters referenced in subsections (g)(2)(G) and (g)(3)(D). The Agency may, by permit condition, require additional, or allow less, leachate sampling and testing as necessary to ensure compliance with this Section and Sections 811.312, 811.317, and 811.319.
 - 2) Discharges of leachate from units that dispose of putrescible wastes shall be tested for the following constituents prior to treatment or pretreatment:
 - A) Five day biochemical oxygen demand (BOD₅);

- B) Chemical oxygen demand;
 - C) Total Suspended Solids;
 - D) Total Iron;
 - E) pH;
 - F) Any other constituents listed in the operator's National Pollution Discharge Elimination System (NPDES) discharge permit, pursuant to 35 Ill. Adm. Code 304, or required by a publicly owned treatment works, pursuant to 35 Ill. Adm. Code 310; and
 - G) All the monitoring parameters listed in Section 811.Appendix C, unless an alternate monitoring list has been approved by the Agency.
- 3) Discharges of leachate from units which dispose only chemical wastes shall be monitored for constituents determined by the characteristics of the chemical waste to be disposed of in the unit. They shall include, as a minimum:
- A) pH;
 - B) Total Dissolved Solids;
 - C) Any other constituents listed in the operator's NPDES discharge permit, pursuant to 35 Ill. Adm. Code 304, or required by a publicly owned treatment works, pursuant to 35 Ill. Adm. Code 310; and
 - D) All the monitoring parameters listed in Section 811.Appendix C, unless an alternate monitoring list has been approved by the Agency.
- 4) A network of leachate monitoring locations shall be established, capable of characterizing the leachate produced by the unit. Unless an alternate network has been approved by the Agency, the network of leachate monitoring locations shall include:
- A) At least four leachate monitoring locations; and
 - B) At least one leachate monitoring location for every 25 acres within the unit's waste boundaries.

- 5) Leachate monitoring shall be performed at least once every six months and each established leachate monitoring location shall be monitored at least once every two years.
- h) Time of Operation of the Leachate Management System
- 1) The operator shall collect and dispose of leachate for a minimum of five years after closure and thereafter until treatment is no longer necessary.
 - 2) Treatment is no longer necessary if the leachate constituents do not exceed the wastewater effluent standards in 35 Ill. Adm. Code 304.124, 304.125, 304.126 and do not contain a BOD₅ concentration greater than 30 mg/L for six consecutive months.
 - 3) Leachate collection at a MSWLF unit shall be continued for a minimum period of 30 years after closure, except as otherwise provided by subsections (h)(4) and (h)(5).
 - 4) The Agency may reduce the leachate collection period at a MSWLF unit upon a demonstration by the owner or operator that the reduced period is sufficient to protect human health and environment.
 - 5) The owner or operator of a MSWLF unit shall petition the Board for an adjusted standard in accordance with Section 811.303, if the owner or operator seeks a reduction of the ~~post-closure~~ ~~post-closure~~ ~~care~~ monitoring period for all of the following requirements:
 - i) Inspection and maintenance (Section 811.111);
 - ii) Leachate collection (Section 811.309);
 - iii) Gas monitoring (Section ~~811.310~~~~811.130~~); and
 - iv) Groundwater monitoring (Section 811.319).

BOARD NOTE: Subsection (h) is derived from 40 CFR 258.61 (1992).

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

SUBPART G: FINANCIAL ASSURANCE

Section 811.700 Scope, Applicability and Definitions

- a) This Subpart provides procedures by which the owner or operator of a permitted waste disposal facility provides financial assurance satisfying the requirements of Section 21.1(a) of the Act.

- b) Financial assurance ~~shall~~ may be provided, as specified in Section 811.706, by a trust agreement, a bond guaranteeing payment, a bond guaranteeing payment or performance, a letter of credit, insurance or self-insurance. The owner operator shall provide financial assurance to the Agency before the receipt of the waste.
- c) Except as provided in subsection (f), this Subpart does not apply to the State of Illinois, its agencies and institutions, or to any unit of local government; provided, however, that any other persons who conduct such a waste disposal operation on a site that is owned or operated by such a governmental entity shall provide financial assurance for closure and ~~post-closure~~ ~~post-closure~~ care of the site.
- d) The owner or operator is not required to provide financial assurance pursuant to this Subpart if the owner or operator demonstrates:
- 1) That closure and ~~post-closure~~ ~~post-closure~~ care plans filed pursuant to 35 Ill. Adm. Code 724 or 725 will result in closure and ~~post-closure~~ ~~post-closure~~ care of the site in accordance with the requirements of this Part; and
 - 2) That the owner or operator has provided financial assurance adequate to provide for such closure and ~~post-closure~~ ~~post-closure~~ care pursuant to 35 Ill. Adm. Code 724 or 725.
- e) Definition: "Assumed closure date" means the point in time when the extent and manner of the facility's development, as permitted for operation in accordance with 35 Ill. Adm. Code 813.203 when applicable, would make closure the most expensive date during the next permit term on which the costs of premature final closure of the facility, in accordance with the standards of this Part, will be greatest.
- f) On or after April 9, 1997, no person, other than the State of Illinois, its agencies and institutions, shall conduct any disposal operation at an MSWLF unit that requires a permit under ~~subsection (d) of Section 21(d)~~ 21.1 of the Act, unless that person complies with the financial assurance requirements of this Part.
- g) The Board will grant a variance pursuant to Sections 35 through 38 of the Act and 35 Ill. Adm. Code 104 that allows a facility to operate not in compliance with the otherwise applicable requirements of this Section for up to one year, until April 9, 1998, for good cause, if it determines that an owner or operator has demonstrated that the prior April 9, 1997 effective date for the requirements of this Section did not provide sufficient time to comply and that operating not in compliance with the otherwise applicable provisions of this Section would not adversely affect human health or the environment.

BOARD NOTE: Subsection (f) clarifies the applicability of the financial assurance

requirements to units of local government, since the Subtitle D regulations exempt only federal and state governments from financial assurance requirements. (See 40 CFR 258.70 (1996).) P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60327), USEPA added 40 CFR 258.70(c) (1996), codified here as subsection (g), to allow states to waive the compliance deadline until April 9, 1998.

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

Section 811.703 Application of Proceeds and Appeals

- a) The Agency may sue in any court of competent jurisdiction to enforce its rights under financial instruments. The filing of an enforcement action before the Board is not a condition precedent to such an Agency action, except when this Subpart or the terms of the instrument provide otherwise.
- b) As provided in Titles VIII and IX of the Act and 35 Ill. Adm. Code 103 and 104, the Board may order modifications in permits to change the type or amount of financial assurance pursuant to an enforcement action or a variance petition. Also, the Board may order that an owner or operator modify a closure or ~~post-closure~~post-closure care plan or order that proceeds from financial assurance be applied to the execution of a closure or ~~post-closure~~post-closure care plan.
- c) The following Agency actions may be appealed to the Board as a permit denial pursuant to 35 Ill. Adm. Code 105 and ~~Section 21.1(e)~~Section 21.5(e) of the Act:
 - 1) A refusal to accept financial assurance tendered by the owner or operator;
 - 2) A refusal to release the owner or operator from the requirement to maintain financial assurance;
 - 3) A refusal to release excess funds from a trust;
 - 4) A refusal to approve a reduction in the penal sum of a bond;
 - 5) A refusal to approve a reduction in the amount of a letter of credit;
 - 6) A refusal to approve a reduction in the face amount of an insurance policy;
or
 - 7) A determination that an owner or operator no longer meets the gross revenue test or financial test.

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

Section 811.704 Closure and ~~Post-Closure~~ Postclosure Care and Corrective Action Cost Estimates

- a) Written cost estimate. The owner or operator shall have a written estimate of the cost of closure of all parts of the facility where wastes have been deposited in accordance with the requirements of this Part; the written closure plan, required by Section 811.110 and 35 Ill. Adm. Code 812.114; and the cost of ~~post-closure~~ postclosure care and plans, required by this Part and the written ~~post-closure~~ postclosure care plans required by 35 Ill. Adm. Code 812.115. The cost estimate is the total cost for closure and ~~post-closure~~ postclosure care.
- b) The owner or operator shall revise the cost estimate whenever a change in the closure plan or ~~post-closure~~ postclosure care plan increases the cost estimate.
- c) The cost estimate must be based on the steps necessary for the premature final closure of the facility on the assumed closure date.
- d) The cost estimate must be based on the assumption that the Agency will contract with a third party to implement the closure plan.
- e) The cost estimate may not be reduced by allowance for the salvage value of equipment or waste, for the resale value of land, or for the sale of landfill gas.
- f) The cost estimate must, at a minimum, include all costs for all activities necessary to close the facility in accordance with all requirements of this Part.
- g) ~~(Blank) Except for a MSWLF unit, the postclosure monitoring and maintenance cost estimate must be prepared:~~
 - 1) ~~On the basis of the design period for each unit at a facility, assuming operations will cease on the assumed closure date; and~~
 - 2) ~~Reduced to present value, as follows:~~
 - A) ~~Based on a 4 percent discount rate;~~
 - B) ~~Without allowing for inflation;~~
 - C) ~~Over a period including the time remaining until the assumed closure date, plus the postclosure care period;~~
- h) The ~~post-closure~~ postclosure care cost estimate must, at a minimum, be based on the following elements in the ~~post-closure~~ postclosure care plan:
 - 1) Groundwater monitoring, based on the number of monitoring points and

parameters and the frequency of sampling specified in the permit.

- 2) The annual Cost of Cover Placement and Stabilization, including an estimate of the annual residual settlement and erosion control and the cost of mowing.
- 3) Alternative Landfill Gas Disposal. If landfill gas is transported to an off-site processing system, then the owner or operator shall include in the cost estimate the costs necessary to operate an onsite gas disposal system, should access to the off-site facility become unavailable. The cost estimate must include the following information: installation, operation, maintenance and monitoring of an on-site gas disposal system.
- 4) Cost Estimates Beyond the Design Period. When a facility must extend the ~~post-closure~~^{post-closure} care period beyond the applicable design period, the cost estimate must be based upon such additional time and the care activities occurring during that time.
 - i) This Section does not authorize the Agency to require the owner or operator to perform any of the indicated activities upon which cost estimates are to be based; however, if the site permit requires a closure activity, the owner or operator shall include the cost of that activity in the cost estimate.
 - j) Once the owner or operator has completed an activity, the owner or operator may file an application for significant permit modification pursuant to 35 Ill. Adm. Code 813.201 indicating that the activity has been completed, and zeroing that element of the cost estimate.
 - k) Cost estimate for corrective action at MSWLF units.
 - 1) An owner or operator of a MSWLF unit required to undertake a corrective action program pursuant to Section 811.326 shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the Section 811.326. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator shall notify the Agency that the estimate has been placed in the operating record.
 - 2) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with Section 811.326(f).
 - 3) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided pursuant to subsections (k)(5) and (k)(6)~~under paragraph (b) of this Section~~ if changes in

the corrective action program or MSWLF unit conditions increase the maximum costs of corrective action.

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

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

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

Section 811.706 Mechanisms for Financial Assurance

- a) The owner or operator of a waste disposal site ~~shall~~may utilize any of the mechanisms listed in subsections (a)(1) through (a)(10) to provide financial assurance for closure and ~~post-closure~~postclosure care, and for corrective action at an MSWLF unit. An owner or operator of an MSWLF unit shall also meet the requirements of subsections (b), (c), and (d). The mechanisms are as follows:
 - 1) A trust fund (see Section 811.710);
 - 2) A surety bond guaranteeing payment (see Section 811.711);
 - 3) A surety bond guaranteeing performance (see Section 811.712);
 - 4) A letter of credit (see Section 811.713);
 - 5) Closure insurance (see Section 811.714);
 - 6) Self-insurance (see Section 811.715);
 - 7) Local government financial test (see Section 811.716);

- 8) Local government guarantee (see Section 811.717);
 - 9) Corporate financial test (see Section 811.719); or
 - 10) Corporate guarantee (see Section 811.720).
- b) The owner or operator of an MSWLF unit shall ensure that the language of the mechanisms listed in subsection (a), when used for providing financial assurance for closure, ~~post-closure~~~~postclosure~~, and corrective action, satisfies the following:
- 1) The amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action; and
 - 2) The funds will be available in a timely fashion when needed.
- c) The owner or operator of an MSWLF unit shall provide financial assurance utilizing one or more of the mechanisms listed in subsection (a) within the following dates:
- 1) By April 9, 1997, or such later date granted pursuant to Section 811.700(g), or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care; or
 - 2) No later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325, in the case of corrective action.
- d) The owner or operator shall provide continuous coverage until the owner or operator is released from the financial assurance requirements pursuant to 35 Ill. Adm. Code 813.403(b) or Section 811.326.

BOARD NOTE: Subsections (b) and (c) are derived from 40 CFR 258.74(1) (1996). Amendments prompted by amendments to 40 CFR 258.74(a)(5) (1996). P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60327), USEPA added 40 CFR 258.70(c) (1996), codified here as Section 811.700(g), to allow states to waive the compliance deadline until April 9, 1998.

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

Section 811.710 Trust Fund

- a) An owner or operator may satisfy the requirements of this Subpart G by establishing a trust fund that 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 that has the authority to act as a trustee and of whom either of the following is true:
- 1) It is an entity whose trust operations are examined by the Illinois ~~Department of Financial and Professional Regulation~~ ~~Commissioner of Banks and Trust Companies~~ pursuant to the Illinois Banking Act [205 ILCS 5]; or
 - 2) It is an entity that complies with the Corporate Fiduciary Act [205 ILCS 620].
- c) The trust agreement must be on the forms specified in Appendix A, Illustration A of this Part, and the trust agreement must be accompanied by a formal certification of acknowledgement, on the form specified in Appendix A, Illustration B. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure, post-closure, and corrective action cost estimates covered by the agreement. ~~of this Part.~~
- d) Payments into the trust.
- 1) For closure and post-closure care.
 - A) The owner or operator must make a payment into the trust fund each year during the pay-in period.
 - B) The pay-in period is the initial permit term or the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter. ~~number of years remaining until the assumed closure date.~~
 - C) Annual payments are determined by the following formula:

$$\text{Annual payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

Where ~~the variables are defined as follows:~~

 - CE = Current cost estimate
 - CV = Current value of the trust fund
 - Y = Number of years remaining in the pay-in period.
 - D) The owner or operator must make the first annual payment prior to the initial receipt of waste for disposal. The owner or operator must also, prior to ~~such~~ initial receipt of waste, submit to the

Agency a receipt from the trustee for the first annual payment.

- E) Subsequent annual payments must be made no later than 30 days after each anniversary of the first payment.
- F) The owner or operator may accelerate payments into the trust fund, or may deposit the full amount of the current cost estimate at the time the fund is established.
- G) An owner or operator required to provide additional financial assurance for an increase in the cost estimate because of an amendment to this Subchapter i may provide such additional financial assurance pursuant to this subsection (d)(1)(G). The owner or operator may provide the increase by contributing to a new or existing trust fund pursuant to this Section. Subsection (d)(2) of this Section notwithstanding, the pay-in period for such additional financial assurance must be not less than three years.

2) For corrective action at MSWLF units.

- A) The owner or operator must make payments into the trust fund annually over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.
- B) The owner or operator must make the first payment into the trust fund equal to at least one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period, as defined in subsection (d)(2)(A) of this Section. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{RB}-\text{CV}}{\text{Y}}$$

Where the variables are defined as follows:

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

CV = Current value of the trust fund

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

- C) The owner or operator must make the initial payment into the trust fund no later than 120 days after the remedy has been selected in

accordance with the requirements of Section 811.325.

BOARD NOTE: Subsection (d) of this Section is partly derived from 40 CFR 258.74(a)(2), (a)(4), and (a)(5) (2005).

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

BOARD NOTE: Subsection (f) of this Section is derived from 40 CFR 258.74(a)(6) (2005).

- g) Release of excess funds.
 - 1) If the value of the financial assurance is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the Agency for a release of the amount in excess of the current cost estimate.
 - 2) Within 60 days after receiving a request from the owner or operator for a release of funds, the Agency must instruct the trustee to release to the owner or operator ~~to release~~ such funds as the Agency specifies in writing to be in excess of the current cost estimate.
- h) Reimbursement for closure, post-closure~~postclosure~~ care, and corrective action expenses.
 - 1) After initiating closure or corrective action, an owner or operator, or any other person authorized to perform closure, post-closure~~postclosure~~ care, or corrective action, may request reimbursement for closure, post-closure~~postclosure~~ care, or corrective action expenditures, by submitting itemized bills to the Agency.
 - 2) Within 60 days after receiving the itemized bills for closure, post-closure~~postclosure~~ care, or correction action activities, the Agency must determine whether the expenditures are in accordance with the closure, post-closure~~postclosure~~ care, or corrective action plan. The Agency must instruct the trustee to make reimbursement in such amounts as the Agency specifies in writing as expenditures in accordance with the closure, post-

~~closure~~~~postclosure~~ care, or corrective action plan.

- 3) If the Agency determines, based on such information as is available to it, that the cost of closure and ~~post-closure~~~~postclosure~~ care or corrective action will be greater than the value of the trust fund, it must withhold reimbursement of such amounts as it determines are necessary to preserve the fund in order to accomplish closure and ~~post-closure~~~~postclosure~~ care or corrective action until it determines that the owner or operator is no longer required to maintain financial assurance for closure and ~~post-closure~~~~postclosure~~ care or corrective action. In the event the fund is inadequate to pay all claims, the Agency must pay claims according to the following priorities:
- A) Persons with whom the Agency has contracted to perform closure, ~~post-closure~~~~postclosure~~ care, or corrective action activities (first priority);
 - B) Persons who have completed closure, ~~post-closure~~~~postclosure~~ care, or corrective action authorized by the Agency (second priority);
 - C) Persons who have completed work that furthered the closure, ~~post-closure~~~~postclosure~~ care, or corrective action (third priority);
 - D) The owner or operator and related business entities (last priority).

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

Section 811.711 Surety Bond Guaranteeing Payment

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining a surety bond which conforms to the requirements of this Section and submitting the bond to the Agency. A surety bond obtained by an owner or operator of an MSWLF unit must be effective before the initial receipt of waste or before April 9, 1997 (the effective date of the financial assurance requirements under RCRA Subtitle D regulations), or such later date granted pursuant to Section 811.700(g), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.
- b) The surety company issuing the bond shall be *licensed to transact the business of insurance by the Department of 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. ~~Section 21.1(a.5) of the Act~~ [415 ILCS 5/21.1(a.5)]

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

- c) The surety bond must be on the forms specified in Appendix A, Illustration C, ~~D~~, or H.
- d) Any payments made under the bond will be placed in the Landfill Closure~~landfill closure~~ and Post-Closure~~postclosure~~ fund within the State Treasury.
- e) Conditions:
 - 1) The bond must guarantee that the owner or operator will:
 - A) Provide~~provide~~ closure and post-closure~~postclosure~~ care in accordance with the approved closure and post-closure~~postclosure~~ care plans and, if the bond is a corrective action bond, provide~~and, if the facility is an MSWLF unit, then the corrective action bond must guarantee that the owner or operator will implement~~ corrective action in accordance with Section 811.326; and
 - B) Provide alternative financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the owner or operator and the Agency of a notice from the surety that the bond will not be renewed for another term.
 - 2) The surety will become liable on the bond obligation when, during the term of the bond, the owner or operator fails to perform as guaranteed by the bond. The owner or operator fails to perform when the owner or operator:
 - A) Abandons the site;
 - B) Is adjudicated bankrupt;
 - C) Fails to initiate closure of the site or post-closure~~postclosure~~ care or corrective action when ordered to do so by the Board pursuant to Title VIII~~Title VII~~ of the Act, or when ordered to do so by a court of competent jurisdiction;
 - D) Notifies the Agency that it has initiated closure or corrective action, or initiates closure or corrective action, but fails to close the site or provide post-closure~~postclosure~~ care or corrective action in accordance with the closure and post-closure~~postclosure~~ care or corrective action plans; ~~or~~

- E) For a corrective action bond, fails to implement corrective action at an MSWLF unit in accordance with Section 811.326; or
- F) Fails to provide alternative financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the owner or operator and the Agency of a notice from the surety that the bond will not be renewed for another term.
- f) Penal sum:
- 1) The penal sum of the bond must be in an amount at least equal to the current cost estimate.
 - 2) Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Agency~~The Agency shall approve a reduction in the penal sum whenever the current cost estimate decreases.~~
 - 3) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner of operator, within 90 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of that increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of the alternative financial assurance to the Agency.
- g) Term:
- 1) The bond must be issued for a term of at least one year~~five years~~ and must not be cancelable during that term.
 - 2) The surety bond must provide that, on the current expiration date and on each successive expiration date, the term of the surety bond will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the surety notifies both the owner and operator and the Agency by certified mail of a decision not to renew the bond. Under the terms of the surety bond, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts. If the owner or operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond must be automatically extended for one twelve-month period starting with the date of expiration of the bond. During such extension the bond will cease to serve as financial assurance satisfying the requirements of this Part, and will not excuse the owner or operator from

~~the duty to provide substitute financial assurance.~~

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

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

B) The Agency releases the owner or operator from the requirements of this Subpart in accordance with 35 Ill. Adm. Code 813.403(b). The Agency shall release the surety if, after the surety becomes liable on the bond, the owner or operator or another person provides financial assurance for closure and postclosure care of the site or corrective action program at an MSWLF unit, unless the Agency determines that the closure or postclosure care plan, corrective action at an MSWLF unit, or the amount of substituted financial assurance is inadequate to provide closure and postclosure care or implement corrective action in compliance with this Part.

- h) Cure of default and refunds:

- 1) The Agency shall release the surety if, after the surety becomes liable on the bond, the owner or operator or another person provides financial assurance for closure and ~~post-closure~~ ~~postclosure~~ care of the site or corrective action at an MSWLF unit, unless the Agency determines that the closure or ~~post-closure~~ ~~postclosure~~ care plan, corrective action at an MSWLF unit or the amount of substituted financial assurance is inadequate to provide closure and ~~post-closure~~ ~~postclosure~~ care or implement corrective action in compliance with this Part.
- 2) After closure and ~~post-closure~~ ~~postclosure~~ care have been completed in accordance with the plans and requirements of this Part or after the completion of corrective action at an MSWLF unit in accordance with Section 811.326, the Agency shall refund any unspent money which was paid into the "Landfill Closure and ~~post-closure~~ ~~postclosure~~ Fund" by the surety, subject to appropriation of funds by the Illinois General Assembly.

BOARD NOTE: MSWLF corrective action language at subsection (a) is derived from 40 CFR 258.74(b)(1) (1996). P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60337), USEPA added 40 CFR 258.70(c) (1996), codified here as Section 811.700(g), to allow states to waive the compliance deadline until April 9, 1998. The other clarifying

changes reflect the inclusion of financial assurance requirements for implementing corrective action at MSWLF units under this Section.

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

Section 811.712 Surety Bond Guaranteeing Performance

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

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

- c) The surety bond must be on the forms as specified in Appendix A, Illustration ~~C, D, or H.~~
- d) Any payments made under the bond will be placed in the Landfill Closure and Post-Closure ~~landfill closure and postclosure~~ within the State Treasury.
- e) Conditions:
 - 1) The bond must guarantee that the owner or operator will:
 - A) Provide ~~provide~~ closure and post-closure ~~postclosure~~ care in accordance with the closure and post-closure ~~postclosure~~ care plans in the permit and, if the bond is a corrective action bond, provide. ~~If the facility is an MSWLF unit, then a corrective action bond must guarantee that the owner or operator will implement corrective action in accordance with Section 811.326; and. The surety shall have the option of providing closure and postclosure care or carrying out corrective action, or of paying the penal sum~~

- B) Provide alternative financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the owner or operator and the Agency of a notice from the surety that the bond will not be renewed for another term.
- 2) The surety will become liable on the bond obligation when, during the term of the bond, the owner or operator fails to perform as guaranteed by the bond. The owner or operator fails to perform when the owner or operator:
- A) Abandons the site;
- B) Is adjudicated bankrupt;
- C) Fails to initiate closure of the site or ~~post-closure~~ ~~post-closure~~ care or corrective action when ordered to do so by the Board pursuant to ~~Title VIII~~ ~~Title VII~~ of the Act, or when ordered to do so by a court of competent jurisdiction; ~~or~~
- D) Notifies the Agency that it has initiated closure or corrective action, or initiates closure or corrective action, but fails to close the site or provide ~~post-closure~~ ~~post-closure~~ care or corrective action in accordance with the closure and ~~post-closure~~ ~~post-closure~~ care or corrective action plans.
- E) For a corrective action bond, fails to implement corrective action at an MSWLF unit in accordance with Section 811.326; or
- F) Fails to provide alternative financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the owner or operator and the Agency of a notice from the surety that the bond will not be renewed for another term.
- 3) Upon failure of the owner or operator to perform as guaranteed by the bond, the surety shall have the option of providing closure and ~~post-closure~~ ~~post-closure~~ care, in accordance with the closure and post-closure care plans or carrying out corrective action, in accordance with the corrective action plan, or of paying the penal sum.
- f) Penal sum:
- 1) The penal sum of the bond must be in an amount at least equal to the current cost estimate.

- 2) Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Agency. The Agency shall approve a reduction in the penal sum whenever the current cost estimate decreases.
 - 3) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within 90 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of that increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of the alternative financial assurance to the Agency.
- g) Term:
- 1) The bond must be issued for a term of at least one year~~five years~~ and must not be cancelable during that term.
 - 2) The surety bond must provide that, on the current expiration date and on each successive expiration date, the term of the surety bond will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the surety notifies both the owner or operator and the Agency by certified mail of a decision not to renew the bond. Under the terms of the surety bond, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts. If the owner or operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond must be automatically extended for one twelve month period starting with the date of expiration of the bond. During such extension, the bond will cease to serve as financial assurance satisfying the requirements of this Part, and will not excuse the owner or operator from the duty to provide substitute financial assurance.
 - 3) The Agency shall release the surety by providing written authorization for termination of the bond to the owner or operator and the surety when either of the following occurs:
 - A) An owner or operator substitutes alternative financial assurance, as specified in this Subpart; or
 - B) The Agency releases the owner or operator from the requirements of this Subpart in accordance with 35 Ill. Adm. Code 813.403(b).
- h) Cure of default and refunds:

- 1) The Agency shall release the surety if, after the surety becomes liable on the bond, the owner or operator or another person provides financial assurance for closure and ~~post-closure~~ postclosure care of the site or corrective action at an MSWLF unit, unless the Agency determines that the closure or ~~post-closure~~ postclosure care plan, corrective action at an MSWLF unit, or the amount of substituted financial assurance is inadequate to provide closure and ~~post-closure~~ postclosure care or implement corrective action at an MSWLF unit in compliance with this Part.
- 2) After closure and ~~post-closure~~ postclosure care have been completed in accordance with the closure and ~~post-closure~~ postclosure care plans and the requirements of this Part or after the completion of corrective action at an MSWLF unit in accordance with Section 811.326, the Agency shall refund any unspent money which was paid into the "Landfill Closure and Post-Closure ~~postclosure~~ Fund" by the surety, subject to appropriation of funds by the Illinois General Assembly.
- i) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the Agency releases the owner or operator from the requirements of this Subpart.

BOARD NOTE: MSWLF corrective action language at subsection (a) is derived from 40 CFR 258.74(b)(1) (1996). P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60337), USEPA added 40 CFR 258.70(c) (1996), codified here as Section 811.700(g), to allow states to waive the compliance deadline until April 9, 1998. The other clarifying changes reflect the inclusion of financial assurance requirements for implementing corrective action at MSWLF units under this Section.

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

Section 811.713 Letter of Credit

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining an irrevocable standby letter of credit which conforms to the requirements of this Section and submitting the letter to the Agency. A letter of credit obtained by an owner or operator of an MSWLF unit must be effective before the initial receipt of waste or before April 9, 1997 (the effective date of the financial assurance requirements under RCRA Subtitle D regulations), or such later date granted pursuant to Section 811.700(g), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.

- b) The issuing institution shall be an entity ~~that~~^{which} has the authority to issue letters of credit and:
- 1) Whose letter-of-credit operations are regulated by the Illinois Department of Financial and Professional Regulation~~Commissioner of Banks and Trust Companies~~ pursuant to the Illinois Banking Act [205 ILCS 5]; or
 - 2) Whose deposits are insured by the Federal Deposit Insurance Corporation ~~or the Federal Savings and Loan Insurance Corporation.~~
- c) Forms:
- 1) The letter of credit must be on the forms specified in Appendix A, Illustration E.
 - 2) The letter of credit must be accompanied by a letter from the owner or operator, referring to the letter of credit by number, the name and address of the issuing institution, and the effective date of the letter, and providing the following information: the name and address of the site and the amount of funds assured for closure and ~~post-closure~~^{postclosure} care of the site, or for corrective action at an MSWLF unit by the letter of credit.
- d) Any amounts drawn by the Agency pursuant to the letter of credit will be deposited in the Landfill Closure and Post-Closure Fund~~landfill closure and postclosure fund~~ within the State Treasury.
- e) Conditions on which the Agency ~~shall~~^{may} draw on the letter of credit:
- 1) The Agency shall draw on the letter of credit if the owner or operator fails to perform closure ~~post-closure~~^{postclosure} care in accordance with the closure and ~~post-closure~~^{postclosure} care plans, or fails to implement corrective action at an MSWLF unit in accordance with Section 811.326.
 - 2) The Agency shall draw on the letter of credit when the owner or operator:
 - A) Abandons the site;
 - B) Is adjudicated bankrupt;
 - C) Fails to initiate closure of the site or ~~post-closure~~^{postclosure} care or corrective action when ordered to do so by the Board pursuant to Title VIII~~Title VII~~ of the Act, or when ordered to do so by a court of competent jurisdiction;
 - D) Notifies the Agency that it has initiated closure or corrective action, or initiates closure or corrective action, but fails to Provide

closure and ~~post-closure~~~~postclosure~~ care or corrective ~~post-~~~~closure~~~~postclosure~~ action in accordance with the closure and ~~post-~~~~closure~~~~postclosure~~ care or corrective action plans; ~~or~~

- E) For a corrective action bond, fails to implement corrective action at an MSWLF unit in accordance with Section 811.326; or
- F) Fails to provide alternative financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the owner or operator and the Agency of a notice from the issuing institution that the letter of credit will not be extended for another term.

f) Amount:

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

g) Term:

- 1) The letter of credit must be issued for a term of at least one year~~five years~~ and must be irrevocable during that term.
- 2) The letter of credit must provide that, on the current expiration date and on each successive expiration date, the letter of credit will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Agency by certified mail of a decision not to extend the letter of credit for another term. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts. If the owner or operator fails to substitute alternative financial assurance prior to expiration of a letter of credit, the term of the letter of credit must

~~be automatically extended for one twelve month period starting with the date of expiration. During such extension, the letter of credit will cease to serve as financial assurance satisfying the requirements of this Part, and will not excuse the owner or operator from the duty to provide substitute financial assurance.~~

- 3) The Agency must return the letter of credit to the issuing institution for termination when either of the following occurs:
- A) An owner or operator substitutes alternative financial assurance, as specified in this Subpart; or
 - B) The Agency releases the owner or operator from the requirements of this Subpart in accordance with Ill. Adm. Code 813.403(b).
- h) Cure of default and refunds:
- 1) The Agency shall release the financial institution if, after the Agency is allowed to draw on the letter of credit, the owner or operator or another person provides financial assurance for closure and ~~post-closure~~ post-closure care of the site or corrective action at an MSWLF unit, unless the Agency determines that a plan or the amount of substituted financial assurance is inadequate to provide closure and ~~post-closure~~ post-closure care, or implement corrective action at an MSWLF unit, as required by this Part.
 - 2) After closure and ~~post-closure~~ post-closure care have been completed in accordance with the closure and ~~post-closure~~ post-closure care plans and the requirements of this Part or after the completion of corrective action at an MSWLF unit in accordance with Section 811.326, the Agency shall refund any unspent money which was paid into the "Landfill Closure and ~~Post-Closure~~ Post-closure Fund" by the financial institution, subject to appropriation of funds by the Illinois General Assembly.

BOARD NOTE: MSWLF corrective action language at subsection (a) is derived from 40 CFR 258.74(c)(1) (1996). P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60337), USEPA added 40 CFR 258.70(c) (1996), codified here as Section 811.700(g), to allow states to waive the compliance deadline until April 9, 1998. The other clarifying changes reflect the inclusion of financial assurance requirements for implementing corrective action at MSWLF units under this Section.

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

Section 811.714 Closure Insurance

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining closure and ~~post-closure~~ ~~postclosure~~ care insurance which conforms to the requirements of this Section and submitting to the Agency an executed duplicate original of ~~the~~ ~~such~~ insurance policy and the certificate of insurance for closure and/or ~~post-closure~~ ~~postclosure~~ care specified in Appendix A, Illustration F to the Agency.
- b) The insurer shall be *licensed to transact the business of insurance by the Department of 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.* ~~Section 21.1(a.5) of the Act~~ [415 ILCS 5/21.1(a.5)]
- c) The policy must be on forms filed with the Illinois Department of Insurance, ~~approved by the Illinois Department of Insurance~~ pursuant to 50 Ill. Adm. Code 753 and Section 143(2) of the Illinois Insurance Code [215 ILCS 5/143(2)] or on forms approved by the insurance department of one or more states.
- d) Face amount:
 - 1) The closure and ~~post-closure~~ ~~postclosure~~ care insurance policy must be issued for a face amount at least equal to the current cost estimate. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
 - 2) Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate, following written approval by the Agency. ~~The Agency shall approve a reduction in the amount of the policy whenever the current cost estimate decreases.~~
 - 3) Whenever the current cost estimate increases to an amount greater than the face amount, the owner or operator, within 90 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of that increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of the alternative financial assurance to the Agency.

- e) The closure and ~~post-closure~~ ~~postclosure~~ care insurance policy must guarantee that funds will be available to close the site and to provide ~~post-closure~~ ~~postclosure~~ care thereafter. The policy must also guarantee that, once closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Agency to such party or parties as the Agency specifies. The insurer will be liable when:
- 1) The owner or operator abandons the site;
 - 2) The owner or operator is adjudicated bankrupt;
 - 3) The Board, pursuant to Title VIII of the Act, or a court of competent jurisdiction orders the site closed;
 - 4) The owner or operator notifies the Agency that it is initiating closure; or
 - 5) Any person initiates closure with approval of the Agency.
- f) Reimbursement for closure and ~~post-closure~~ ~~postclosure~~ care expenses:
- 1) After initiating closure, an owner or operator or any other person authorized to perform closure or ~~post-closure~~ ~~postclosure~~ care may request reimbursement for closure and ~~post-closure~~ ~~postclosure~~ care expenditures by submitting itemized bills to the Agency.
 - 2) Within 60 days after receiving bills for closure or ~~post-closure~~ ~~postclosure~~ care activities, the Agency shall determine whether the expenditures are in accordance with the closure or ~~post-closure~~ ~~postclosure~~ care plan. The Agency shall direct the insurer to make reimbursement in such amounts as the Agency specifies in writing as expenditures in accordance with the closure and ~~post-closure~~ ~~postclosure~~ care plans.
 - 3) If the Agency determines based on such information as is available to it that the cost of closure and ~~post-closure~~ ~~postclosure~~ care will be greater than the face amount of the policy, it shall withhold reimbursement of such amounts as it deems prudent until it determines that the owner or operator is no longer required to maintain financial assurance. In the event the face amount of the policy is inadequate to pay all claims, the Agency shall pay claims according to the following priorities:
 - A) Persons with whom the Agency has contracted to perform closure or ~~post-closure~~ ~~postclosure~~ care activities (first priority);
 - B) Persons who have completed closure or ~~post-closure~~ ~~postclosure~~ care authorized by the Agency (second priority);

- C) Persons who have completed work which furthered the closure or ~~post-closure~~ post-closure care (third priority);
 - D) The owner or operator and related business entities (last priority).
- g) Cancellation:
- 1) The owner or operator shall maintain the policy in full force and effect until the Agency releases the insurer pursuant to Section 811.702.
 - 2) The policy must provide that the insurer may not cancel, terminate or fail to renew the policy, except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the owner or operator and the Agency. Cancellation, termination or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Agency and the owner or operator, as evidenced by the return receipts. Cancellation, termination or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration the premium due is paid.
- h) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

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

Section 811.715 Self-Insurance for Non-Commercial~~Commercial~~ Sites

- a) Definitions. The following definitions are intended to assist in the understanding of this Part and are not intended to limit the meanings of terms in any way that conflicts with generally accepted accounting principles:
- "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.
- "Current assets" means cash or other assets or resources commonly identified as those ~~that 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 Auditing Standards—Current Text, incorporated by reference at 35 Ill. Adm. Code 810.104.~~

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

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

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

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

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

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

b) Information to be filed

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

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

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

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

operator's waste disposal operations.

e) Financial test.

- 1) To pass the financial test, the owner or operator must meet the criteria of either subsection (e)(1)(A) or (e)(1)(B) of this Section:
 - A) The owner or operator must have:
 - i) Two of the following three ratios: a ratio of total liabilities to net worth of less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities of greater than 0.1; or a ratio of current assets to current liabilities of greater than 1.5; and
 - ii) Net working capital and tangible net worth each at least six times the current cost estimate; and
 - iii) Tangible net worth of at least \$10 million; and
 - iv) Assets in the United States amounting to at least 90 percent of the owner's or operator's total assets and at least six times the current cost estimate.
 - B) The owner or operator must have:
 - i) A current rating of AAA, AA, A, or BBB for its most recent bond issuance as issued by Standard and Poor, or a rating of Aaa, Aa, A₂ or Baa, as issued by Moody; and
 - ii) Tangible net worth at least six times the current cost estimate; and
 - iii) Tangible net worth of at least \$10 million; and
 - iv) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the current cost estimate.
- 2) To demonstrate that it meets this test, the owner or operator must submit the following items to the Agency:
 - A) A letter signed by the owner or operator's chief financial officer and worded as specified in Appendix A, Illustration I; and
 - B) A copy of the independent certified public accountant's report on

examination of the owner or operator's financial statements for the latest completed fiscal year; and

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

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

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

Section 811.716 Local Government Financial Test

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

- a) Financial component.
- 1) The unit of local government owner or operator must satisfy subsection (a)(1)(A) or (a)(1)(B) of this Section, as applicable:
 - A) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's, on all such general obligation bonds; or
 - B) The owner or operator must satisfy each of the following financial ratios based on the owner or operator's most recent audited annual financial statement:
 - i) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and
 - ii) A ratio of annual debt service to total expenditures less than or equal to 0.20.
 - 2) The unit of local government owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant or the Comptroller of the State of Illinois pursuant to the Governmental Account Audit Act [50 ILCS 310].
 - 3) A unit of local government is not eligible to assure its obligations pursuant to this Section if any of the following is true:
 - A) It is currently in default on any outstanding general obligation bonds;

- B) It has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's;
- C) It operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or
- D) It receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant or the Comptroller of the State of Illinois pursuant to the Governmental Account Audit Act [50 ILCS 310] auditing its financial statement as required pursuant to subsection (a)(2) of this Section. However, the Agency must evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Agency deems the qualification insufficient to warrant disallowance of use of the test.

4) Terms used in this Section are defined as follows:

"Cash plus marketable securities" is all the cash plus marketable securities held by the unit of local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

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

"Deficit" equals total annual revenues minus total annual expenditures.

"Total revenues" include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by a unit of local government on behalf of a specific third party.

"Total expenditures" include all expenditures excluding capital outlays and debt repayment.

b) Public notice component.

- 1) The unit of local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR), or prior to the initial receipt of waste at the facility, whichever is later.
- 2) Disclosure must include the nature and source of closure and post-closure

care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years.

- 3) A reference to corrective action costs must be placed in the CAFR not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Sections 811.319(d) and 811.325.
 - 4) For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget.
 - 5) For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18, incorporated by reference in 35 Ill. Adm. Code 810.104, assures compliance with this public notice component.
- c) Recordkeeping and reporting requirements.
- 1) The unit of local government owner or operator must place the following items in the facility's operating record:
 - A) A letter signed by the unit of local government's chief financial officer that provides the following information:
 - i) It lists all the current cost estimates covered by a financial test, as described in subsection (d) of this Section;
 - ii) It provides evidence and certifies that the unit of local government meets the conditions of subsections (a)(1), (a)(2), and (a)(3) of this Section; and
 - iii) It certifies that the unit of local government meets the conditions of subsections (b) and (d) of this Section.
 - B) The unit of local government's independently audited year-end financial statements for the latest fiscal year (except for a unit of local government where audits are required every two years, where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent certified public accountant (CPA) or the Comptroller of the State of Illinois pursuant to the Governmental Account Audit Act [50 ILCS 310].

- C) A report to the unit of local government from the unit of local government's independent CPA or the Comptroller of the State of Illinois pursuant to the Governmental Account Audit Act [50 ILCS 310] based on performing an agreed upon procedures engagement relative to the financial ratios required by subsection (a)(1)(B) of this Section, if applicable, and the requirements of subsections (a)(2), (a)(3)(C), and (a)(3)(D) of this Section. The CPA or Comptroller's report should state the procedures performed and the CPA or Comptroller's findings; ~~and~~
 - D) A copy of the comprehensive annual financial report (CAFR) used to comply with subsection (b) of this Section or certification that the requirements of General Accounting Standards Board Statement 18, incorporated by reference in Section 810.104, have been met.
- 2) The items required in subsection (c)(1) of this Section must be placed in the facility operating record as follows:
 - A) In the case of closure and post-closure care, before November 27, 1997 or prior to the initial receipt of waste at the facility, whichever is later; or
 - B) In the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of Sections 811.319(d) and 811.325.
 - 3) After the initial placement of the items in the facility operating record, the unit of local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.
 - 4) The unit of local government owner or operator is no longer required to meet the requirements of subsection (c) of this Section when either of the following occurs:
 - A) The owner or operator substitutes alternative financial assurance as specified in this Section; or
 - B) The owner or operator is released from the requirements of this Section in accordance with Section 811.326(g), 811.702(b), or 811.704(j) or (k)(6).
 - 5) A unit of local government must satisfy the requirements of the financial test at the close of each fiscal year. If the unit of local government owner

or operator no longer meets the requirements of the local government financial test it must, within ~~120~~210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this Subpart, place the required submissions for that assurance in the operating record, ~~and~~ notify the Agency that the owner or operator no longer meets the criteria of the financial test and that alternative assurance has been obtained, and submit evidence of the alternative financial assurance to the Agency.

- 6) The Agency, based on a reasonable belief that the unit of local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the unit of local government at any time. If the Agency determines, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the unit of local government must provide alternative financial assurance in accordance with this Subpart.
- d) Calculation of Costs to Be Assured. The portion of the closure, post-closure, and corrective action costs that an owner or operator may assure pursuant to this Section is determined as follows:
- 1) If the unit of local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the unit of local government's total annual revenue.
 - 2) If the unit of local government assures other environmental obligations through a financial test, including those associated with UIC facilities pursuant to 35 Ill. Adm. Code 704.213, petroleum underground storage tank facilities pursuant to 40 CFR 280, PCB storage facilities pursuant to 40 CFR 761, and hazardous waste treatment, storage, and disposal facilities pursuant to 35 Ill. Adm. Code 724 and 725, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure pursuant to this Section. The total that may be assured must not exceed 43 percent of the unit of local government's total annual revenue.
 - 3) The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in subsections (d)(1) and (d)(2) of this Section.

BOARD NOTE: Derived from 40 CFR 258.74(f) (2005).

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

Section 811.718 Discounting

For facilities providing financial assurance solely through a trust fund, theThe Agency shall allow discounting of closure cost estimates, post-closure cost estimates, and corrective action cost estimates in Section 811.704 up to the rate of return for essentially risk free investments, net of inflation, under the following conditions:

- a) The Agency determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a professional engineer, as defined in Section 810.103, so stating;
- b) The Agency finds the facility in compliance with applicable and appropriate permit conditions; ~~and~~
- c) The Agency determines that the closure date is certain, and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; ~~and-~~
- d) Discounted cost estimates ~~are~~must be adjusted annually to reflect inflation and the anticipated years of remaining life.

BOARD NOTE: Derived from 40 CFR 258.75, added at 61 Fed. Reg. 60327 (Nov. 27, 1996).

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

Section 811.719 Corporate Financial Test

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

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

cost estimates and any other environmental obligations, including guarantees, covered by a financial test plus \$10 million except as provided in subsection (a)(2)(B) of this Section.

- B) \$10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided all of the current closure, post-closure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Agency.
 - 3) The owner or operator must have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test, as described in subsection (c) of this Section.
- b) Recordkeeping and reporting requirements.
- 1) The owner or operator must place the following items into the facility's operating record:
 - A) A letter signed by the owner's or operator's chief financial officer that includes the following:
 - i) All the current cost estimates covered by a financial test, including, but not limited to, cost estimates required for municipal solid waste management facilities pursuant to this Part; cost estimates required for UIC facilities pursuant to 35 Ill. Adm. Code 730, if applicable; cost estimates required for petroleum underground storage tank facilities pursuant to 40 CFR 280, if applicable; cost estimates required for PCB storage facilities pursuant to 40 CFR 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities pursuant to 35 Ill. Adm. Code 724 or 725, if applicable; and
 - ii) Evidence demonstrating that the firm meets the conditions of subsection (a)(1)(A), (a)(1)(B), or (a)(1)(C) of this Section and subsection (a)(2) and (a)(3) of this Section.
 - B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public

accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence.

The Agency must evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Agency deems that the matters that form the basis for the qualification are insufficient to warrant disallowance of the test. If the Agency does not allow use of the test, the owner or operator must provide alternative financial assurance that meets the requirements of this Section.

- C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subsection (a)(1)(B) or (a)(1)(C) of this Section that are different from data in the audited financial statements referred to in subsection (b)(1)(B) of this Section or any other audited financial statement or data filed with the federal Security Exchange Commission, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report must be based upon an agreed upon procedures engagement in accordance with professional auditing standards and must describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.
 - D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations, as provided in subsection (a)(2)(B) of this Section, then the letter must include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.
- 2) An owner or operator must place the items specified in subsection (b)(1) of this Section in the operating record and notify the Agency in writing that these items have been placed in the operating record before the initial receipt of waste or before February 17, 1999, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Section 811.324.

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

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

- c) Calculation of costs to be assured. When calculating the current cost estimates for closure, post-closure care, corrective action, the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in this Section, the owner or operator must include cost estimates required for municipal solid waste management facilities pursuant to this Part, as well as cost estimates required for the following environmental obligations, if it assures them through a financial test: obligations associated with UIC facilities pursuant to 35 Ill. Adm. Code 730; petroleum underground storage tank facilities pursuant to 40 CFR 280; PCB storage facilities pursuant to 40 CFR 761; and hazardous waste treatment, storage, and disposal facilities pursuant to 35 Ill. Adm. Code 724 or 725.

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

Section 811.APPENDIX A Financial Assurance Forms**Section 811.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~~ ~~postclosure~~ care or corrective action in accordance with the Act and Illinois Pollution Control Board, "IPCB", rules.

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

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

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

Whereas, Trustee is an entity ~~that which~~ has authority to act as a trustee and whose trust operations are regulated by the Illinois Department of Financial and Professional Regulation ~~Commissioner of Banks & Trust Companies~~ or who complies with the Corporate Fiduciary Act (~~Ill. Rev. Stat. 1991, ch. 17, par. 1551-1 et. seq. [205 ILCS 5/4]~~). (Line through any condition ~~that which~~ does not apply.)

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

Section 1. Definitions.

As used in this Agreement:

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

Section 2. Identification of Sites and Cost Estimates.

This Agreement pertains to the sites and cost estimates identified on attached Schedule A (on Schedule A, list the name and address and ~~current~~^{initial} 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~~^{Postclosure} Care or Corrective Action.

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

Section 5. Payments Comprising the Fund.

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

Section 6. Trust Management.

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

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

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

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

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this agreement or by law, the Trustee is expressly authorized and empowered;

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

merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund.

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

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

Section 9. Taxes and Expenses.

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

Section 10. Annual Valuation.

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

Section 11. Advice of counsel.

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

Section 12. Trustee Compensation.

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

Section 13. Successor Trustee.

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

Section 14. Instructions to the Trustee.

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the IEPA to the Trustee shall be in writing, signed by the IEPA Director or his/~~her~~ designee-~~designees~~, 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 ten days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the IEPA Director or his/her designee, or by the Trustee and the IEPA Director or his/her 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 designee, or by the Trustee and the IEPA Director

or his/her 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 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 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 811.Appendix A, Illustration A as those regulations were constituted on the date this Agreement was entered.

Attest: Signature of Grantor _____

 Typed Name _____

 Title _____

Seal

Attest: Signature of Trustee _____

Typed Name _____

Title _____

Seal

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

Section 811.APPENDIX A Financial Assurance Forms

Section 811.ILLUSTRATION C Forfeiture Bond

FORFEITURE BOND

Date bond executed: _____

Effective date: _____

Principal: _____

Type of organization: _____

State of incorporation: _____

Surety: _____

Sites:

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

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

Total penal sum of bond: _____

Surety's bond number: _____

The Principal and the Surety promise to pay the Illinois Environmental Protection Agency ("IEPA") the above penal sum unless the Principal provides closure and ~~post-closure~~ postclosure care or corrective action for each site in accordance with the closure and ~~post-closure~~ postclosure

care or corrective action plans for that site. To the payment of this obligation the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

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

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

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

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

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

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or ~~post-closure~~ ~~postclosure~~ care or corrective action when ordered to do so by the Illinois Pollution Control Board or a court of competent jurisdiction;
- d) Notifies the ~~IEPA Agency~~ that it has initiated closure, or initiates closure, but fails to close the site or provide ~~post-closure~~ ~~postclosure~~ care or corrective action in accordance with the closure and ~~post-closure~~ ~~postclosure~~ care or corrective action plans; ~~or~~
- e) For corrective action, fails to implement corrective action at a municipal solid waste landfill unit in accordance with 35 Ill. Adm. Code 811.326; or
- f) Fails to provide alternative financial assurance and obtain the IEPA written approval of the assurance provided within 90 days after receipt by both the Principal and the IEPA of a notice from the Surety that the bond will not be renewed for another term.

The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails notice to the Surety that the Principal has met one or more of the conditions described

~~above failed to fulfill one or more of the conditions described above in this document failed to so provide closure and postclosure care or corrective action. Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Post-Closure ~~Postclosure~~ Fund.~~

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

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

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

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

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

PRINCIPAL

SURETY

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Corporate Seal

Title

Corporate Seal

Bond Premium: \$

~~PRINCIPAL~~

Signature Name _____

Typed Name _____

Address _____

Title _____

State of Incorporation _____

Date _____

Corporate seal

~~CORPORATE SURETY~~

Signature _____

Typed Name _____

Title _____

Corporate seal

Bond premium: \$ _____

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

Section 811.APPENDIX A Financial Assurance Forms

Section 811.ILLUSTRATION D Performance Bond

PERFORMANCE BOND

Date bond executed: _____

Effective date: _____

Principal: _____

Type of organization: _____

State of incorporation: _____

Surety: _____

Sites:

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

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

Total penal sum of bond: \$ _____

Surety's bond number: _____

The Principal and the Surety promise to pay the Illinois Environmental Protection Agency ("IEPA") the above penal sum unless the Principal or Surety provides closure and ~~post-closure~~ post-closure care or corrective action for each site in accordance with the closure and ~~post-closure~~ post-closure care or corrective action plans for that site. To the payment of this obligation

the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

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

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

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

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

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

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or ~~post-closure~~ ~~postclosure~~ care or corrective action when ordered to do so by the Illinois Pollution Control Board or a court of competent jurisdiction;
- d) Notifies the ~~IEPA Agency~~ that it has initiated closure, or initiates closure, but fails to close the site or provide ~~post-closure~~ ~~postclosure~~ care or corrective action in accordance with the closure and ~~post-closure~~ ~~postclosure~~ care or corrective action plans;
- e) For corrective action, fails to implement corrective action at a municipal solid waste landfill unit in accordance with 35 Ill. Adm. Code 811.326; or
- f) Fails to provide alternative financial assurance and obtain the IEPA written approval of the assurance provided within 90 days after receipt by both the Principal and the IEPA of a notice from the Surety that the bond will not be renewed for another term.

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

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

If the Surety notifies the ~~IEPA Agency~~ that it intends to provide closure and ~~post-closure~~ ~~post-closure~~ care or corrective action, then the Surety must initiate closure and ~~post-closure~~ ~~post-closure~~ care or corrective action within 60 days after the IEPA mailed notice to the Surety that the Principal failed to fulfill one or more of the conditions described in this document~~provide closure and post-closure care or corrective action.~~ The Surety must complete closure and ~~post-closure~~ ~~post-closure~~ care or corrective action in accordance with the closure and ~~post-closure~~ ~~post-closure~~ care or corrective action plans, or pay the penal sum.

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

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

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

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

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

PRINCIPAL

SURETY

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Corporate Seal

Title

Corporate Seal

Bond Premium: \$

PRINCIPAL

Signature Name _____

Typed Name _____

Address _____

Title _____

State of Incorporation _____

Date _____

Corporate seal

CORPORATE SURETY

Signature _____

Typed Name _____

Title _____

Corporate seal

Bond premium: \$ _____

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

Section 811. APPENDIX A Financial Assurance Forms**Section.811.ILLUSTRATION E Irrevocable Standby Letter of Credit**

IRREVOCABLE STANDBY LETTER OF CREDIT

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

Dear Sir or Madam:

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

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

1. your sight draft, bearing references to this letter of credit No. _____ ; and;
2. your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Environmental Protection Act (~~Ill. Reg. State. 1991, ch. 111½, par. 1001 et seq.~~ [415 ILCS 5/4 et. seq.]~~)~~ and 35 Ill. Adm. Code 811.713(e)."

This letter of credit is effective as of _____ [date] and shall expire on _____ [date] at least one year later]; but that expiration date shall be automatically extended for a period of _____ [at least one year] on _____ [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and _____ [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. The 120 days will begin on the date when both ~~the owner or operator~~ _____ [owner's or operators' name] and the IEPA have received the notice, as evidenced by the return receipts. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and _____ [owner's or operator's name], as shown on the signed return receipts . 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 ~~that 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~~ Postclosure or Corrective Action Fund in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 35 Ill. Adm. Code 811. Appendix A, Illustration E as that regulation was constituted on the date shown below. This letter of credit is governed by the Uniform Commercial Code (Ill. Rev. State. 1991, ch. 26, pars. 1-101 et. seq. [810 ILCS 5/1-101 et. seq.]).

Signature _____

Typed Name _____

Title _____

Date _____

Name and address of issuing institution _____

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

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

Section 811. APPENDIX A Financial Assurance Forms

Section 811. ILLUSTRATION F Certificate of Insurance for Closure and/or Post-Closure ~~Postclosure~~ Care or Corrective Action

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

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

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

Sites Covered:

Name _____

Address _____

City _____

Amount insured for this site: \$ _____

Name _____

Address _____

City _____

Amount insured for this site: \$ _____

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

Face Amount _____

Policy Number _____

Effective Date _____

The Insurer hereby certifies that it is licensed to transact the business of insurance by the Illinois Department of 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 [indicate: closure and/or post-closure ~~postclosure~~ care or corrective action] for the sites identified above. The Insurer further warrants that such policy

conforms in all respects with the requirements of 35 Ill. Adm. Code 811.714, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

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

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

Name (Authorized ~~Signature~~signature for Insurer) _____

Typed Name _____

Title _____

Date _____

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

Section 811. APPENDIX A Financial Assurance Forms

Section 811. 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'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 ~~post-closure~~ care or corrective action for ~~of~~ the site in accordance with the closure and post-closure ~~post-closure~~ care or corrective action plans for the site.

Owner or Operator _____

Signature _____

Typed Name _____

Title _____

Date: _____

Corporate seal

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

Section 811. APPENDIX A Financial Assurance Forms

Section 811. 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's or Operator's address: _____

Site: _____

Site address: _____

Penal sum: \$ _____

The Owner or Operator and Surety promise to pay the above penal sum to the Illinois Environmental Protection Agency ("IEPA") unless the Owner or Operator provides closure and ~~post-closure~~ ~~post-closure~~ care of the site in accordance with the closure and ~~post-~~ ~~closure~~ ~~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. 1989, ch. 111-1/2, par. 1021(d) to have a permit to conduct a waste disposal operation, ~~;~~ ~~and~~

Whereas the Owner or Operator is required under Section 21.1 of the Environmental Protection Act [415 ILCS 5/21.1] to provide financial assurance for closure and ~~post-closure~~ ~~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 ~~that~~ ~~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~~ ~~post-closure~~ ~~post-closure~~ care for any site in accordance

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

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or ~~post-closure~~~~postclosure~~ care when ordered to do so by the Illinois Pollution Control Board or a court of competent jurisdiction;
or
- d) Notifies the ~~IEPA~~~~Agency~~ that it has initiated closure, or initiates closure, but fails to close the site or provide ~~post-closure~~~~postclosure~~ care in accordance with the closure and ~~post-closure~~~~postclosure~~ care plans;-
- e) For corrective action, fails to implement corrective action at a municipal solid waste landfill unit in accordance with 35 Ill. Adm. Code 811.326; or
- f) Fails to provide alternative financial assurance and obtain the IEPA written approval of the assurance provided within 90 days after receipt by the Owner or Operator and the IEPA of a notice from the Surety that the bond will not be renewed for another term.

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

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

The liability of the Surety shall not be discharged by any payment or succession of payments unless and until the 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 the _____ day of _____, _____ [date]; ~~===== [date]~~ day of ~~=====~~ [month], ~~=====~~ [year], but that expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, the Surety notifies both the IEPA and the 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 ~~owner or operator~~ and the IEPA have received the notice, as evidenced by the return receipts.

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

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

The persons whose signatures appear below certify that they are authorized to execute this surety bond on behalf of the Owner or Operator and Surety and that the wording of this surety bond is identical to the wording specified in 35 Ill. Adm. Code 811. Appendix A, Illustration H as that regulation was constituted on the date set forth above~~this bond was executed.~~

OWNER OR OPERATOR

SURETY

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Corporate Seal

Title

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 _____)

Section 811. APPENDIX A Financial Assurance Forms

Section 811.ILLUSTRATION I Letter from Chief Financial Officer

LETTER FROM CHIEF FINANCIAL OFFICER

Director
Illinois Environmental protection Agency
C/O Bureau of Land #24
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

~~Director~~
~~Illinois Environmental Protection Agency~~
~~2200 Churchill Road~~
~~Springfield, Illinois 62706~~

Dear Sir or Madam:

I am the chief financial officer of _____

This letter is in support of this firm's use of the gross revenue test and financial test to demonstrate financial assurance pursuant to 35 Ill. Adm. Code 811.715.

Owner or Operator: _____

Name: _____

Address: _____

City: _____

Current cost estimate: \$ _____

Owner or Operator: _____

Name: _____

Address: _____

City: _____

Current cost estimate: \$ _____

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

Attached is an Owner's or Operator's Bond without Surety or an Owner's or Operator's Bond with Parent Surety for the current cost estimate for each site. (Strike inapplicable language.)

Gross Revenue Test

1. Gross revenue of the firm \$_____
2. Gross revenue from waste disposal operation \$_____
3. Line 2 divided by line 1 _____

Financial Test Alternative I

1. Sum of current cost estimates (total of all cost estimates shown in paragraphs above) \$_____
2. Total liabilities (if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4) \$_____
3. Tangible net worth \$_____
4. Net worth \$_____
5. Current assets \$_____
6. Current liabilities \$_____
7. Net working capital (line 5 minus line 6) \$_____
8. The sum of net income plus depreciation, depletion, and amortization \$_____
9. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.) \$_____

Yes/No

10. Is line 3 at least \$10 million? _____
11. Is line 3 at least 6 times line 1? _____
12. Is line 7 at least 6 times line 1? _____

- 13. Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 14. _____
- 14. Is line 9 at least 6 times line 1? _____
- 15. Is line 2 divided by line 4 less than 2.0? _____
- 16. Is line 8 divided by line 2 greater than 0.1? _____
- 17. Is line 5 divided by line 6 greater than 1.5? _____

Signature _____

Typed Name _____

Title _____

Date _____

Financial Test Alternative II

- 1. Sum of current cost estimates (total of all cost estimates shown in paragraphs above) \$ _____
 - 2. Current bond rating of most recent issuance of this firm and name of rating service _____
 - 3. Date of issuance of bond _____
 - 4. Date of maturity of bond _____
 - 5. Tangible net worth (if any portion of the closure and ~~post-closure~~ ~~post-closure~~ cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line) \$ _____
 - 6. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.) \$ _____
- Yes/No
- 7. Is line 5 at least \$10 million? _____
 - 8. Is line 5 at least 6 times line 1? _____
 - 9. Are at least 90 percent of firm's assets located in the U.S.? If not complete line 10.

10. Is line 6 at least 6 times line 1? _____

Signature _____

Typed name _____

Title _____

Date _____

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

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 21, 2011, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board