



OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

July 1, 2011

POLLUTION CONTROL BOARD
JOHN THERRIAULT ASSISTANT CLERK
100 W RANDOLPH ST, STE 11-500
CHICAGO, IL 60601

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CLERK'S OFFICE

JUL 07 2011

STATE OF ILLINOIS
Pollution Control Board

Dear JOHN THERRIAULT ASSISTANT CLERK

Your rules Listed below met our codification standards and have been published in Volume 35, Issue 28 of the Illinois Register, dated 7/8/2011.

ADOPTED RULES

Solid Waste

35 Ill. Adm. Code 807
Point of Contact: Nancy Miller

10784 R10-9

Solid Waste Disposal: General Provisions

35 Ill. Adm. Code 810
Point of Contact: Nancy Miller

10837 R10-9

Standards for New Solid Waste Landfills

35 Ill. Adm. Code 811
Point of Contact: Nancy Miller

10842 R10-9

PROPOSED RULES

Solid Waste

35 Ill. Adm. Code 807
Point of Contact: Nancy Miller

10490 R10-9A

Standards for New Solid Waste Landfills

35 Ill. Adm. Code 811
Point of Contact: Nancy Miller

10505 R10-9A

If you have any questions, you may contact the Administrative Code Division at (217) 782 - 7017.

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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

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

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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

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

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: Affected sources and facilities would include those sources and facilities required to obtain financial assurance for the closure and post closure care of waste disposal sites and any sources and facilities that provide financial assurance services for waste disposal sites.
- B) Reporting, bookkeeping or other procedures required for compliance: Are detailed in the rule and include submitting to the Illinois Environmental Protection Agency.
- C) Types of Professional skills necessary for compliance: Professional skills held by financial advisors/planners such as accountants, bookkeepers.

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

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

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POLLUTION CONTROL BOARD

NOTICE PROPOSED AMENDMENTS

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

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807.102	Repeals
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807.104	Definitions
807.105	Relation to Other Rules

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807.204	Former Authorization
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807.212	Permit Revocation
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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

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NOTICE PROPOSED AMENDMENTS

- 807.605 Application of Proceeds and Appeal
- 807.606 Release of the Operator
- 807.620 Current Cost Estimate
- 807.621 Cost Estimate for Closure
- 807.622 Cost Estimate for Post-closure Care
- 807.623 Biennial Revision of Cost Estimate
- 807.624 Interim Formula for Cost Estimate
- 807.640 Mechanisms for Financial Assurance
- 807.641 Use of Multiple Financial Mechanisms
- 807.642 Use of Financial Mechanism for Multiple Sites
- 807.643 Trust Fund for Unrelated Sites
- 807.644 RCRA Financial Assurance
- 807.661 Trust Fund
- 807.662 Surety Bond Guaranteeing Payment
- 807.663 Surety Bond Guaranteeing Performance
- 807.664 Letter of Credit
- 807.665 Closure Insurance
- 807.666 Self-insurance for Non-Commercial Sites

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 Owner's or Operator's Bond Without Surety
 - 807.ILLUSTRATION H Owner's or Operator's Bond With Parent Surety
 - 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].

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NOTICE PROPOSED AMENDMENTS

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 _____, amended in R10-09(A) at 35 Ill. Reg. _____, effective _____..

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

Section 807.663 Surety Bond Guaranteeing Performance

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

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

- c) The surety bond must be on the form specified in Appendix A, Illustration D.
- d) Any payments made under the bond will be placed in the Landfill Closure and Post-Closure Fund within the State Treasury.
- e) Conditions:
 - 1) The bond must guarantee that the operator will:

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NOTICE PROPOSED AMENDMENTS

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

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NOTICE PROPOSED AMENDMENTS

- 2) Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate, following written approval by the Agency.
 - 3) Whenever the current cost estimate increases to an amount greater than the penal sum, the operator, within 90 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of the increase to the Agency or obtain other financial assurance, as specified in this Subpart, ~~to cover the increase~~ and submit evidence of the alternate financial assurance to the Agency.
- g) Term:
- 1) The bond shall be issued for a term of at least one year and shall not be cancelable during that term.
 - 2) The surety bond must provide that, on the current expiration date and on each successive expiration date, the term of the surety bond will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the surety notifies both the operator and the Agency by certified mail of a decision not to renew the bond. Under the terms of the surety bond, the 120 days will begin on the date when both the operator and the Agency have received the notice, as evidenced by the return receipts.
 - 3) The Agency shall release the surety by providing written authorization for termination of the bond to the operator and the surety when either of the following occurs:
 - A) An operator substitutes alternate financial assurance, as specified in this Subpart; or
 - B) The Agency releases the operator from the requirements of this Subpart in accordance with Section 807.606(b) of this Part.
- h) Cure of default and refunds:
- 1) The Agency shall release the surety if, after the surety becomes liable on

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NOTICE PROPOSED AMENDMENTS

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

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

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

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NOTICE PROPOSED AMENDMENTS

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.

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NOTICE PROPOSED AMENDMENTS

Total penal sum of bond: \$ _____

Surety's bond number: _____

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

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

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

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

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

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

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or post-closure care when ordered to do so by the Illinois Pollution Control Board or a court of competent jurisdiction;
- d) Notifies the IEPA that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care in accordance with the closure and post-closure care plans; or

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- e) Fails to provide alternate financial assurance and obtain the IEPA written approval of the assurance provided within 90 days after receipt by both the Principal and the IEPA of a notice from the Surety that the bond will not be renewed for another term.

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

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

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

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

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

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

The persons whose signatures appear below certify that they are authorized to execute this surety bond on behalf of the Principal and Surety and that the wording of this surety bond is identical to

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NOTICE PROPOSED AMENDMENTS

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

State of Incorporation

Date

Signature

Typed Name

Title

Corporate seal

Corporate seal

Bond premium: \$ _____

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

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NOTICE PROPOSED AMENDMENTS

Section 807.APPENDIX A Financial Assurance Forms

Section 807.ILLUSTRATION E Irrevocable Standby Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

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

Dear Sir or Madam:

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

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

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

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

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

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

Signature

Typed 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 _____)

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NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Standards for New Solid Waste Landfills
- 2) Code Citation: 35 Ill. Adm. Code 811
- 3) Section Numbers: 811.712
811.Appendix A.Illustration D Proposed Action: Amend
Amend
- 4) Statutory Authority: Implementing Section 22 of the Environmental Protection Act [415 ILCS 5/22] and Section 8 of the Illinois Groundwater Protection Act [415 ILCS 55/8], and authorized by Sections 22, 27, and 28 of the Illinois Environmental Protection Act [415 ILCS 5/10, 27, 28] and Section 8 of the Illinois Groundwater Protection Act [415 ICLS 55/8].
- 5) A Complete Description of the Subjects and Issues Involved: This proposal incorporates technical corrections to the Board's prior rulemaking docketed as R10-9, In the Matter of: Financial Assurance Instruments – Renewal and Terms: Amendments to 35 Ill. Adm. Code 807 Subpart F and Appendix A, 810.104 and 811 Subparts C, G and Appendix A.
- 6) Published studies or reports and sources of underlying data, used to compose this rulemaking: No published study or research report was used in developing the proposed amendments to 35 Ill. Adm. Code 811.
- 7) Will this proposed rule replace an emergency rule currently in effect? No.
- 8) Does this rulemaking contain an automatic repeal date? No.
- 9) Does this proposed rule contain incorporations by reference? Yes.
- 10) Are there any other proposed amendments pending on this Part? No.
- 11) Statement of Statewide Policy Objectives: This proposed rule does not create or enlarge a state mandate as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of 45 days after the date of publication in the Illinois Register. Comments should refer to docket R10-09(A) and be addressed to:

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NOTICE OF PROPOSED AMENDMENTS

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

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- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Affected sources and facilities would include those sources and facilities required to obtain financial assurance for the closure and post closure care of waste disposal sites and any sources and facilities that provide financial assurance services for waste disposal sites.
 - B) Reporting, bookkeeping or other procedures required for compliance: Are detailed in the rule and include submitting to the Illinois Environmental Protection Agency.
 - C) Types of Professional skills necessary for compliance: Professional skills held by financial advisors/planners such as accountants, bookkeepers.
- 14) Regulatory Agenda in which this rulemaking was summarized: January 2011.

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POLLUTION CONTROL BOARD

NOTICE PROPOSED AMENDMENTS

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

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

SUBPART B: INERT WASTE LANDFILLS

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

SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS

Section	
811.301	Scope and Applicability

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- 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

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

SUBPART G: FINANCIAL ASSURANCE

Section

- 811.700 Scope, Applicability and Definitions
- 811.701 Upgrading Financial Assurance
- 811.702 Release of Financial Institution
- 811.703 Application of Proceeds and Appeals
- 811.704 Closure and Post-Closure Care Cost Estimates
- 811.705 Revision of Cost Estimate
- 811.706 Mechanisms for Financial Assurance
- 811.707 Use of Multiple Financial Mechanisms
- 811.708 Use of a Financial Mechanism for Multiple Sites
- 811.709 Trust Fund for Unrelated Sites
- 811.710 Trust Fund
- 811.711 Surety Bond Guaranteeing Payment
- 811.712 Surety Bond Guaranteeing Performance
- 811.713 Letter of Credit
- 811.714 Closure Insurance
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- 811.716 Local Government Financial Test
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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
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- 811.ILLUSTRATION F Certificate of Insurance for Closure and/or Post-Closure Care or Corrective Action
- 811.ILLUSTRATION G Owner's or Operator's Bond Without Surety
- 811.ILLUSTRATION H Owner's or Operator's Bond With Parent Surety
- 811.ILLUSTRATION I Letter from Chief Financial Officer
- 811.APPENDIX B Section-by-Section correlation between the Standards of the RCRA Subtitle D MSWLF regulations and the Board's nonhazardous waste landfill regulations.
- 811.APPENDIX C List of Leachate Monitoring Parameters

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

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

SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS

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),

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whichever is later, in the case of closure and post-closure care, or no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.

- b) The surety company issuing the bond shall be *licensed to transact the business of insurance by the Department of Insurance*, pursuant to the Illinois Insurance Code [215 ILCS 5], *or at a minimum the insurer must be licensed to transact the business of insurance or approved to provide insurance as an excess or surplus lines insurer by the insurance department in one or more states*, and approved by the U.S. Department of the Treasury as an acceptable surety. [415 ILCS 5/21.1(a.5)]

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

- c) The surety bond must be on the forms specified in Appendix A, Illustration D.
- d) Any payments made under the bond will be placed in the Landfill Closure and Post-Closure Fund within the State Treasury.
- e) Conditions:
- 1) The bond must guarantee that the owner or operator will:
 - A) Provide closure and post-closure care in accordance with the closure and post-closure care plans in the permit and, if the bond is a corrective action bond, provide corrective action in accordance with Section 811.326; and
 - B) Provide alternative financial assurance, as specified in this Subpart, and obtain the Agency's written approval of the assurance provided within 90 days after receipt by both the owner or operator and the Agency of a notice from the surety that the bond will not be renewed for another term.
 - 2) The surety will become liable on the bond obligation when, during the term of the bond, the owner or operator fails to perform as guaranteed by the bond. The owner or operator fails to perform when the owner or operator:

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

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reduced to the amount of the current cost estimate following written approval by the Agency.

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

g) Term:

- 1) The bond must be issued for a term of at least one year and must not be cancelable during that term.
- 2) The surety bond must provide that, on the current expiration date and on each successive expiration date, the term of the surety bond will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the surety notifies both the owner or operator and the Agency by certified mail of a decision not to renew the bond. Under the terms of the surety bond, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts.
- 3) The Agency shall release the surety by providing written authorization for termination of the bond to the owner or operator and the surety when either of the following occurs:
 - A) An owner or operator substitutes alternative financial assurance, as specified in this Subpart; or
 - B) The Agency releases the owner or operator from the requirements of this Subpart in accordance with 35 Ill. Adm. Code 813.403(b).

h) Cure of default and refunds:

- 1) The Agency shall release the surety if, after the surety becomes liable on the bond, the owner or operator or another person provides financial assurance for closure and post-closure care of the site or corrective action

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

- 2) After closure and post-closure care have been completed in accordance with the closure and post-closure care plans and the requirements of this Part or after the completion of corrective action at an MSWLF unit in accordance with Section 811.326, the Agency shall refund any unspent money which was paid into the "Landfill Closure and Post-Closure Fund" by the surety, subject to appropriation of funds by the Illinois General Assembly.
- i) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the Agency releases the owner or operator from the requirements of this Subpart.

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

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

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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: \$ _____

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Surety's bond number: _____

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

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

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

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

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

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

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or post-closure care or corrective action when ordered to do so by the Illinois Pollution Control Board or a court of competent jurisdiction;
- d) Notifies the IEPA that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care or corrective action in accordance with the

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closure and post-closure care or corrective action plans;

- e) For corrective action, fails to implement corrective action at a municipal solid waste landfill unit in accordance with 35 Ill. Adm. Code 811.326; or
- f) Fails to provide alternative financial assurance and obtain the IEPA written approval of the assurance provided within 90 days after receipt by both the Principal and the IEPA of a notice from the Surety that the bond will not be renewed for another term.

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

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

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

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

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

In Witness Whereof, the Principal and Surety have executed this Performance Bond and have

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affixed their seals on the date set forth above.

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

PRINCIPAL

SURETY

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Corporate Seal

Title

Corporate Seal

Bond Premium: \$ _____

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