

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

2) Code citation: 35 Ill. Adm. Code 725

<u>Section numbers:</u>	<u>Adopted action:</u>
725.111	Amend
725.112	Amend
725.115	Amend
725.152	Amend
725.156	Amend
725.170	Amend
725.171	Amend
725.172	Amend
725.241	Amend
725.242	Amend
725.243	Amend
725.274	Amend
725.295	Amend
725.301	Amend
725.414	Amend
725.416	Amend
725.1101	Amend

4) Statutory authority: 415 ILCS 5/7.2, 22.4, and 27.

5) Effective date of amendments: OCT 14 2011

6) Does this rulemaking contain an automatic repeal date?: No.

7) Do these amendments contain incorporations by reference?

No. The incorporations by reference for the purposes of all of 35 Ill. Adm. Code 702 through 705, 720 through 728, 730, 733, and 739 appear in 35 Ill. Adm. Code 720.111. Amendments to 35 Ill. Adm. Code 720.111 may affect documents incorporated by reference for the purposes of this Part 725.

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8) Statement of availability:

The adopted amendments, a copy of the Board's opinion and order adopted August 18, 2011 in docket R11-2/R11-16 (consolidated), and all materials incorporated by reference are on file at the Board's principal office and are available for public inspection and copying.

9) Notice of proposal published in the Illinois Register:

June 24, 2011, 35 Ill. Reg. 9648

10) Has JCAR issued a statement of objections to these rules? No.

Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

11) Differences between the proposal and the final version:

A table that appears in the Board's opinion and order of August 18, 2011 in docket R11-2/R11-16 (consolidated) summarizes the differences between the amendments adopted in that order and those proposed by the Board in an opinion and order dated June 2, 2011, in docket R11-2/R11-16 (consolidated). Many of the differences are explained in greater detail in the Board's opinion and order adopting the amendments.

The differences are limited to minor corrections and stylistic revisions. The changes are intended to have no substantive effect. The intent is to add clarity to the rules without deviation from the substance of the federal amendments on which this proceeding is based.

12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreements issued by JCAR?

Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by JCAR.

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Since the Notices of Proposed Amendments appeared in the June 24, 2011 issue of the *Illinois Register*, the Board received a number of suggestions for revisions from JCAR. The Board evaluated each suggestion and incorporated a number of changes into the text as a result, as detailed in the opinion and order of August 18, 2011 in docket R11-2/R11-16 (consolidated), as indicated in item 11 above. See the August 18, 2011 opinion and order in docket R11-2/R11-16 (consolidated) for additional details on the JCAR suggestions and the Board actions with regard to each. One table in that opinion itemizes the changes made in response to various suggestions. Another table indicates JCAR suggestions not incorporated into the text, with a brief explanation for each.

- 13) Will these amendments replace emergency amendments currently in effect? No.
- 14) Are there any other amendments pending on this Part? No.
- 15) Summary and purpose of amendments:

The amendments to Part 725 are a single segment of the docket R11-2/R11-16 rulemaking that also affects 35 Ill. Adm. Code 702, 720, 721, 722, 723, 724, 726, and 728, each of which is covered by a separate notice in this issue of the *Illinois Register*. To save space, a more detailed description of the subjects and issues involved in the docket R11-2/R11-16 rulemaking in this *Illinois Register* only in the answer to question 5 in the Notice of Adopted Amendments for 35 Ill. Adm. Code 702. A comprehensive description is contained in the Board's opinions and orders of June 2, 2011 and August 18, 2011 in docket R11-2/R11-16, which opinions and orders are available from the address below.

Specifically, the amendments to Part 725 implement segments of the January 8, 2010 federal amendments to the hazardous waste import and export requirements and the federal technical corrections and clarifications of March 18, 2010. The amendments include a number of non-substantive corrections and clarifications added by the Board. Among the corrections is the removal of obsolete provisions relating to the former federal Performance Track Program and corrections to make the Illinois definition of "substantial business relationship" the same as the corresponding federal definition.

Tables appear in the Board's opinion and order of August 18, 2011 in docket R11-2/R11-16 (consolidated) that list numerous corrections and amendments that are not based on current federal amendments. The tables contain deviations from the literal text of the federal amendments underlying these amendments, as well as corrections and clarifications that the Board made in the base text involved. Persons interested in the

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details of those corrections and amendments should refer to the August 18, 2011 opinion and order in docket R11-2/R11-16 (consolidated).

Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

- 16) Information and questions regarding these adopted amendments shall be adopted to:

Please reference consolidated docket R11-2/R11-16 (consolidated) and direct inquiries to the following person:

Michael J. McCambridge
Staff Attorney
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago, IL 60601
312-814-6924

Request copies of the Board's opinion and order of August 18, 2011 at 312-814-3620. Alternatively, you may obtain a copy of the Board's opinion and order from the Internet at <http://www.ipcb.state.il.us>.

The full text of the adopted amendments begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 725
INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF
HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL
FACILITIES

SUBPART A: GENERAL PROVISIONS

Section	
725.101	Purpose, Scope, and Applicability
725.102	Electronic Reporting
725.104	Imminent Hazard Action

SUBPART B: GENERAL FACILITY STANDARDS

Section	
725.110	Applicability
725.111	USEPA Identification Number
725.112	Required Notices
725.113	General Waste Analysis
725.114	Security
725.115	General Inspection Requirements
725.116	Personnel Training
725.117	General Requirements for Ignitable, Reactive, or Incompatible Wastes
725.118	Location Standards
725.119	Construction Quality Assurance Program

SUBPART C: PREPAREDNESS AND PREVENTION

Section	
725.130	Applicability
725.131	Maintenance and Operation of Facility
725.132	Required Equipment
725.133	Testing and Maintenance of Equipment
725.134	Access to Communications or Alarm System
725.135	Required Aisle Space
725.137	Arrangements with Local Authorities

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SUBPART D: CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Section	
725.150	Applicability
725.151	Purpose and Implementation of Contingency Plan
725.152	Content of Contingency Plan
725.153	Copies of Contingency Plan
725.154	Amendment of Contingency Plan
725.155	Emergency Coordinator
725.156	Emergency Procedures

SUBPART E: MANIFEST SYSTEM, RECORDKEEPING, AND REPORTING

Section	
725.170	Applicability
725.171	Use of Manifest System
725.172	Manifest Discrepancies
725.173	Operating Record
725.174	Availability, Retention, and Disposition of Records
725.175	Annual Report
725.176	Unmanifested Waste Report
725.177	Additional Reports

SUBPART F: GROUNDWATER MONITORING

Section	
725.190	Applicability
725.191	Groundwater Monitoring System
725.192	Sampling and Analysis
725.193	Preparation, Evaluation, and Response
725.194	Recordkeeping and Reporting

SUBPART G: CLOSURE AND POST-CLOSURE CARE

Section	
725.210	Applicability
725.211	Closure Performance Standard
725.212	Closure Plan; Amendment of Plan
725.213	Closure; Time Allowed for Closure
725.214	Disposal or Decontamination of Equipment, Structures, and Soils
725.215	Certification of Closure
725.216	Survey Plat
725.217	Post-Closure Care and Use of Property

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- 725.218 Post-Closure Care Plan; Amendment of Plan
- 725.219 Post-Closure Notices
- 725.220 Certification of Completion of Post-Closure Care
- 725.221 Alternative Post-Closure Care Requirements

SUBPART H: FINANCIAL REQUIREMENTS

- Section
- 725.240 Applicability
- 725.241 Definitions of Terms as Used in this Subpart H
- 725.242 Cost Estimate for Closure
- 725.243 Financial Assurance for Closure
- 725.244 Cost Estimate for Post-Closure Care
- 725.245 Financial Assurance for Post-Closure Monitoring and Maintenance
- 725.246 Use of a Mechanism for Financial Assurance of Both Closure and Post-Closure Care
- 725.247 Liability Requirements
- 725.248 Incapacity of Owners or Operators, Guarantors, or Financial Institutions
- 725.251 Promulgation of Forms (Repealed)

SUBPART I: USE AND MANAGEMENT OF CONTAINERS

- Section
- 725.270 Applicability
- 725.271 Condition of Containers
- 725.272 Compatibility of Waste with Containers
- 725.273 Management of Containers
- 725.274 Inspections
- 725.276 Special Requirements for Ignitable or Reactive Wastes
- 725.277 Special Requirements for Incompatible Wastes
- 725.278 Air Emission Standards

SUBPART J: TANK SYSTEMS

- Section
- 725.290 Applicability
- 725.291 Assessment of Existing Tank System Integrity
- 725.292 Design and Installation of New Tank Systems or Components
- 725.293 Containment and Detection of Releases
- 725.294 General Operating Requirements
- 725.295 Inspections
- 725.296 Response to Leaks or Spills and Disposition of Tank Systems

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725.297	Closure and Post-Closure Care
725.298	Special Requirements for Ignitable or Reactive Wastes
725.299	Special Requirements for Incompatible Wastes
725.300	Waste Analysis and Trial Tests
725.301	Generators of 100 to 1,000 Kilograms of Hazardous Waste Per Month
725.302	Air Emission Standards

SUBPART K: SURFACE IMPOUNDMENTS

Section	
725.320	Applicability
725.321	Design and Operating Requirements
725.322	Action Leakage Rate
725.323	Containment System
725.324	Response Actions
725.325	Waste Analysis and Trial Tests
725.326	Monitoring and Inspections
725.328	Closure and Post-Closure Care
725.329	Special Requirements for Ignitable or Reactive Wastes
725.330	Special Requirements for Incompatible Wastes
725.331	Air Emission Standards

SUBPART L: WASTE PILES

Section	
725.350	Applicability
725.351	Protection from Wind
725.352	Waste Analysis
725.353	Containment
725.354	Design and Operating Requirements
725.355	Action Leakage Rates
725.356	Special Requirements for Ignitable or Reactive Wastes
725.357	Special Requirements for Incompatible Wastes
725.358	Closure and Post-Closure Care
725.359	Response Actions
725.360	Monitoring and Inspections

SUBPART M: LAND TREATMENT

Section	
725.370	Applicability
725.372	General Operating Requirements

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725.373	Waste Analysis
725.376	Food Chain Crops
725.378	Unsaturated Zone (Zone of Aeration) Monitoring
725.379	Recordkeeping
725.380	Closure and Post-Closure Care
725.381	Special Requirements for Ignitable or Reactive Wastes
725.382	Special Requirements for Incompatible Wastes

SUBPART N: LANDFILLS

Section	
725.400	Applicability
725.401	Design Requirements
725.402	Action Leakage Rate
725.403	Response Actions
725.404	Monitoring and Inspections
725.409	Surveying and Recordkeeping
725.410	Closure and Post-Closure Care
725.412	Special Requirements for Ignitable or Reactive Wastes
725.413	Special Requirements for Incompatible Wastes
725.414	Special Requirements for Liquid Wastes
725.415	Special Requirements for Containers
725.416	Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs)

SUBPART O: INCINERATORS

Section	
725.440	Applicability
725.441	Waste Analysis
725.445	General Operating Requirements
725.447	Monitoring and Inspections
725.451	Closure
725.452	Interim Status Incinerators Burning Particular Hazardous Wastes

SUBPART P: THERMAL TREATMENT

Section	
725.470	Other Thermal Treatment
725.473	General Operating Requirements
725.475	Waste Analysis
725.477	Monitoring and Inspections

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- 725.481 Closure
- 725.482 Open Burning; Waste Explosives
- 725.483 Interim Status Thermal Treatment Devices Burning Particular Hazardous Wastes

SUBPART Q: CHEMICAL, PHYSICAL, AND BIOLOGICAL TREATMENT

Section

- 725.500 Applicability
- 725.501 General Operating Requirements
- 725.502 Waste Analysis and Trial Tests
- 725.503 Inspections
- 725.504 Closure
- 725.505 Special Requirements for Ignitable or Reactive Wastes
- 725.506 Special Requirements for Incompatible Wastes

SUBPART R: UNDERGROUND INJECTION

Section

- 725.530 Applicability

SUBPART W: DRIP PADS

Section

- 725.540 Applicability
- 725.541 Assessment of Existing Drip Pad Integrity
- 725.542 Design and Installation of New Drip Pads
- 725.543 Design and Operating Requirements
- 725.544 Inspections
- 725.545 Closure

SUBPART AA: AIR EMISSION STANDARDS FOR PROCESS VENTS

Section

- 725.930 Applicability
- 725.931 Definitions
- 725.932 Standards: Process Vents
- 725.933 Standards: Closed-Vent Systems and Control Devices
- 725.934 Test Methods and Procedures
- 725.935 Recordkeeping Requirements

SUBPART BB: AIR EMISSION STANDARDS FOR EQUIPMENT LEAKS

Section

- 725.950 Applicability

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725.951	Definitions
725.952	Standards: Pumps in Light Liquid Service
725.953	Standards: Compressors
725.954	Standards: Pressure Relief Devices in Gas/Vapor Service
725.955	Standards: Sampling Connecting Systems
725.956	Standards: Open-Ended Valves or Lines
725.957	Standards: Valves in Gas/Vapor or Light Liquid Service
725.958	Standards: Pumps, Valves, Pressure Relief Devices, Flanges, and Other Connectors
725.959	Standards: Delay of Repair
725.960	Standards: Closed-Vent Systems and Control Devices
725.961	Percent Leakage Alternative for Valves
725.962	Skip Period Alternative for Valves
725.963	Test Methods and Procedures
725.964	Recordkeeping Requirements

SUBPART CC: AIR EMISSION STANDARDS FOR TANKS, SURFACE
IMPOUNDMENTS, AND CONTAINERS

Section	
725.980	Applicability
725.981	Definitions
725.982	Schedule for Implementation of Air Emission Standards
725.983	Standards: General
725.984	Waste Determination Procedures
725.985	Standards: Tanks
725.986	Standards: Surface Impoundments
725.987	Standards: Containers
725.988	Standards: Closed-Vent Systems and Control Devices
725.989	Inspection and Monitoring Requirements
725.990	Recordkeeping Requirements
725.991	Alternative Tank Emission Control Requirements (Repealed)

SUBPART DD: CONTAINMENT BUILDINGS

Section	
725.1100	Applicability
725.1101	Design and Operating Standards
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SUBPART EE: HAZARDOUS WASTE MUNITIONS AND EXPLOSIVES
STORAGE

Section

725.1200	Applicability
725.1201	Design and Operating Standards
725.1202	Closure and Post-Closure Care
725.APPENDIX A	Recordkeeping Instructions
725.APPENDIX B	EPA Report Form and Instructions (Repealed)
725.APPENDIX C	USEPA Interim Primary Drinking Water Standards
725.APPENDIX D	Tests for Significance
725.APPENDIX E	Examples of Potentially Incompatible Wastes
725.APPENDIX F	Compounds with Henry's Law Constant Less Than 0.1 Y/X (at 25°C)

AUTHORITY: Implementing Sections 7.2 and 22.4 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 22.4, and 27].

SOURCE: Adopted in R81-22 at 5 Ill. Reg. 9781, effective May 17, 1982; amended and codified in R81-22 at 6 Ill. Reg. 4828, effective May 17, 1982; amended in R82-18 at 7 Ill. Reg. 2518, effective February 22, 1983; amended in R82-19 at 7 Ill. Reg. 14034, effective October 12, 1983; amended in R84-9 at 9 Ill. Reg. 11869, effective July 24, 1985; amended in R85-22 at 10 Ill. Reg. 1085, effective January 2, 1986; amended in R86-1 at 10 Ill. Reg. 14069, effective August 12, 1986; amended in R86-28 at 11 Ill. Reg. 6044, effective March 24, 1987; amended in R86-46 at 11 Ill. Reg. 13489, effective August 4, 1987; amended in R87-5 at 11 Ill. Reg. 19338, effective November 10, 1987; amended in R87-26 at 12 Ill. Reg. 2485, effective January 15, 1988; amended in R87-39 at 12 Ill. Reg. 13027, effective July 29, 1988; amended in R88-16 at 13 Ill. Reg. 437, effective December 28, 1988; amended in R89-1 at 13 Ill. Reg. 18354, effective November 13, 1989; amended in R90-2 at 14 Ill. Reg. 14447, effective August 22, 1990; amended in R90-10 at 14 Ill. Reg. 16498, effective September 25, 1990; amended in R90-11 at 15 Ill. Reg. 9398, effective June 17, 1991; amended in R91-1 at 15 Ill. Reg. 14534, effective October 1, 1991; amended in R91-13 at 16 Ill. Reg. 9578, effective June 9, 1992; amended in R92-1 at 16 Ill. Reg. 17672, effective November 6, 1992; amended in R92-10 at 17 Ill. Reg. 5681, effective March 26, 1993; amended in R93-4 at 17 Ill. Reg. 20620, effective November 22, 1993; amended in R93-16 at 18 Ill. Reg. 6771, effective April 26, 1994; amended in R94-7 at 18 Ill. Reg. 12190, effective July 29, 1994; amended in R94-17 at 18 Ill. Reg. 17548, effective November 23, 1994; amended in R95-6 at 19 Ill. Reg. 9566, effective June 27, 1995; amended in R95-20 at 20 Ill. Reg. 11078, effective August 1, 1996; amended in R96-10/R97-3/R97-5 at 22 Ill. Reg. 369, effective December 16, 1997; amended in R98-12 at 22 Ill. Reg. 7620, effective April 15, 1998; amended in R97-21/R98-3/R98-5 at 22 Ill. Reg. 17620, effective September 28,

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1998; amended in R98-21/R99-2/R99-7 at 23 Ill. Reg. 1850, effective January 19, 1999; amended in R99-15 at 23 Ill. Reg. 9168, effective July 26, 1999; amended in R00-5 at 24 Ill. Reg. 1076, effective January 6, 2000; amended in R00-13 at 24 Ill. Reg. 9575, effective June 20, 2000; amended in R03-7 at 27 Ill. Reg. 4187, effective February 14, 2003; amended in R05-8 at 29 Ill. Reg. 6028, effective April 13, 2005; amended in R05-2 at 29 Ill. Reg. 6389, effective April 22, 2005; amended in R06-5/R06-6/R06-7 at 30 Ill. Reg. 3460, effective February 23, 2006; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1031, effective December 20, 2006; amended in R07-5/R07-14 at 32 Ill. Reg. 12566, effective July 14, 2008; amended in R09-3 at 33 Ill. Reg. 1155, effective December 30, 2008; amended in R09-16/R10-4 at 34 Ill. Reg. 18890, effective November 12, 2010; amended in R11-2/R11-16 at 35 Ill. Reg. _____, effective _____.

SUBPART B: GENERAL FACILITY STANDARDS

Section 725.111 USEPA Identification Number

Every facility owner or operator must apply to USEPA Region 5 for a USEPA identification number ~~in accordance with the USEPA notification procedures using USEPA Form 8700-12.~~ The facility owner or operator must obtain a copy of the form from the Agency, Bureau of Land (217-782-6762), and submit a completed copy of the form to the Bureau of Land, in addition to notification to USEPA.

~~BOARD NOTE: USEPA Form 8700-12 is the required instructions and forms for notification. The federal instructions require that an owner or operator file notice for an Illinois facility with the Agency, Bureau of Land (telephone: 217-782-6762).~~

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

Section 725.112 Required Notices

- a) Receipt from a foreign source.
 - 1) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the Agency and USEPA Region 5 in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

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2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to Subpart H of 35 Ill. Adm. Code 722 must provide a copy of the tracking movement document bearing all required signatures to the notifier foreign exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance, Enforcement Planning, Targeting and Data Assurance Division (2222A) (2254A), Environmental Protection Agency, 401 M St., SW, 1200 Pennsylvania Ave., NW, Washington, DC 20460; to the Bureau of Land, Division of Land Pollution Control, Illinois Environmental Protection Agency, P.O. Box 19276, Springfield, IL 62794-9276; and to the competent authorities of all other countries concerned ~~countries~~ within three working days ~~of~~ after receipt of the shipment. The original of the signed tracking movement document must be maintained at the facility for at least three years. In addition, such owner or operator must send a certificate of recovery to the foreign exporter, to the competent authority of the country of export, to USEPA's Office of Enforcement and Compliance Assurance at the above address by mail, by e-mail without a digital signature followed by mail, or by fax followed by mail. The owner or operator must complete this sending of a certificate of recovery as soon as possible, but no later than 30 days after the completion of recovery, and no later than one calendar year following the receipt of the hazardous waste.

b) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of this Part and 35 Ill. Adm. Code 702 and 703 (also see 35 Ill. Adm. Code 703.155).

BOARD NOTE: An owner's or operator's failure to notify the new owner or operator of the requirements of this Part in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

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

Section 725.115 General Inspection Requirements

a) The owner or operator must inspect the facility for malfunctions and deterioration, operator errors and discharges that may be causing—or which may lead to—the conditions listed below. The owner or operator must conduct these inspections

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often enough to identify problems in time to correct them before they harm human health or the environment.

- 1) Release of hazardous waste constituents to the environment, or
 - 2) A threat to human health.
- b) Written schedule.
- 1) The owner or operator must develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.
 - 2) The owner or operator must keep this schedule at the facility.
 - 3) The schedule must identify the types of problems (e.g., malfunctions or deterioration) that are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).
 - 4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, ~~except for the owner or operator of a Performance Track member facility, which must inspect at least once each month after approval by the Agency, as described in subsection (b)(5) of this Section.~~ At a minimum, the inspection schedule must include the items and frequencies called for in Sections 725.274, 725.293, 725.295, 725.326, 725.360, 725.378, 725.404, 725.447, 725.477, 725.503, 725.933, 725.952, 725.953, 725.958, and 725.984 through 725.990, where applicable.
 - 5) ~~The owner or operator of a Performance Track member facility that chooses to reduce its inspection frequency must fulfill the following requirements:—~~This subsection (b)(5) corresponds with 40 CFR 265.15(b)(5), which became obsolete when USEPA terminated the

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Performance Track Program at 74 Fed. Reg. 22741 (May 14, 2009). USEPA has recognized that program-related rules are no longer effective at 75 Fed. Reg. 12989, 12992, note 1 (Mar. 18, 2010). This statement maintains structural consistency with the corresponding federal requirements.

- A) ~~It must submit an application to the Agency. The application must identify its facility as a member of the National Environmental Performance Track Program, and it must identify the management units for reduced inspections and the proposed frequency of inspections. Inspections pursuant to this subsection (b)(5) must be conducted at least once each month.~~

 - B) ~~Within 60 days, the Agency must notify the owner or operator of the Performance Track member facility, in writing, if the application submitted pursuant to subsection (b)(5)(A) of this Section is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record. The owner or operator of the Performance Track member facility should consider the application approved if the Agency does not either deny the application or notify the owner or operator of the Performance Track member facility of an extension to the 60-day deadline. In these situations, the owner or operator of the Performance Track member facility must adhere to the revised inspection schedule outlined in its application and maintain a copy of the application in the facility's operating record.~~

 - C) ~~Any owner or operator of a Performance Track member facility that discontinues its membership or which USEPA terminates from the program must immediately notify the Agency of its change in status. The facility owner or operator must place in its operating record a dated copy of this notification and revert back to the non-Performance Track inspection frequencies within seven calendar days.~~
- c) The owner or operator must remedy any deterioration or malfunction of equipment or structure that the inspection reveals on a schedule that ensures that the problem does not lead to an environmental or human health hazard. Where a

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hazard is imminent or has already occurred, remedial action must be taken immediately.

- d) The owner or operator must record inspections in an inspection log or summary. The owner or operator must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made and the date, and nature of any repairs or other remedial actions.

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

SUBPART D: CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Section 725.152 Content of Contingency Plan

- a) The contingency plan must describe the actions facility personnel must take to comply with Sections 725.151 and 725.156 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.
- b) If the owner or operator has already prepared a federal Spill Prevention Control and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112-~~or 300~~, or some other emergency or contingency plan, it needs only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part. The owner or operator may develop one contingency plan that meets all regulatory requirements. USEPA has recommended that the plan be based on the National Response Team's Integrated Contingency Plan Guidance (One Plan). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

BOARD NOTE: The federal One Plan guidance appeared in the Federal Register at 61 Fed. Reg. 28642 (June 5, 1996), and was corrected at 61 Fed. Reg. 31103 (June 19, 1996). USEPA, Office of Resource Conservation and Recovery, Chemical Emergency Preparedness and Prevention Office, has made these documents available on-line for examination and download at yosemite.epa.gov/oswer/Ceppoweb.nsf/content/serc-lepc-publications.htm.

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- c) The plan must describe arrangements agreed to by local police department, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to Section 725.137.
- d) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see Section 725.155), and this list must be kept up to date. Where more than one person is listed one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.
- e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment) where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list and a brief outline of its capabilities.
- f) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signals to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

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

Section 725.156 Emergency Procedures

- a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately do the following:
 - 1) He or she must activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
 - 2) He or she must notify appropriate State or local agencies with designated response roles if their help is needed.
- b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any

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released materials. He or she may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

- c) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water runoffs from water or chemical agents used to control fire and heat-induced explosions).
- d) If the emergency coordinator determines that the facility has had a release, fire, or explosion that could threaten human health or the environment outside the facility, he or she must report his findings as follows:
 - 1) If his assessment indicates that evacuation of local areas may be advisable, the emergency coordinator must immediately notify appropriate local authorities. He or she must be available to help appropriate officials decide whether local areas should be evacuated; and
 - 2) The emergency coordinator must immediately notify either the government official designated as the on-scene coordinator for that geographical area (~~in the applicable regional contingency plan under federal 40 CFR 300~~), or the National Response Center (using their 24-hour toll free number 800-424-8802). The report must include the following:
 - A) The name and telephone number of reporter;
 - B) The name and address of facility;
 - C) The time and type of incident (e.g., release, fire, etc.);
 - D) The name and quantity of materials involved, to the extent known;
 - E) The extent of injuries, if any; and
 - F) The possible hazards to human health or the environment outside the facility.

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- e) During an emergency the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.
- f) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.
- g) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil, or surface water, or any other material that results from a release, fire, or explosion at the facility.

BOARD NOTE: Unless the owner or operator can demonstrate in accordance with 35 Ill. Adm. Code 721.103(d) or (e) that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of 35 Ill. Adm. Code 722, 723, and 725.

- h) The emergency coordinator must ensure that, in the affected areas of the facility, the following occur:
 - 1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and
 - 2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.
- i) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, it must submit a written report on the incident to the Agency. The report must include the following information:
 - 1) The name, address, and telephone number of the owner or operator;
 - 2) The name, address, and telephone number of the facility;

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- 3) The date, time, and type of incident (e.g., fire, explosion, etc.);
- 4) The name and quantity of materials involved;
- 5) The extent of injuries, if any;
- 6) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
- 7) The estimated quantity and disposition of recovered material that resulted from the incident.

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

SUBPART E: MANIFEST SYSTEM, RECORDKEEPING, AND REPORTING

Section 725.170 Applicability

The regulations in this Subpart E apply to owners and operators of both on-site and off-site facilities, except as Section 725.101 provides otherwise. Sections 725.171, 725.172, and 725.176 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, nor do they apply to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 35 Ill. Adm. Code 726.303(a).

~~BOARD NOTE: This Section corresponds with 40 CFR 265.70(a) (2005), effective September 5, 2006. The Board omitted 40 CFR 265.70(b), as added at 70 Fed. Reg. 10776 (March 4, 2005), since that provision only stated the September 5, 2006 effective date for the newer manifest requirements.~~

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

Section 725.171 Use of Manifest System

- a) Receipt of manifested hazardous waste.
 - 1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator, or its agent must sign and date the manifest, as indicated in subsection (a)(2) of this Section, to certify that the hazardous waste

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covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

- 2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator, or its agent must do the following:
 - A) It must sign and date, by hand, each copy of the manifest;
 - B) It must note any discrepancies (as defined in Section 725.172) on each copy of the manifest;
 - C) It must immediately give the transporter at least one copy of the manifest;
 - D) It must send a copy of the manifest to the generator within 30 days after delivery; and
 - E) It must retain at the facility a copy of each manifest for at least three years after the date of delivery.
 - 3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming USEPA's consent to the import of hazardous waste to the following address within 30 days after delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, OFA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- b) If a facility receives from a rail or water (bulk shipment) transporter hazardous waste that is accompanied by a shipping paper containing all the information required on the manifest (excluding the USEPA identification numbers, generator certification, and signatures), the owner or operator or its agent must do each of the following:

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- 1) It must sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;
- 2) It must note any significant discrepancies, as defined in Section 725.172(a), in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

BOARD NOTE: The owner or operator of a facility whose procedures under Section 725.113(c) include waste analysis need not perform that analysis before signing the shipping paper and giving it to the transporter. Section 725.172(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

- 3) It must immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);
- 4) The owner or operator must send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator within 30 days after the delivery; and

BOARD NOTE: 35 Ill. Adm. Code 722.123(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).

- 5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.
- c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of 35 Ill. Adm. Code 722.

BOARD NOTE: The provisions of 35 Ill. Adm. Code 722.134 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of 35 Ill. Adm. Code 722.134 apply only to owners or operators that are shipping hazardous waste which they generated at that facility.

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- d) Within three working days of the receipt of a shipment subject to Subpart H of 35 Ill. Adm. Code 722, the owner or operator of ~~the a~~ facility must provide a copy of the ~~tracking movement~~ document bearing all required signatures to the ~~notifier exporter~~; to the Office of Enforcement and Compliance Assurance, Office of ~~Federal Activities, International Compliance, Enforcement Planning, Targeting and Data Assurance Division (2222A) (2254A)~~, Environmental Protection Agency, 401 M St., SW, ~~1200 Pennsylvania Ave., NW~~, Washington, DC 20460; to the Bureau of Land, Division of Land Pollution Control, Illinois Environmental Protection Agency, P.O. Box 19276, Springfield, IL 62794-9276; and to competent authorities of all other ~~countries~~ concerned ~~countries~~. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.

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

Section 725.172 Manifest Discrepancies

- a) “Manifest discrepancies” are defined as any one of the following:
- 1) Significant differences (as defined by subsection (b) of this Section) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;
 - 2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, or disposal facility cannot accept; or
 - 3) Container residues, which are residues that exceed the quantity limits for empty containers set forth in 35 Ill. Adm. Code 721.107(b).
- b) “Significant differences in quantity” are defined as the appropriate of the following: for bulk waste, variations greater than 10 percent in weight; or, for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. “Significant differences in type” are defined as obvious differences that can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or as toxic constituents not reported on the manifest or shipping paper.

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- c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Agency a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.
- d) Rejection of hazardous waste.
- 1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for empty containers set forth in 35 Ill. Adm. Code 721.107(b), the facility owner or operator must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility owner or operator may return the rejected waste or residue to the generator. The facility owner or operator must send the waste to the alternative facility or to the generator within 60 days after the rejection or the container residue identification.
 - 2) While the facility owner or operator is making arrangements for forwarding rejected wastes or residues to another facility under this Section, it must ensure that either the delivering transporter retains custody of the waste, or the facility owner or operator must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under subsection (e) or (f) of this Section.
- e) Except as provided in subsection (e)(7) of this Section, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility owner or operator is required to prepare a new manifest in accordance with 35 Ill. Adm. Code 722.120(a) and the instructions set forth in subsections (e)(1) through (e)(6) of this Section:
- 1) ~~Write-~~The facility owner or operator must write the generator's USEPA identification number in Item 1 of the new manifest. ~~Write-~~The facility owner or operator must write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then the facility owner or operator must write the generator's site address in the designated space in Item 5.

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- 2) ~~Write~~ The facility owner or operator must write the name of the alternate designated facility and the facility's USEPA identification number in the designated facility block (Item 8) of the new manifest.
 - 3) ~~Copy~~ The facility owner or operator must copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.
 - 4) ~~Copy~~ The facility owner or operator must copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).
 - 5) ~~Write~~ The facility owner or operator must write the USDOT description for the rejected load or the residue in Item 9 (USDOT Description) of the new manifest and write the container types, quantity, and volumes of waste.
 - 6) ~~Sign~~ The facility owner or operator must sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.
 - 7) For full load rejections that are made while the transporter remains present at the facility, the facility owner or operator may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility owner or operator must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility owner or operator must use a new manifest and comply with subsections (e)(1) through (e)(6) of this Section.
- f) Except as provided in subsection (f)(7) of this Section, for rejected wastes and residues that must be sent back to the generator, the facility owner or operator is required to prepare a new manifest in accordance with 35 Ill. Adm. Code

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722.120(a) and the instructions set forth in subsections (f)(1) through (f)(6) and (f)(8) of this Section:

- 1) ~~Write~~ The facility owner or operator must write the facility's USEPA identification number in Item 1 of the new manifest. ~~Write~~ The facility owner or operator must write the ~~generator's facility's~~ name and mailing address in Item 5 of the new manifest. If the mailing address is different from the ~~generator's facility's~~ site address, then the facility owner or operator must write the ~~generator's facility's~~ site address in the designated space for Item 5 of the new manifest.
- 2) ~~Write~~ The facility owner or operator must write the name of the initial generator and the generator's USEPA identification number in the designated facility block (Item 8) of the new manifest.
- 3) ~~Copy~~ The facility owner or operator must copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.
- 4) ~~Copy~~ The facility owner or operator must copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).
- 5) ~~Write~~ The facility owner or operator must write the USDOT description for the rejected load or the residue in Item 9 (USDOT Description) of the new manifest and write the container types, quantity, and volumes of waste.
- 6) ~~Sign~~ The facility owner or operator must sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.
- 7) For full load rejections that are made while the transporter remains at the facility, the facility owner or operator may return the shipment to the generator with the original manifest by completing Item 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility owner or operator must retain a copy for its

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records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility owner or operator must use a new manifest and comply with subsections (f)(1) through (f)(6) and (f)(8) of this Section.

8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility owner or operator must also comply with the exception reporting requirements in Section 722.142(a).

- g) If a facility owner or operator rejects a waste or identifies a container residue that exceeds the quantity limits for empty containers set forth in 35 Ill. Adm. Code 721.107(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility owner or operator must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility owner or operator must also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility owner or operator must retain the amended manifest for at least three years from the date of amendment, and must, within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

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

SUBPART H: FINANCIAL REQUIREMENTS

Section 725.241 Definitions of Terms as Used in this Subpart H

- a) “Closure plan” means the plan for closure prepared in accordance with the requirements of Section 725.212.
- b) “Current closure cost estimate” means the most recent of the estimates prepared in accordance with Sections 725.242(a), (b), and (c).
- c) “Current post-closure cost estimate” means the most recent of the estimates prepared in accordance with Sections 725.244(a), (b), and (c).

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- d) “Parent corporation” means a corporation that directly owns at least 50 percent of the voting stock of the corporation that is the facility owner or operator; the latter corporation is deemed a “subsidiary” of the parent corporation.
- e) “Post-closure plan” means the plan for post-closure care prepared in accordance with the requirements of Sections 725.217 through 725.220.
- f) The following terms are used in the specifications for the financial tests for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

“Assets” mean all existing and all probable future economic benefits obtained or controlled by a particular entity.

“Current assets” mean cash or other assets or resources commonly identified as those that 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.

“Current plugging and abandonment cost estimate” means the most recent of the estimates prepared in accordance with 35 Ill. Adm. Code 704.212(a), (b), and (c).

“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.

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“Net worth” means total assets minus total liabilities and is equivalent to owner’s equity.

“Tangible net worth” means the tangible assets that remain after deducting liabilities; such assets would not include intangibles, such as goodwill and rights to patents or royalties.

- g) In the liability insurance requirements the terms “bodily injury” and “property damage” have the meanings given below. The Board intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

“Accidental occurrence” means an accident, including continuous or repeated exposure to conditions, that results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

“Bodily injury” means bodily injury, sickness, or disease sustained by a person, including death resulting from any of these at any time. However, this term does not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

“Environmental damage” means the injurious presence in or upon land, the atmosphere or any watercourse or body of water of solid, liquid, gaseous, or thermal contaminants, irritants, or pollutants.

BOARD NOTE: This term is used in the definition of “pollution incident.”

“Legal defense costs” means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

“Nonsudden accidental occurrence” means an occurrence that takes place over time and involves continuous or repeated exposure.

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“Pollutants” means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste.

BOARD NOTE: This definition is used in the definition of “pollution incident.”

“Pollution incident” means emission, discharge, release or escape of pollutants into or upon land, the atmosphere, or any watercourse or body of water, provided that such emission, discharge, release, or escape results in “environmental damage.” The entirety of any such emission, discharge, release, or escape must be deemed to be one “pollution incident.” “Waste” includes materials to be recycled, reconditioned, or reclaimed. The term “pollution incident” includes an “occurrence.”

BOARD NOTE: This definition is used in the definition of “property damage.”

“Property damage” means as follows:

Either of the following:

Physical injury to, destruction of, or contamination of tangible property, including all resulting loss of use of that property; or

Loss of use of tangible property that is not physically injured, destroyed, or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of a “pollution incident.”

This term does not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage.

“Sudden accidental occurrence” means an occurrence that is not continuous or repeated in nature.

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- h) “Substantial business relationship” means that one business entity has an ownership interest in another, the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A “substantial business relationship” must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that the Agency can reasonably determine that a substantial business relationship currently exists between the guarantor and the owner or operator that is adequate consideration to support the obligation of the guarantee relating to any liability towards a third-party. “Applicable state law,” as used in this subsection (h), means the laws of the State of Illinois and those of any sister state that govern the guarantee and the adequacy of the consideration.

BOARD NOTE: Derived from 40 CFR 265.141(h) (2010) and the discussion at 53 Fed. Reg. 33938, 33941-33943 (Sep. 1, 1988). This term is also independently defined in 35 Ill. Adm. Code 724.141(h) and 727.240(b)(8). Any Agency determination that a substantial business relationship exists is subject to Board review pursuant to Section 40 of the Act [415 ILCS 5/40].

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

Section 725.242 Cost Estimate for Closure

- a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections 725.211 through 725.215 and applicable closure requirements of Sections 725.297, 725.328, 725.358, 725.380, 725.410, 725.451, 725.481, 725.504, and 725.1102.
- 1) The estimate must equal the cost of final closure at the point in the facility’s active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see Section 725.212(b)); and
 - 2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party that is neither a parent nor a subsidiary of the owner or operator. (See definition of “parent corporation” in Section 725.241(d).) The owner or operator may use costs for on-site disposal if the owner or operator

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demonstrates that on-site disposal capacity will exist at all times over the life of the facility.

- 3) The closure cost estimate must not incorporate any salvage value that may be realized by the sale of hazardous wastes, or non-hazardous wastes if ~~applicable under~~ permitted by the Agency pursuant to Section 725.213(d), facility structures or equipment, land or other facility assets at the time of partial or final closure.
 - 4) The owner or operator must not incorporate a zero cost for hazardous waste, or non-hazardous waste if ~~applicable under~~ permitted by the Agency pursuant to Section 725.213(d), that may have economic value.
- b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with Section 725.243. For an owner or operator using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Agency, as specified in Section 725.243(e)(5). The adjustment may be made by recalculating the closure cost estimate in current dollars, or by using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product (Deflator), as published by the U.S. Department of Commerce in its Survey of Current Business, as specified in subsections (b)(1) and (b)(2) of this Section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.
- 1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.
 - 2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

BOARD NOTE: The table of Deflators is available as Table 1.1.9., "Implicit Price Deflators for Gross Domestic Product," in the National Income and Product Account Tables, published by U.S. Department of Commerce, Bureau of Economic Analysis, National Economic Accounts, available on-line at the following web address: www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=13&FirstYear=2002&LastYear=2004&Freq=Qtr.

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- c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after a revision has been made to the closure plan that increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate must be revised no later than 30 days after the Agency has approved the request to modify the closure plan if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subsection (b) of this Section.
- d) The owner or operator must keep the following at the facility during the operating life of the facility: the latest closure cost estimate prepared in accordance with subsections (a) and (c) of this Section, and, when this estimate has been adjusted in accordance with subsection (b) of this Section, the latest adjusted closure cost estimate.

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

Section 725.243 Financial Assurance for Closure

An owner or operator of each facility must establish financial assurance for closure of the facility. The owner or operator must choose from the options specified in subsections (a) through (e) of this Section.

- a) Closure trust fund.
 - 1) An owner or operator may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the requirements of this subsection and submitting an original, signed duplicate of the trust agreement to the Agency. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or State agency.
 - 2) The wording of the trust agreement must be as specified in 35 Ill. Adm. Code 724.251, and the trust agreement must be accompanied by a formal certification of acknowledgment, as specified in 35 Ill. Adm. Code 724.251. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure cost estimate covered by the agreement.

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3) Payments into the trust fund must be made annually by the owner or operator over the 20 years beginning May 19, 1981, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the closure trust fund must be made as follows:

A) The first payment must be made before May 19, 1981, except as provided in subsection (a)(5) of this Section. The first payment must be at least equal to the current closure cost estimate, except as provided in subsection (f) of this Section, divided by the number of years in the pay-in period.

B) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

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

Where:

CE = the current closure cost estimate

CV = the current value of the trust fund

Y = the number of years remaining in the pay-in period

4) The owner or operator may accelerate payments into the trust fund or may deposit the full amount of the current closure cost estimate at the time the fund is established. However, the owner or operator must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3) of this Section.

5) If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in this Section, the owner or operator's first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in subsection (a)(3) of this Section.

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- 6) After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance, as specified in this Section, to cover the difference.
- 7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current closure cost estimate.
- 8) If an owner or operator substitutes other financial assurance, as specified in this Section, for all or part of the trust fund, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current closure cost estimate covered by the trust fund.
- 9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (a)(7) or (a)(8) of this Section, the Agency must instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing.
- 10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursement for closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursement for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the Agency must instruct the trustee to make reimbursement in those amounts as the Agency specifies in writing if the Agency determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Agency determines that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, it must withhold reimbursement of such amounts as it deems prudent until it determines, in accordance with subsection (h) of this Section, that the

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owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Agency does not instruct the trustee to make such reimbursements, the Agency must provide the owner or operator a detailed written statement of reasons.

- 11) The Agency must agree to termination of the trust when either of the following occurs:
 - A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or
 - B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h) of this Section.

- b) Surety bond guaranteeing payment into a closure trust fund.
 - 1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond that conforms to the requirements of this subsection (b) and submitting the bond to the Agency. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

BOARD NOTE: The U.S. Department of the Treasury updates Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," on an annual basis pursuant to 31 CFR 223.16. Circular 570 is available on the Internet from the following website: <http://www.fms.treas.gov/c570/>.
 - 2) The wording of the surety bond must be as specified in 35 Ill. Adm. Code 724.251.
 - 3) The owner or operator that uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements specified in subsection (a) of this Section, except as follows:

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- A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and
- B) Until the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:
 - i) Payments into the trust fund, as specified in subsection (a);
 - ii) Updating of Schedule A of the trust agreement (see 35 Ill. Adm. Code 724.251(a)) to show current closure cost estimates;
 - iii) Annual valuations, as required by the trust agreement; and
 - iv) Notices of nonpayment, as required by the trust agreement.
- 4) The bond must guarantee that the owner or operator will:
 - A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;
 - B) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the Board or a court of competent jurisdiction; or
 - C) Provide alternate financial assurance, as specified in this Section, 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 of cancellation of the bond from the surety.
- 5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
- 6) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate, except as provided in subsection (f) of this Section.

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- A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and
- B) Until the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:
 - i) Payments into the trust fund, as specified in subsection (a);
 - ii) Updating of Schedule A of the trust agreement (see 35 Ill. Adm. Code 724.251(a)) to show current closure cost estimates;
 - iii) Annual valuations, as required by the trust agreement; and
 - iv) Notices of nonpayment, as required by the trust agreement.
- 4) The bond must guarantee that the owner or operator will:
 - A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;
 - B) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the Board or a court of competent jurisdiction; or
 - C) Provide alternate financial assurance, as specified in this Section, 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 of cancellation of the bond from the surety.
- 5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
- 6) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate, except as provided in subsection (f) of this Section.

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- 7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Agency.
 - 8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.
 - 9) The owner or operator may cancel the bond if the Agency has given prior written consent based on its receipt of evidence of alternate financial assurance, as specified in this Section.
- c) Closure letter of credit.
- 1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection (c) and submitting the letter to the Agency. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or State agency.
 - 2) The wording of the letter of credit must be as specified in 35 Ill. Adm. Code 724.251.
 - 3) An owner or operator that uses a letter of credit to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Agency must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements of the trust fund specified in subsection (a) of this Section, except as follows:

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- A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the letter of credit; and
- B) Unless the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:
 - i) Payments into the trust fund, as specified in subsection (a) of this Section;
 - ii) Updating of Schedule A of the trust agreement (as specified in 35 Ill. Adm. Code 724.251) to show current closure cost estimates;
 - iii) Annual valuations, as required by the trust agreement; and
 - iv) Notices of nonpayment as required by the trust agreement.
- 4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: the USEPA identification number, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.
- 5) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date 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 expiration date. 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.
- 6) The letter of credit must be issued in an amount at least equal to the current closure cost estimate, except as provided in subsection (f) of this Section.
- 7) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after

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the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance, as specified in this Section, to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the Agency.

- 8) Following a final judicial determination or Board order finding that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the Agency may draw on the letter of credit.
 - 9) If the owner or operator does not establish alternate financial assurance, as specified in this Section, and obtain written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice from issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Agency must draw on the letter of credit. The Agency may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Agency must draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance, as specified in this Section, and obtain written approval of such assurance from the Agency.
 - 10) The Agency must return the letter of credit to the issuing institution for termination when one of the following occurs:
 - A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or
 - B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h) of this Section.
- d) Closure insurance.
- 1) An owner or operator may satisfy the requirements of this Section by obtaining closure insurance that conforms to the requirements of this subsection and submitting a certificate of such insurance to the Agency.

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At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

- 2) The wording of the certificate of insurance must be as specified in 35 Ill. Adm. Code 724.251.
- 3) The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in subsection (f) of this Section. 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.
- 4) The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that, once final 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.
- 5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursement for closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Agency must instruct the insurer to make reimbursement in such amounts as the Agency specifies in writing if the Agency determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Agency determines that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, it must withhold reimbursement of such amounts as it deems prudent until it determines, in accordance with subsection (h) of this Section, that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the Agency does not instruct the insurer to make such

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reimbursements, the Agency must provide the owner or operator with a detailed written statement of reasons.

- 6) The owner or operator must maintain the policy in full force and effect until the Agency consents to termination of the policy by the owner or operator as specified in subsection (d)(10) of this Section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this Section, will constitute a significant violation of these regulations, warranting such remedy as the Board may impose pursuant to the Environmental Protection Act. Such violation will be deemed to begin upon receipt by the Agency of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.
- 7) 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.
- 8) 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, one of the following occurs:
 - A) The Agency deems the facility abandoned;
 - B) Interim status is terminated or revoked;
 - C) Closure is ordered by the Board or a court of competent jurisdiction;

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- D) The owner or operator is named as debtor in a voluntary or involuntary proceeding under 11 USC (Bankruptcy); or
 - E) The premium due is paid.
- 9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Agency.
- 10) The Agency must give written consent to the owner or operator that the owner or operator may terminate the insurance policy when either of the following occurs:
- A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or
 - B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h) of this Section.
- e) Financial test and corporate guarantee for closure.
- 1) An owner or operator may satisfy the requirements of this Section by demonstrating that the owner or operator passes a financial test as specified in this subsection. To pass this 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 all of the following:
 - 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; and a ratio of current assets to current liabilities greater than 1.5;

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- ii) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates;
 - iii) Tangible net worth of at least \$10 million; and
 - iv) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.
- B) The owner or operator must have all of the following:
- 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;
 - ii) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates;
 - iii) Tangible net worth of at least \$10 million; and
 - iv) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.
- 2) The phrase "current closure and post-closure cost estimates," as used in subsection (e)(1) of this Section, refers to the cost estimates required to be shown in subsections 1 through 4 of the letter from the owner's or operator's chief financial officer (see 35 Ill. Adm. Code 724.251). The phrase "current plugging and abandonment cost estimates," as used in subsection (e)(1) of this Section, refers to the cost estimates required to be shown in subsections 1 through 4 of the letter from the owner's or operator's chief financial officer (see 35 Ill. Adm. Code 704.240).

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this Section. 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 owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

- 7) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (e)(1) of this Section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (e)(3) of this Section. If the Agency finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (e)(1) of this Section, the owner or operator must provide alternate financial assurance as specified in this Section within 30 days after notification of such a finding.
- 8) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see subsection (e)(3)(B) of this Section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency must evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this Section within 30 days after notification of the disallowance.
- 9) The owner or operator is no longer required to submit the items specified in subsection (e)(3) of this Section when either of the following occurs:
 - A) An owner or operator substitutes alternate financial assurance, as specified in this Section; or
 - B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h) of this Section.
- 10) An owner or operator may meet the requirements of this Section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a

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“substantial business relationship” with the owner or operator. The guarantor must meet the requirements for owners or operators in subsections (e)(1) through (e)(8) of this Section, and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in 35 Ill. Adm. Code 724.251. The corporate guarantee must accompany the items sent to the Agency as specified in subsection (e)(3) of this Section. One of these items must be the letter from the guarantor’s chief financial officer. If the guarantor’s parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a “substantial business relationship” with the owner or operator, this letter must describe this substantial business relationship” and the value received in consideration of the guarantee. The terms of the corporate guarantee must provide the following:

- A) That, if the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plan and other interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in subsection (a) of this Section, in the name of the owner or operator.
- B) That the corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.
- C) That, if the owner or operator fails to provide alternate financial assurance as specified in this Section and obtain the written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

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- f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms must be as specified in subsections (a) through (d) of this Section, respectively, except that it is the combination of mechanisms, rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Agency may use any or all of the mechanisms to provide for closure of the facility.

- g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this Section to meet the requirements of this Section for more than one facility. Evidence of financial assurance submitted to the Agency must include a list showing, for each facility, the USEPA identification number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. The amount of funds available to the Agency must be sufficient to close all of the owner or operator's facilities. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Agency may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

- h) Release of the owner or operator from the requirements of this Section. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Agency must notify the owner or operator in writing that the owner or operator is no longer required by this Section to maintain financial assurance for closure of the facility, unless the Agency determines that closure has not been in accordance with the approved closure plan. The Agency must provide the owner or operator a detailed written statement of any such determination that closure has not been in accordance with the approved closure plan.

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- i) Appeal. The following Agency actions are deemed to be permit modifications or refusals to modify for purposes of appeal to the Board (35 Ill. Adm. Code 702.184(e)(3)):
 - 1) An increase in, or a refusal to decrease the amount of, a bond, letter of credit, or insurance; or
 - 2) Requiring alternate assurance upon a finding that an owner or operator or parent corporation no longer meets a financial test.

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

SUBPART I: USE AND MANAGEMENT OF CONTAINERS

Section 725.274 Inspections

At least weekly, the owner or operator must inspect areas where containers are stored, ~~except for the owner or operator of a Performance Track member facility, which must conduct inspections at least once each month after approval by the Agency. To apply for reduced inspection frequency, the owner or operator of the Performance Track member facility must follow the procedures described in Section 725.115(b)(5).~~ The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

BOARD NOTE: See Section 725.271 for remedial action required if deterioration or leaks are detected.

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

SUBPART J: TANK SYSTEMS

Section 725.295 Inspections

- a) The owner or operator must inspect the following, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells, etc.) to ensure that the tank system is being operated according to its design.
- b) Except as noted under subsection (c) of this Section, the owner or operator must inspect the following at least once each operating day:

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- 1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;
- 2) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and
- 3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation, etc.).

BOARD NOTE: Section 725.115(c) requires the owner or operator to remedy any deterioration or malfunction the owner or operator finds. Section 725.296 requires the owner or operator to notify the Agency within 24 hours of confirming a release. Also, federal 40 CFR 302 may require the owner or operator to notify the National Response Center of a release.

- c) The owner or operator of a tank system that either uses leak detection equipment to alert facility personnel to leaks or implements established workplace practices to ensure leaks are promptly identified must inspect at least weekly those areas described in subsections (b)(1) through (b)(3) of this Section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.
- d) ~~The owner or operator of a Performance Track member facility may inspect on a less frequent basis, after approval by the Agency, but it must inspect at least once each month. To apply for a less than weekly inspection frequency, the owner or operator of the Performance Track member facility must follow the procedures described in Section 725.115(b)(5).~~ This subsection (d) corresponds with 40 CFR 265.195(d), which became obsolete when USEPA terminated the Performance Track Program at 74 Fed. Reg. 22741 (May 14, 2009). USEPA has recognized that program-related rules are no longer effective at 75 Fed. Reg. 12989, 12992, note 1 (Mar. 18, 2010). This statement maintains structural consistency with the corresponding federal requirements.

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- e) Ancillary equipment that is not provided with secondary containment, as described in Section 725.293(f)(1) through (f)(4), must be inspected at least once each operating day.
- f) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:
 - 1) The proper operation of the cathodic protection system must be confirmed within six months after initial installation, and annually thereafter; and
 - 2) All sources of impressed current must be inspected or tested, as appropriate, at least every other month.

BOARD NOTE: The practices described in "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," NACE Recommended Practice RP0285-85, or "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," API Recommended Practice 1632, each incorporated by reference in 35 Ill. Adm. Code 720.111(a), may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.

- g) The owner or operator must document in the operating record of the facility an inspection of those items in subsections (a) and (b) of this Section.

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

Section 725.301 Generators of 100 to 1,000 Kilograms of Hazardous Waste Per Month

- a) The requirements of this Section apply to small quantity generators that generate more than 100 kg but less than 1,000 kg of hazardous waste in a calendar month, that accumulate hazardous waste in tanks for less than 180 days (or 270 days if the generator must ship the waste greater than 200 miles), and that do not accumulate over 6,000 kg on-site at any time.
- b) A generator of between 100 and 1,000 kg/mo hazardous waste must comply with the following general operating requirements:

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- 1) Treatment or storage of hazardous waste in tanks must comply with Section 725.117(b);
- 2) Hazardous wastes or treatment reagents must not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life;
- 3) Uncovered tanks must be operated to ensure at least 60 centimeters (2 feet) of freeboard unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank; and
- 4) Where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., waste feed cutoff system or by-pass system to a stand-by tank).

BOARD NOTE: These systems are intended to be used in the event of a leak or overflow from the tank due to a system failure (e.g., a malfunction in the treatment process, a crack in the tank, etc.).

- c) Except as noted in subsection (d) of this Section, a generator of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks must inspect the following, where present:
 - 1) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;
 - 2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;
 - 3) The level of waste in the tank at least once each operating day to ensure compliance with subsection (b)(3) of this Section;
 - 4) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

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- 5) The construction materials of and the area immediately surrounding discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

BOARD NOTE: As required by Section 725.115(c), the owner or operator must remedy any deterioration or malfunction the owner or operator finds.

- d) A generator that accumulates between 100 and 1,000 kg/mo of hazardous waste in tanks or tank systems which have full secondary containment and which either uses leak detection equipment to alert facility personnel to leaks or implements established workplace practices to ensure leaks are promptly identified must inspect at least weekly, where applicable, the areas identified in subsections (c)(1) through (c)(5) of this Section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.
- e) ~~The owner or operator of a Performance Track member facility may inspect on a less frequent basis after approval by the Agency, but it must inspect at least once each month. To apply for a less than weekly inspection frequency, the owner or operator of the Performance Track member facility must follow the procedures described in Section 725.115(b)(5). This subsection (e) corresponds with 40 CFR 265.201(e), which became obsolete when USEPA terminated the Performance Track Program at 74 Fed. Reg. 22741 (May 14, 2009). USEPA has recognized that program-related rules are no longer effective at 75 Fed. Reg. 12989, 12992, note 1 (Mar. 18, 2010). This statement maintains structural consistency with the corresponding federal requirements.~~
- f) A generator of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks must, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures.

BOARD NOTE: At closure, as throughout the operating period, unless the owner or operator demonstrates, in accordance with 35 Ill. Adm. Code 721.103(d) or (e), that any solid waste removed from the tank is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of 35 Ill. Adm. Code 722, 723, and 725.

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- g) A generator of between 100 and 1,000 kg/mo must comply with the following special requirements for ignitable or reactive waste:
- 1) Ignitable or reactive waste must not be placed in a tank unless one of the following conditions are fulfilled:
 - A) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that the following is true of the waste:
 - i) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under 35 Ill. Adm. Code 721.121 or 721.123, and
 - ii) Section 725.117(b) is complied with;
 - B) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or
 - C) The tank is used solely for emergencies.
 - 2) The owner or operator of a facility that treats or stores ignitable or reactive waste in covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of "Flammable and Combustible Liquids Code," NFPA 30, incorporated by reference in 35 Ill. Adm. Code 720.111(a).
- fh) A generator of between 100 and 1,000 kg/mo must comply with the following special requirements for incompatible wastes:
- 1) Incompatible wastes or incompatible wastes and materials (see appendix V of 40 CFR 265 (Examples of Potentially Incompatible Waste), incorporated by reference in 35 Ill. Adm. Code 720.111(b), for examples) must not be placed in the same tank unless Section 725.117(b) is complied with.
 - 2) Hazardous waste must not be placed in an unwashed tank that previously held an incompatible waste or material unless Section 725.117(b) is complied with.

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

SUBPART N: LANDFILLS

Section 725.414 Special Requirements for Liquid Wastes

- a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.
- b) Containers holding free liquids must not be placed in a landfill unless one of the following conditions is fulfilled:
 - 1) One of the following occurs with regard to all free-standing liquid:
 - A) It has been removed by decanting or other methods;
 - B) It has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or
 - C) It has been otherwise eliminated;
 - 2) The container is very small, such as an ampule;
 - 3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or
 - 4) The container is a lab pack, as defined in Section 724.416, and is disposed of in accordance with Section 724.416.
- c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095B (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," USEPA publication number EPA-530/SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a).

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- d) This subsection (d) corresponds with 40 CFR 265.314(d), which recites a past effective date. This statement maintains structural parity with the federal regulations.
- e) Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are one of the following: materials listed or described in subsection ~~(f)(1)~~ (e)(1) of this Section; materials that pass one of the tests in subsection ~~(f)(2)~~ (e)(2) of this Section; or materials that are determined by the Board to be nonbiodegradable through the adjusted standard procedure of Section 28.1 of the Act [415 ILCS 5/28.1] and Subpart D of 35 Ill. Adm. Code 104.
 - 1) Nonbiodegradable sorbents are the following:
 - A) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites, calcium carbonate (organic free limestone), oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth, perlite (volcanic glass), expanded volcanic rock, volcanic ash, cement kiln dust, fly ash, rice hull ash, activated charcoal/activated carbon, etc.); or
 - B) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene, and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or
 - C) Mixtures of these nonbiodegradable materials.
 - 2) Tests for nonbiodegradable sorbents.
 - A) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70 (1984a) (Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi), incorporated by reference in 35 Ill. Adm. Code 720.111(a);

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- B) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b) (Standard Practice for Determining Resistance of Plastics to Bacteria), incorporated by reference in 35 Ill. Adm. Code 720.111(a); or
 - C) The sorbent material is determined to be non-biodegradable under OECD Guideline for Testing of Chemicals, Method 301B (CO₂ Evolution (Modified Sturm Test)), incorporated by reference in 35 Ill. Adm. Code 720.111(a).
- f) The placement of any liquid that is not a hazardous waste in a landfill is prohibited. (See 35 Ill. Adm. Code 729.311.)

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

Section 725.416 Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs)

Small containers of hazardous waste in overpacked drums (lab packs) may be placed in a landfill if the following requirements are met:

- a) Hazardous waste must be packaged in non-leaking inside containers. The inside containers must be of a design and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the waste held therein. Inside containers must be tightly and securely sealed. The inside containers must be of the size and type specified in the USDOT hazardous materials regulations (49 CFR 173 (Shippers—General Requirements for Shipments and Packages), 178 (Specifications for Packagings), and 179 (Specifications for Tank Cars), each incorporated by reference in 35 Ill. Adm. Code 720.111(b)), if those regulations specify a particular inside container for the waste.
- b) The inside containers must be overpacked in an open head USDOT-specification metal shipping container (49 CFR 178 (Specifications for Packagings) and 179 (Specifications for Tank Cars), of no more than 416 liter (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with 35 Ill. Adm. Code ~~725.414(f)~~ 725.414(e) to completely sorb all of the liquid contents of the inside

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containers. The metal outer container must be full after packing with inside containers and sorbent material.

- c) The sorbent material used must not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers, in accordance with Section 725.117(b).
- d) Incompatible wastes, as defined in 35 Ill. Adm. Code 720.110, must not be placed in the same outside container.
- e) Reactive waste, other than cyanide- or sulfide-bearing waste, as defined in 35 Ill. Adm. Code 721.123(a)(5), must be treated or rendered non-reactive prior to packaging in accordance with subsections (a) through (d) of this Section. Cyanide- or sulfide-bearing reactive waste may be packaged in accordance with subsections (a) through (d) of this Section without first being treated or rendered non-reactive.
- f) Such disposal is in compliance with the requirements of 35 Ill. Adm. Code 728. Persons that incinerate lab packs according to the requirements of 35 Ill. Adm. Code 728.142(c)(1) may use fiber drums in place of metal outer containers. Such fiber drums must meet the USDOT specifications in 49 CFR 173.12 (Exceptions for Shipments of Waste Materials), incorporated by reference in 35 Ill. Adm. Code 720.111(b), and be overpacked according to subsection (b) of this Section.
- g) Pursuant to 35 Ill. Adm. Code 729.312, the use of labpacks for disposal of liquid wastes or wastes containing free liquids allowed under this Section is restricted to labwaste and non-periodic waste, as those terms are defined in that Part.

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

SUBPART DD: CONTAINMENT BUILDINGS

Section 725.1101 Design and Operating Standards

- a) All containment buildings must comply with the following design and operating standards:

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- 1) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements (e.g. precipitation, wind, run on) and to assure containment of managed wastes;
- 2) The floor and containment walls of the unit, including the secondary containment system if required under subsection (b) of this Section, must be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes. The containment building must meet the structural integrity requirements established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM). If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:
 - A) They provide an effective barrier against fugitive dust emissions under subsection (c)(1)(D) of this Section; and
 - B) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings;
- 3) Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail; and
- 4) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

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- b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator must include the following design features:
- 1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (e.g., a geomembrane covered by a concrete wear surface).
 - 2) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building:
 - A) The primary barrier must be sloped to drain liquids to the associated collection system; and
 - B) Liquids and waste must be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time.
 - 3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.
 - A) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum, as follows:
 - i) It is constructed with a bottom slope of 1 percent or more; and
 - ii) It is constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m²/sec or more.

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- B) If treatment is to be conducted in the building, an area in which such treatment will be conducted must be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.
 - C) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of Section 725.293(e)(1). In addition, the containment building must meet the requirements of subsections 725.293(b) and (c) to be an acceptable secondary containment system for a tank.)
- 4) For existing units other than 90-day generator units, USEPA may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of this Subpart DD. In making this demonstration, the owner or operator must do each of the following:
- A) Provide written notice to USEPA of their request by November 16, 1992. This notification must describe the unit and its operating practices with specific reference to the performance of existing systems, and specific plans for retrofitting the unit with secondary containment;
 - B) Respond to any comments from USEPA on these plans within 30 days; and
 - C) Fulfill the terms of the revised plans, if such plans are approved by USEPA.
- c) Owners or operators of all containment buildings must do each of the following:

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- 1) It must use controls and practice to ensure containment of the hazardous waste within the unit, and at a minimum do each of the following:
 - A) It must maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;
 - B) It must maintain the level of the stored or treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;
 - C) It must take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area must be designated to decontaminate equipment and any rinsate must be collected and properly managed; and
 - D) It must take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see Method 22 (Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares) in appendix A to 40 CFR 60 (Test Methods), incorporated by reference in 35 Ill. Adm. Code 720.111(b)). In addition, all associated particulate collection devices (e.g., fabric filter, electrostatic precipitator) must be operated and maintained with sound air pollution control practices (see 40 CFR 60 for guidance). This state of no visible emissions must be maintained effectively at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit;

BOARD NOTE: At 40 CFR 264.1101(c)(1)(iv), USEPA cites "40 CFR part 60, subpart 292." At 57 Fed. Reg. 37217 (August 18, 1992), USEPA repeats this citation in the preamble discussion of adoption of the rules. No such provision exists in the Code of Federal Regulations. While ~~section~~ 40 CFR 60.292 of the federal regulations pertains to control of fugitive dust emissions, that provision is limited in its application to glass melting furnaces. The Board has chosen to use the general citation: "40 CFR 60."

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- 2) It must obtain and keep on-site a certification by a qualified Professional Engineer that the containment building design meets the requirements of subsections (a) through (c) of this Section;
- 3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, it must repair the condition promptly, in accordance with the following procedures:
 - A) Upon detection of a condition that has caused a release of hazardous wastes (e.g., upon detection of leakage from the primary barrier) the owner or operator must do the following:
 - i) Enter a record of the discovery in the facility operating record;
 - ii) Immediately remove the portion of the containment building affected by the condition from service;
 - iii) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and
 - iv) Within seven days after the discovery of the condition, notify the Agency in writing of the condition, and within 14 working days, provide a written notice to the Agency with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work;
 - B) The Agency must review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing; and
 - C) Upon completing all repairs and cleanup the owner and operator must notify the Agency in writing and provide a verification, signed by a qualified, registered professional engineer, that the

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repairs and cleanup have been completed according to the written plan submitted in accordance with subsection (c)(3)(A)(iv) of this Section; and

- 4) It must inspect and record in the facility's operating record at least once every seven days, ~~except for the owner or operator of a Performance Track member facility, which must inspect the record at least once each month after approval of the Agency,~~ data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. ~~To apply for a reduced inspection frequency, the owner or operator of a Performance Track member facility must follow the procedures described in Section 725.115(b)(5).~~
- d) For a containment building that contains areas both with and without secondary containment, the owner or operator must do the following:
 - 1) Design and operate each area in accordance with the requirements enumerated in subsections (a) through (c) of this Section;
 - 2) Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and
 - 3) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.
- e) Notwithstanding any other provision of this Subpart DD, the Agency must, in writing, allow the use of alternatives to the requirements for secondary containment for a permitted containment building where the Agency has determined that the facility owner or operator has adequately demonstrated that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

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