



OFFICE OF THE SECRETARY OF STATE

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January 2, 2019

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STATE OF ILLINOIS
Pollution Control Board

POLLUTION CONTROL BOARD
DON BROWN
100 W RANDOLPH ST
STE 11-500
CHICAGO, IL 60601

Dear DON BROWN

Your rules Listed below met our codification standards and have been published in Volume 42, Issue 51 of the Illinois Register, dated 12/21/2018.

ADOPTED RULES

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

35 Ill. Adm. Code 725 23725
Point of Contact: Mike McCambridge

Standards for Owners and Operators of Hazardous Waste Facilities Operating under a RCRA Standardized Permit

35 Ill. Adm. Code 727 24055
Point of Contact: Mike McCambridge

Underground Injection Control Operating Requirements

35 Ill. Adm. Code 730 24145
Point of Contact: Mike McCambridge

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

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NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Standards for Owners and Operators of Hazardous Waste Facilities Operating under a RCRA Standardized Permit
- 2) Code citation: 35 Ill. Adm. Code 727
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
727.100	Amendment
727.110	Amendment
727.150	Amendment
727.170	Amendment
727.190	Amendment
727.210	Amendment
727.240	Amendment
727.270	Amendment
727.290	Amendment
727.900	Amendment
- 4) Statutory authority: 415 ILCS 5/7.2, 22.4, and 27.
- 5) Effective date of rule: NOV 19 2018
- 6) Does this rulemaking contain an automatic repeal date? No.
- 7) Does this rulemaking contain incorporations by reference? No.
- 8) Statement of availability: The adopted rulemaking, a copy of the Board's opinion and order adopted October 4, 2018 in consolidated docket R17-14/R17-15/R18-12/R18-31, 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: 42 Ill. Reg. 11136; June 22, 2018
- 10) Has JCAR issued a statement of objections to these rules? No. 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).
- 11) Differences between the proposal and the final version: A table in a document entitled "Identical-in-Substance Rulemaking Addendum (Final)" that the Board added to consolidated docket R17-14/R17-15/R18-12/R18-31 summarizes the differences between

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the amendments adopted in the October 4, 2018 opinion and order and those proposed by the Board on May 24, 2018.

The differences are limited to minor corrections suggested by JCAR staff or resulting from the Board's review of its proposal. The changes are not intended to have substantive effect and intend to clarify the rules without deviating 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? Sections 13 and 22.4 of the Environmental Protection Act [415 ILCS 5/13 and 22.4] provide 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.

Since the Notices of Proposed Amendments appeared in the June 22, 2018 issue of the *Illinois Register*, the Board received suggestions for revisions from JCAR. The Board evaluated each suggestion and incorporated some into the adopted rules, as detailed in the Identical-in-Substance Rulemaking Addendum (Final) in consolidated docket R17-14/R17-15/R18-12/R18-31, as described in item 11 above. See that Addendum for additional details on JCAR suggestions and the Board actions on each. One table in itemizes changes made in response to various suggestions. Another table indicates suggestions not incorporated into the text, with a brief explanation for each.

- 13) Will this rulemaking replace emergency rule currently in effect? No.
- 14) Are there any other rulemakings pending on this Part? No.
- 15) Summary and purpose of rulemaking: The amendments to Part 727 are a segment larger Board rulemaking. The consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking also includes amendments to 35 Ill. Adm. Code 702 through 705, 720 through 726, 728, 730, 733, 738, 739, and 810 through 812. Due to the extreme volume of the consolidated docket, each Part is covered by a notice in five separate issues of the *Illinois Register*. Included in this issue are the fourth group for publication: 35 Ill. Adm. Code 725, 727 and 730.

Section 22.4(a) of the Environmental Protection Act (Act) (415 ILCS 5/22.4(a) (2016)) requires the Board to adopt hazardous waste rules that are identical-in-substance to United States Environmental Protection Agency's (USEPA's) Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste rules. Section 22.4(a) requires the Board to use the identical-in-substance rulemaking procedure of Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2014)). The Illinois hazardous waste rules are in 35 Ill. Adm. Code

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702, 703, 705, 720 through 728, 733, 738, and 739. The Board reserved docket R17-14 to incorporate USEPA amendments adopted during the period July 1, 2016 through December 31, 2016 into the Illinois hazardous waste rules. Similarly, the Board reserved docket R18-12 for USEPA hazardous waste rules adopted during the period July 1, 2017 through December 31, 2017 and consolidated it with dockets R17-14, R17-15, and R18-12.

To save space, a more detailed description of the subjects and issues involved in the consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking in this issue of the Illinois Register only in the answer to question 5 in the Notice of Adopted Amendments for 35 Ill. Adm. Code 725. A comprehensive description is contained in the Board's opinion and order of October 4, 2018, adopting amendments in consolidated docket R17-14/R17-15/R18-11/R18-31. The opinion and order is available from the address below.

Specifically, the amendments to Part 727 incorporate USEPA's action of November 28, 2016 adopting the Generator Improvements Rule.

The consolidated docket R17-14/R17-15/R18-11/R18-31 rulemaking further makes numerous corrections and non-substantive stylistic revisions that the Board found are needed.

Tables appear in the Identical-in-Substance Rulemaking Addendum (Final) in consolidated docket R17-14/R17-15/R18-12/R18-31, as described in item 11 above, that list corrections and amendments. Persons interested in the details of those corrections and amendments should refer to the Addendum.

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).

- 16) Information and questions regarding this adopted rulemaking shall be directed to: Please reference consolidated docket R17-14/R17-15/R18-12/R18-31 and direct inquiries to the following person:

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

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312-814-6924

michael.mccambridge@illinois.gov

Request copies of the Board's opinion and order of October 4, 2018 at 312-814-3620.

You may also 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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NOTICE OF ADOPTED AMENDMENTS

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

PART 727
STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE
FACILITIES OPERATING UNDER A RCRA STANDARDIZED PERMIT

Section

727.100	General
727.110	General Facility Standards
727.130	Preparedness and Prevention
727.150	Contingency Plan and Emergency Procedures
727.170	Recordkeeping, Reporting, and Notifying
727.190	Releases from Solid Waste Management Units
727.210	Closure
727.240	Financial Requirements
727.270	Use and Management of Containers
727.290	Tank Systems
727.900	Containment Buildings

727.APPENDIX A Financial Assurance Forms (Repealed)

727.ILLUSTRATION A Letter of Chief Financial Officer: Financial Assurance for Facility Closure (Repealed)

727.ILLUSTRATION B Letter of Chief Financial Officer: Financial Assurance for Liability Coverage (Repealed)

727.APPENDIX B Correlation of State and Federal Provisions

727.TABLE A Correlation of Federal RCRA Standardized Permit Provisions to State Provisions

727.TABLE B Correlation of State RCRA Standardized Permit Provisions to Federal Provisions

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 R06-16/R06-17/R06-18 at 31 Ill. Reg. 1146, effective December 20, 2006; amended in R07-5/R07-14 at 32 Ill. Reg. 12829, effective July 14, 2008; amended in R13-15 at 37 Ill. Reg. 17909, effective October 24, 2013; amended in R14-1/R14-2/R14-3 at 38 Ill. Reg. 7221, effective March 13, 2014; amended in R16-7 at 40 Ill. Reg. 12011, effective August

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9, 2016; amended in R17-14/R17-15/R18-12/R18-31 at 42 Ill. Reg. _____, effective
_____.

Section 727.100 General

- a) Purpose, Scope, ~~scope~~, and Applicability ~~applicability~~.
- 1) The purpose of this Part is to establish minimum national standards that define the acceptable management of hazardous waste under a RCRA standardized permit, as such is defined in 35 Ill. Adm. Code 702.110 and 720.110, issued pursuant to Subpart J of 35 Ill. Adm. Code 703.
 - 2) This Part applies to owners and operators of facilities that treat or store hazardous waste under a RCRA standardized permit issued pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided otherwise in Subpart A of 35 Ill. Adm. Code 721 or 35 Ill. Adm. Code 724.101(f) and (g).

BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.1 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~. The exemptions of subsection (a)(2) ~~of this Section~~ are directly derived from corresponding 40 CFR 267.1(b). The Board assumes that USEPA exempted from the RCRA standardized permit requirements those wastes excluded from the definition of hazardous waste (in Subpart A of 35 Ill. Adm. Code 721) and those exempted from the T/S/D facility standards (by 35 Ill. Adm. Code 724.101(g)). The Board has retained the reference to 35 Ill. Adm. Code 724.101(f), even though it does no more than reference corresponding 40 CFR 264.1(f), which relates exclusively to the applicability of the federal regulations.

- b) Relationship to Interim Status Standards ~~interim status standards~~. A facility owner or operator that has fully complied with the requirements for interim status, as defined in section 3005(e) of federal RCRA and regulations pursuant to 35 Ill. Adm. Code 703.153, must comply with the regulations specified in 35 Ill. Adm. Code 725 instead of the regulations in this Part, until final administrative disposition of the RCRA standardized permit application is made, except as provided in Subpart S of 35 Ill. Adm. Code 724.

BOARD NOTE: Subsection (b) ~~of this Section~~ is derived from 40 CFR 267.2 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

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- c) Effect on a Federal Imminent Hazard Action ~~federal imminent hazard action~~. Notwithstanding any other provisions of this Part, enforcement actions may be brought in a federal court pursuant to section 7003 of RCRA.

BOARD NOTE: Subsection (c) ~~of this Section~~ is derived from 40 CFR 267.3 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~. The corresponding federal regulation relates to an imminent hazard action under RCRA. An enforcement action for violation of any applicable provision of the ~~Environmental Protection Act [415 ILCS 5] (Act)~~ is also possible.

- d) Electronic Reporting ~~reporting~~. The filing of any document pursuant to any provision of this Part as an electronic document is subject to 35 Ill. Adm. Code 720.104.

BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 3, as added, and 40 CFR 271.10(b), 271.11(b), and 271.12(h) (2017) ~~(2005)~~, as amended at 70 Fed. Reg. 59848 (Oct. 13, 2005).

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 727.110 General Facility Standards

- a) Applicability of This ~~this~~ Section. This Section applies to the owner or operator of a facility that treats or stores hazardous waste under a Subpart J of 35 Ill. Adm. Code 703 RCRA standardized permit, except as provided in Section 727.100(a)(2).

BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.10 (2017) ~~(2012)~~.

- b) Compliance with This ~~this~~ Section. To comply with this Section, the facility owner or operator must obtain a USEPA identification number, and follow the requirements of this Part for waste analysis, security, inspections, training, special waste handling, and location standards.

BOARD NOTE: Subsection (b) ~~of this Section~~ is derived from 40 CFR 267.11 (2017) ~~(2012)~~.

- c) Obtaining a USEPA Identification Number ~~identification number~~. The facility owner or operator must apply to USEPA Region 5 for a USEPA identification number using USEPA Form 8700-12. The owner or operator must obtain a copy

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of the form from the Agency, and submit a completed copy of the form to the Bureau of Land, in addition to notification to USEPA Region 5.

BOARD NOTE: Subsection (c) ~~of this Section~~ is derived from 40 CFR 267.12 (2017) ~~(2012)~~.

- d) ~~Waste Analysis Requirements~~ analysis requirements.
- 1) Before it treats or stores any hazardous wastes, the facility owner or operator must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information needed to treat or store the waste to comply with this Part and 35 Ill. Adm. Code 728.
 - A) The facility owner or operator may include data in the analysis that was developed pursuant to 35 Ill. Adm. Code 721 or data published or documented on the hazardous waste or on hazardous waste generated from similar processes.
 - B) The facility owner or operator must repeat the analysis as necessary to ensure that it is accurate and up to date. At a minimum, the owner or operator must repeat the analysis if the process or operation generating the hazardous wastes has changed.
 - 2) The facility owner or operator must develop and follow a written waste analysis plan that describes the procedures it will follow to comply with subsection (d)(1) ~~of this Section~~. The owner or operator must keep this plan at the facility. If the owner or operator receives wastes generated from off-site and is eligible for a RCRA standardized permit, the owner or operator also must have submitted the waste analysis plan with the Notice of Intent. At a minimum, the plan must specify all of the following:
 - A) The hazardous waste parameters that the owner or operator will analyze and the rationale for selecting these parameters (that is, how analysis for these parameters will provide sufficient information on the waste's properties to comply with subsection (d)(1) ~~of this Section~~).
 - B) The test methods the owner or operator will use to test for these parameters.

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- C) The sampling method the owner or operator will use to obtain a representative sample of the waste to be analyzed. The owner or operator may obtain a representative sample using either of the following methods:
 - i) One of the sampling methods described in Appendix A of 35 Ill. Adm. Code 721; or
 - ii) An equivalent sampling method.
- D) How frequently the owner or operator will review or repeat the initial analysis of the waste to ensure that the analysis is accurate and up to date.
- E) Where applicable, the methods the owner or operator will use to meet the additional waste analysis requirements for specific waste management methods, as specified in 35 Ill. Adm. Code 724.117, 724.934(d), 724.963(d), and 724.983.

BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 267.13 (2017) ~~(2012)~~.

- e) Security Requirements ~~requirements~~.
 - 1) The facility owner or operator must prevent, and minimize the possibility for, livestock and unauthorized people from entering the active portion of its facility.
 - 2) The facility must have either of the features listed in subsection (e)(2)(A) ~~of this Section~~ or those listed in subsections (e)(2)(B) and (e)(2)(C) ~~of this Section~~:
 - A) A 24-hour surveillance system (for example, television monitoring or surveillance by guards or facility personnel) that continuously monitors and controls entry onto the active portion of the facility; or
 - B) An artificial or natural barrier (for example, a fence in good repair or a fence combined with a cliff) that completely surrounds the active portion of the facility; and

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- C) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (for example, an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

- 3) The facility owner or operator must post a sign at each entrance to the active portion of a facility, and at other prominent locations, in sufficient numbers to be seen from any approach to this active portion. The sign must bear the legend “Danger—Unauthorized Personnel Keep Out.”. The legend must be in English and in any other language predominant in the area surrounding the facility (for example, French or Spanish), and must be legible from a distance of at least 25 feet. The owner or operator may use existing signs with a legend other than “Danger—Unauthorized Personnel Keep Out” if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion and entry onto the active portion can be dangerous.

BOARD NOTE: Subsection (e) ~~of this Section~~ is derived from 40 CFR 267.14 (2017)-(2012).

- f) General Inspection Requirements ~~inspection requirements.~~
 - 1) The owner or operator must inspect its facility for malfunctions and deterioration, operator errors, and discharges that may be causing, or may lead to either of the conditions listed in subsection (f)(1)(A) or (f)(1)(B) ~~of this Section~~. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they result in harm to human health and the environment.
 - A) A release of hazardous waste constituents to the environment; or
 - B) A threat to human health.

 - 2) The facility owner or operator must develop and follow a written schedule for inspecting 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.
 - A) The owner or operator must keep this schedule at the facility.

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- B) The schedule must identify the equipment and devices that the owner or operator will inspect and what problems it will look for, such as malfunctions or deterioration of equipment (for example, inoperative sump pump, leaking fitting, etc.).
- C) The frequency of the owner's or operator's inspections 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 any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies required in Sections 727.270(e), 727.290(d) and (f), and 727.900(d) and 35 Ill. Adm. Code 724.933, 724.952, 724.953, 724.958, and 724.983 through 724.989, where applicable.
- 3) The facility owner or operator must remedy any deterioration or malfunction of equipment or structures that the inspection reveals in time to prevent any environmental or human health hazards. Where hazard is imminent or has already occurred, the owner or operator must take immediate remedial action.
- 4) The facility owner or operator must record all inspections. The owner or operator must keep these records for at least three years from the date of inspection. At a minimum, the owner or operator 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.

BOARD NOTE: Subsection (f) of this Section is derived from 40 CFR 267.15 (2017)-(2012).

- g) Employee Training training.
 - 1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this Part. The facility owner or operator must ensure that this program includes all the elements described in the documents that are required pursuant to subsection (g)(4)(C) of this Section.

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- A) A person trained in hazardous waste management procedures must direct this program, and must teach facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to their employment positions.
- B) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by including instruction on emergency procedures, emergency equipment, and emergency systems, including all of the following, where applicable:
 - i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment.
 - ii) Key parameters for automatic waste feed cut-off systems.
 - iii) Communications or alarm systems.
 - iv) Response to fires or explosions.
 - v) Response to groundwater contamination incidents.
 - vi) Shutdown of operations.
- 2) Facility personnel must successfully complete the program required in subsection (g)(1) of this Section within six months after the date of their employment or assignment to a facility or to a new position at a facility, whichever is later. Employees hired after the effective date of the owner's or operator's RCRA standardized permit must not work in unsupervised positions until they have completed the training requirements of subsection (g)(1) of this Section.
- 3) Facility personnel must take part in an annual review of the initial training required in subsection (g)(1) of this Section.
- 4) The facility owner or operator must maintain the following documents and records at its facility:
 - A) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

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- B) A written job description for each position listed pursuant to subsection (g)(4)(A) ~~of this Section~~. This description must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;
 - C) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed pursuant to subsection (g)(4)(A) ~~of this Section~~;
 - D) Records that document that facility personnel have received and completed the training or job experience required pursuant to subsections (g)(1), (g)(2), and (g)(3) ~~of this Section~~.
- 5) The facility owner or operator must keep training records on current personnel until its facility closes. The owner or operator must keep training records on former employees for at least three years from the date the employee last worked at its facility. Personnel training records may accompany personnel transferred within a company.

BOARD NOTE: Subsection (g) ~~of this Section~~ is derived from 40 CFR 267.16 (2017) ~~(2012)~~.

- h) Requirements for Managing Ignitable, Reactive, or Incompatible Wastes ~~managing ignitable, reactive, or incompatible wastes~~.
 - 1) The facility owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste by following these requirements:
 - A) The owner or operator must separate these wastes and protect them from sources of ignition or reaction such as open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (for example, from heat-producing chemical reactions), and radiant heat.
 - B) While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flames to specially designated locations.
 - C) “No Smoking” signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

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- 2) If it treats or stores ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, the owner or operator must take precautions to prevent reactions that do the following:
 - A) Generate extreme heat or pressure, fire or explosions, or violent reactions.
 - B) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment.
 - C) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions.
 - D) Damage the structural integrity of the device or facility.
 - E) Threaten human health and the environment in any similar way.
- 3) The facility owner or operator must document compliance with subsection (h)(1) or (h)(2) ~~of this Section~~. The owner or operator may base this documentation on references to published scientific or engineering literature, data from trial tests (for example bench scale or pilot scale tests), waste analyses (as specified in Section 727.110(d)), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

BOARD NOTE: Subsection (h) ~~of this Section~~ is derived from 40 CFR 267.17 (2017) ~~(2012)~~.

- i) Facility Location Standards ~~location standards~~.
 - 1) The facility owner or operator may not locate any portion of a new facility where hazardous waste will be treated or stored within 61 meters (200 feet) of a fault that has had displacement in Holocene time.
 - A) “Fault” means a fracture along which rocks on one side have been displaced with respect to those on the other side.
 - B) “Displacement” means the relative movement of any two sides of a fault measured in any direction.
 - C) “Holocene” means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

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BOARD NOTE: Under the note to corresponding 40 CFR 267.18(a)(3) and 40 CFR 270.14(b)(11), a facility that is located in a political jurisdiction other than those listed in appendix VI of 40 CFR 264, incorporated by reference in 35 Ill. Adm. Code 720.111(b), is assumed to be in compliance with this requirement. No area of Illinois is listed in appendix VI of 40 CFR 264.

- 2) If an owner's or operator's facility is located within a 100-year flood plain, it must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.
 - A) "100-year flood plain" means any land area that is subject to a one percent or greater chance of flooding in any given year from any source.
 - B) "Washout" means the movement of hazardous waste from the active portion of the facility as a result of flooding.
 - C) "100-year flood" means a flood that has a one percent chance of being equaled or exceeded in any given year.

BOARD NOTE: Subsection (i) of this Section is derived from 40 CFR 267.18 (2017)-(2012).

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 727.150 Contingency Plan and Emergency Procedures

- a) Applicability of This ~~this~~ Section. This Section applies to the owner or operator of a facility that treats or stores hazardous waste under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2).

BOARD NOTE: Subsection (a) of this Section is derived from 40 CFR 267.50 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- b) The Purpose ~~purpose~~ and Use ~~use~~ of the Contingency Plan ~~contingency plan~~.
 - 1) The facility owner or operator must have a contingency plan for its facility. The owner or operator must design the plan to minimize hazards to human health or the environment from fires, explosions, or any

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unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

- 2) The owner or operator must implement the provisions of the plan immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents that could threaten human health or the environment.

BOARD NOTE: Subsection (b) ~~of this Section~~ is derived from 40 CFR 267.51 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- c) Contents of the Contingency Plan ~~contingency plan~~.
 - 1) The facility contingency plan must include the following information:
 - A) It must describe the actions facility personnel will take to comply with subsections (b) and (g) ~~of this Section~~ 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) It must describe all arrangements agreed upon pursuant to Section 727.130(g) by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services;
 - C) It must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see subsection (f) ~~of this Section~~), and the owner or operator must keep the list 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;
 - D) It must include a current 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. In addition, the facility owner or operator must include the location and a physical description of each item on the list, and a brief outline of its capabilities; and

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- E) It must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. The 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).
- 2) If the facility owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan pursuant to federal 40 CFR 112, or some other emergency or contingency plan, the owner or operator needs only to amend that plan to incorporate hazardous waste management provisions that will comply with the requirements of this Part.

BOARD NOTE: Subsection (c) ~~of this Section~~ is derived from 40 CFR 267.52 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- d) Who Must Have Copies ~~must have copies of the Contingency Plan~~ ~~contingency plan.~~
- 1) The facility owner or operator must maintain a copy of the plan with all revisions at the facility; and
- 2) The owner or operator must submit a copy with all revisions to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 267.53 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- e) When the Facility Owner ~~facility owner~~ or Operator Must Amend ~~operator must amend the Contingency Plan~~ ~~contingency plan.~~ The facility owner or operator must review, and immediately amend the contingency plan, if necessary, whenever any of the following occurs:
- 1) The facility permit is revised;
- 2) The plan fails in an emergency;
- 3) The owner or operator changes the facility (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of hazardous waste

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or hazardous waste constituents, or changes the response necessary in an emergency;

- 4) The owner or operator changes the list of emergency coordinators; or
- 5) The owner or operator changes the list of emergency equipment.

BOARD NOTE: Subsection (e) ~~of this Section~~ is derived from 40 CFR 267.54 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- f) The ~~Role~~ ~~role~~ of the ~~Emergency Coordinator~~ ~~emergency coordinator~~. At least one employee must be either on the facility premises or on call at all times (that is, available to respond to an emergency by reaching the facility within a short period of time) who has the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

BOARD NOTE: Subsection (f) ~~of this Section~~ is derived from 40 CFR 267.55 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- g) Required ~~Emergency Procedures~~ ~~emergency procedures~~ for the ~~Emergency Coordinator~~ ~~emergency coordinator~~.
- 1) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately undertake the following actions:
 - A) He or she must activate internal facility alarm or communication systems, where applicable, to notify all facility personnel; and
 - B) He or she must notify appropriate State or local agencies with designated response roles if their help is needed.
 - 2) Whenever there is a release, fire, or explosion, the emergency coordinator must undertake the following actions:
 - A) He or she must immediately identify the character, exact source, amount, and areal extent of any released materials. He or she may

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do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis; and

- B) He or she 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. For example, the assessment would consider the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions.
- 3) 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:
- A) If his or her assessment indicates that evacuation of local areas may be advisable, he or she must immediately notify appropriate local authorities. He or she must be available to help appropriate officials decide whether local areas should be evacuated; and
 - B) He or she must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll-free number 800-424-8802). The report must include the following information:
 - i) The name and telephone number of the reporter;
 - ii) The name and address of facility;
 - iii) The time and type of incident (for example, a release or a fire);
 - iv) The name and quantity of materials involved, to the extent known;
 - v) The extent of injuries, if any; and
 - vi) The possible hazards to human health, or the environment outside the facility.

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- 4) 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 release waste, and removing or isolating containers.
- 5) 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, when appropriate.

BOARD NOTE: Subsection (g) ~~of this Section~~ is derived from 40 CFR 267.56 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- h) The Emergency Coordinator's Responsibilities ~~emergency coordinator's responsibilities after an Emergency emergency.~~
 - 1) 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.
 - 2) The emergency coordinator must ensure that the following occur in the affected areas of the facility:
 - A) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and
 - B) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

BOARD NOTE: Subsection (h) ~~of this Section~~ is derived from 40 CFR 267.57 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- i) Emergency Notification ~~notification~~ and Recordkeeping Requirements ~~recordkeeping requirements.~~
 - 1) The facility owner or operator must notify the Agency and other appropriate State and local authorities that the facility is in compliance

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with Section 727.150(h)(2) before operations are resumed in the affected areas of the facility.

- 2) The facility owner or operator must note the time, date, and details of any incident that requires implementing the contingency plan in the operating record. Within 15 days after the incident, the owner or operator must submit a written report on the incident to the Agency. The owner or operator must include the following information in the report:
 - A) The name, address, and telephone number of the owner or operator;
 - B) The name, address, and telephone number of the facility;
 - C) The date, time, and type of incident (e.g., fire, explosion);
 - D) The name and quantity of materials involved;
 - E) The extent of injuries, if any;
 - F) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
 - G) The estimated quantity and disposition of recovered material that resulted from the incident.

BOARD NOTE: Subsection (i) ~~of this Section~~ is derived from 40 CFR 267.58 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 727.170 Recordkeeping, Reporting, and Notifying

- a) Applicability of This ~~this~~ Section. This Section applies to the owner and operator of a facility that stores or non-thermally treats a hazardous waste under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2). In addition, the owner or operator must comply with the manifest requirements of 35 Ill. Adm. Code 722 whenever a shipment of hazardous waste is initiated from the facility.

BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.70 (2017) ~~(2007)~~.

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- b) Use of the Manifest System ~~manifest system~~.
- 1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or its agent, must do each of the following:
 - A) It must sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;
 - B) It must note any significant discrepancies in the manifest (as defined in Section 727.170(c)(1)) on each copy of the manifest;
 - C) It must immediately give the transporter at least one copy of the signed manifest;
 - D) Within 30 days after the delivery, it must send a copy of the manifest to the generator; ~~and~~
 - E) It must retain at the facility a copy of each manifest for at least three years from the date of delivery; ~~and~~
 - F) If a facility receives hazardous waste subject to Subpart H of 35 Ill. Adm. Code 722 from a foreign source, the receiving facility must do both of the following:
 - i) Additionally list the relevant consent number from consent documentation supplied by USEPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b of the hazardous waste manifest (USEPA Form 8700-22). If additional space is needed, the receiving facility should use Continuation Sheets (USEPA Form 8700-22A); and
 - ii) Mail a copy of the hazardous waste manifest to USEPA using the addresses listed in 35 Ill. Adm. Code 722.182(e) within 30 days of delivery until the facility can submit such a copy to the e-Manifest system per 35 Ill. Adm. Code 724.171(a)(2)(E) or 725.171(a)(2)(E).
 - 2) 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

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identification numbers, generator's certification, and signatures), the owner or operator, or its agent, must do each of the following:

- A) 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;
- B) It must note any significant discrepancies (as defined in Section 727.170(c)(1)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

BOARD NOTE: USEPA does not intend that the owner or operator of a facility whose procedures pursuant to Section 727.110(d)(3) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 727.170(c)(2), however, requires reporting an unreconciled discrepancy discovered during later analysis.

- C) 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);
- D) Within 30 days after the delivery, it must send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or its agent, must send a copy of the shipping paper signed and dated to the generator; and

BOARD NOTE: Section 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).

- E) It must 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.
- 3) Whenever a shipment of hazardous waste is initiated from a facility, the facility owner or operator must comply with the requirements of 35 Ill. Adm. Code 722.

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BOARD NOTE: The provisions of 35 Ill. Adm. Code 722.116 or 722.117 724.134 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of 35 Ill. Adm. Code 722.116 or 722.117 724.134 apply only to an owner or operator that is shipping hazardous waste that it generated at that facility.

- 4) As required by 35 Ill. Adm. Code 722.184(d)(2)(O), within ~~Within~~ three working days after the receipt of a shipment subject to Subpart H of 35 Ill. Adm. Code 722, the owner or operator of the facility must provide a copy of the movement tracking document bearing all required signatures to the foreign exporter; notifier, to the Agency, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and to competent authorities of the all other concerned countries of export and transit that control the shipment as an export or transit of hazardous waste. On or after the electronic import-export reporting compliance date, to USEPA electronically using USEPA's Waste Import Export Tracking System (WIETS). The original copy of the movement tracking document must be maintained at the facility for at least three years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on USEPA's WIETS, provided that copies are readily available for viewing and production if requested by any USEPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with USEPA's WIETS for which the owner or operator of a facility bears no responsibility.

BOARD NOTE: Subsection (b) ~~of this Section~~ is derived from 40 CFR 267.71 (2017)-(2007).

- c) Manifest Discrepancies ~~discrepancies.~~
- 1) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are either of the following:

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- A) For bulk waste, variations greater than 10 percent in weight; or
 - B) For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences that can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.
- 2) Upon discovering a significant discrepancy, the facility 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.

BOARD NOTE: Subsection (c) of this Section is derived from 40 CFR 267.72 (2017)-(2007).

- d) Retention of Information-~~information~~.
- 1) The facility owner or operator must keep a written operating record at its facility.
 - 2) The facility owner or operator must record the following information, as it becomes available, and maintain the operating record until it closes the facility:
 - A) A description and the quantity of each type of hazardous waste generated, and the methods and dates of its storage or treatment at the facility as required by Appendix A of 35 Ill. Adm. Code 724;
 - B) The location of each hazardous waste within the facility and the quantity at each location;
 - C) Records and results of waste analyses and waste determinations performed as specified in Section 727.110(d) and (h) and 35 Ill. Adm. Code 724.934, 724.963, 724.983, and 728.107;

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- D) Summary reports and details of all incidents that require the owner or operator to implement the contingency plan as specified in Section 727.150(i)(2));
- E) Records and results of inspections as required by Section 727.110(f)(4) (except that the facility owner or operator needs to keep these data for only three years);
- F) Monitoring, testing or analytical data, and corrective action when required by Section 727.190, Section 727. 290(b), (d), and (f) and 35 Ill. Adm. Code 724.934(c) through (f), 724.935, 724.963(d) through (i), 724.964, 724.988, 724.989, and 724.990;
- G) All closure cost estimates pursuant to Section 727.240(c);
- H) The facility owner or operator certification, executed at least annually, that the owner or operator has a program in place to reduce the volume and toxicity of hazardous waste that it generates to the degree that the owner or operator determines to be economically practicable; and that the proposed method of treatment or storage is that practicable method currently available to the owner or operator that minimizes the present and future threat to human health and the environment;
- I) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration, if applicable, required by the facility owner or operator pursuant to 35 Ill. Adm. Code 728.107;
- J) For an on-site storage facility, the information in the notice (except the manifest number), and the certification and demonstration, if applicable, required by the facility owner or operator pursuant to 35 Ill. Adm. Code 728.107;
- K) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the facility owner or operator pursuant to 35 Ill. Adm. Code 728.107 or 728.108; and
- L) For an off-site storage facility, a copy of the notice, and the certification and demonstration, if applicable, required by the

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generator or the owner or operator pursuant to 35 Ill. Adm. Code 728.107 or 728.108.

BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 267.73 (2017)-(2007).

- e) Availability of Records ~~records~~.
- 1) The facility owner or operator must furnish all records, including plans, required pursuant to this Part upon the request of any officer, employee, or representative of the Agency or USEPA and make them available at all reasonable times for inspection.
 - 2) The retention period for all records required pursuant to this Part is extended automatically during the course of any unresolved enforcement action involving the facility or as requested in writing by the Agency.

BOARD NOTE: Any Agency request for extended records retention under this subsection (e)(2) is subject to Board review pursuant to Section 40 of the Act.

BOARD NOTE: Subsection (e) ~~of this Section~~ is derived from 40 CFR 267.74 (2017)-(2007).

- f) Submission of Reports ~~reports~~. The facility owner or operator must prepare an annual facility activities report and other reports listed in subsection (f)(2) ~~of this Section~~.
- 1) Annual Facility Activities Report ~~facility activities report~~. The facility owner or operator must prepare and submit a single copy of an annual facility activities report to the Agency by March 1 of each year. The annual facility activities report must be submitted on USEPA Form 8700-13B. The report must cover facility activities during the previous calendar year and must include the following information:

BOARD NOTE: Corresponding 40 CFR 267.75(a) (2006) requires biennial reporting. The Board has required annual reporting, since Section 20.1 of the Act ~~[415 ILCS 5/20.1 (2006)]~~ requires the Agency to assemble annual reports, and only annual facility activity reports will enable the Agency to fulfill this mandate.

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- A) The USEPA identification number, name, and address of the facility;
 - B) The calendar year covered by the report;
 - C) The method of treatment or storage for each hazardous waste;
 - D) The most recent closure cost estimate pursuant to Section 727.240(c);
 - E) A description of the efforts undertaken during the year to reduce the volume and toxicity of generated waste;
 - F) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984; and
 - G) The certification signed by the owner or operator.
- 2) Additional Reports ~~reports~~. In addition to submitting the annual ~~biennial~~ reports, the owner or operator must also report the following information to the Agency:
- A) Releases, fires, and explosions as specified in Section 727.150(i)(2);
 - B) Facility closures specified in Section 727.210(h); and
 - C) Other information as otherwise required by Sections 727.270, 727.290, and 727.900 and Subparts AA, BB, and CC of 35 Ill. Adm. Code 724.
- 3) For off-site facilities, the USEPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator.
- 4) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by USEPA identification number of each generator.

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BOARD NOTE: Subsection (f) ~~of this Section~~ is derived from 40 CFR 267.75 (2017) ~~(2007)~~.

- g) Required Notifications ~~notifications~~. Before transferring ownership or operation of a facility during its operating life, the facility owner or operator must notify the new owner or operator in writing of the requirements of this Part and Subpart J of 35 Ill. Adm. Code 703.

BOARD NOTE: Subsection (g) ~~of this Section~~ is derived from 40 CFR 267.76 (2017) ~~(2007)~~.

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 727.190 Releases from Solid Waste Management Units

- a) Applicability of This ~~this~~ Section. This Section applies to the owner or operator of a facility that treats or stores hazardous waste under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2), or unless its facility already has a permit that imposes requirements for corrective action pursuant to 35 Ill. Adm. Code 724.201.

BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.90 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- b) This subsection (b) corresponds with 40 CFR 267.91, which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.
- c) This subsection (c) corresponds with 40 CFR 267.92, which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.
- d) This subsection (d) corresponds with 40 CFR 267.93, which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.
- e) This subsection (e) corresponds with 40 CFR 267.94, which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.

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- f) This subsection (f) corresponds with 40 CFR 267.95, which USEPA has marked “Reserved.”. This statement maintains structural consistency with the corresponding federal rules.
- g) This subsection (g) corresponds with 40 CFR 267.96, which USEPA has marked “Reserved.”. This statement maintains structural consistency with the corresponding federal rules.
- h) This subsection (h) corresponds with 40 CFR 267.97, which USEPA has marked “Reserved.”. This statement maintains structural consistency with the corresponding federal rules.
- i) This subsection (i) corresponds with 40 CFR 267.98, which USEPA has marked “Reserved.”. This statement maintains structural consistency with the corresponding federal rules.
- j) This subsection (j) corresponds with 40 CFR 267.99, which USEPA has marked “Reserved.”. This statement maintains structural consistency with the corresponding federal rules.
- k) This subsection (k) corresponds with 40 CFR 267.100, which USEPA has marked “Reserved.”. This statement maintains structural consistency with the corresponding federal rules.
- l) Requirements for addressing corrective action for solid waste management units.
 - 1) The facility owner or operator must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.
 - 2) The Agency must specify corrective action in the supplemental portion of the facility owner’s or operator’s RCRA standardized permit in accordance with this subsection (l) and Subpart S of 35 Ill. Adm. Code 724. The Agency must include in the supplemental portion of the RCRA standardized permit schedules of compliance for corrective action (where corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing corrective action.
 - 3) The facility owner or operator must implement corrective action beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the

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satisfaction of the Agency that, despite its best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. The owner or operator must provide assurances of financial responsibility for such corrective action.

- 4) The facility owner or operator of a remediation site does not have to comply with this subsection (l) unless the site is part of a facility that is subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

BOARD NOTE: Subsection (l) ~~of this Section~~ is derived from 40 CFR 267.101 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 727.210 Closure

- a) Applicability of ~~This this~~ Section. This Section applies to the facility owner or operator of a facility that treats or stores hazardous waste under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2).

BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.110 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- b) Required General Standards When Operations Cease ~~general standards when operations cease~~. The facility owner or operator must close the storage and treatment units in a manner that fulfills the following conditions:
 - 1) It minimizes the need for further maintenance;
 - 2) It controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere; and
 - 3) It meets the closure requirements of this Section and the requirements of Sections 727.270(g), 727.290(l), and 727.900(i). If the facility owner or

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operator determines that, when applicable, the closure requirements of Section 727.290(l) (tanks) or 727.900(i) (containment buildings) cannot be met, then the owner or operator must close the unit in accordance with the requirements that apply to landfills (35 Ill. Adm. Code 724.410). In addition, for the purposes of post-closure and financial responsibility, such a tank system or containment building is then considered to be a landfill, and the owner or operator must apply for a post-closure care permit in accordance with 35 Ill. Adm. Code 702 and 703.

BOARD NOTE: Subsection (b) ~~of this Section~~ is derived from 40 CFR 267.111 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- c) Closure Procedures ~~procedures.~~
- 1) To close a facility, the facility owner or operator must follow its approved closure plan, and follow notification requirements.
 - A) The facility owner or operator must submit its closure plan at the time it submits its Notice of Intent to operate under a RCRA standardized permit. Final issuance of the RCRA standardized permit constitutes approval of the closure plan, and the plan becomes a condition of the RCRA standardized permit.
 - B) The Agency's approval of the plan must ensure that the approved plan is consistent with Sections 727.210(b) through (f), 727.270(g), 727.290(l), and 727.900(i).
 - 2) Content of Closure Plan ~~closure plan~~. The closure plan must identify steps necessary to perform partial or final closure of the facility. The closure plan must include at least the following minimum information:
 - A) A description of how each hazardous waste management unit at the facility subject to this Section will be closed following the requirements of Section 727.210(b);
 - B) A description of how final closure of the facility will be conducted in accordance with Section 727.210(b). The description must identify the maximum extent of the operations that will be unclosed during the active life of the facility;
 - C) An estimate of the maximum inventory of hazardous wastes ever on site during the active life of the facility and a detailed

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description of the methods that the facility owner or operator will use during partial or final closure, such as methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the types of off-site hazardous waste management units to be used, if applicable;

- D) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial or final closure. These might include procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;
 - E) A detailed description of other activities necessary during the closure period to ensure that partial or final closure satisfies the closure performance standards;
 - F) A schedule for closure of each hazardous waste management unit, and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities that allow tracking of progress of partial or final closure; and
 - G) For facilities that use trust funds to establish financial assurance pursuant to Section 727.240(d) and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.
- 3) The facility owner or operator may submit a written notification to the Agency for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility, following the applicable procedures in 35 Ill. Adm. Code 705.304.
- A) Events leading to a change in the closure plan, and therefore requiring a modification, may include the following:
 - i) A change in the operating plan or facility design;
 - ii) A change in the expected year of closure, if applicable; or

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- iii) In conducting partial or final closure activities, an unexpected event requiring a modification of the approved closure plan.
 - B) The written notification or request must include a copy of the amended closure plan for review or approval by the Agency. The Agency must approve, disapprove, or modify this amended plan in accordance with the procedures in 35 Ill. Adm. Code 703.353 and 705.304.
- 4) Notification before Final Closure ~~final closure~~.
- A) The facility owner or operator must notify the Agency in writing at least 45 days before the date that it expects to begin final closure of a treatment or storage tank, container storage area, or containment building.
 - B) The date when the owner or operator “expects to begin closure” must be no later than 30 days after the date that any hazardous waste management unit receives the known final volume of hazardous wastes.
 - C) If the facility’s permit is terminated, or if the facility owner or operator is otherwise ordered, by a federal judicial decree or final order pursuant to section 3008 of RCRA (42 USC 6928), to cease receiving hazardous wastes or to close, then the requirements of this subsection (c)(4) do not apply. However, the owner or operator must close the facility following the deadlines established in subsection (f) ~~of this Section~~.

BOARD NOTE: Subsection (c) ~~of this Section~~ is derived from 40 CFR 267.112 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- d) Opportunity for Public Comment ~~public comment on the Plan~~ ~~plan~~.
- 1) The Agency must provide the facility owner or operator and the public, when the draft RCRA standardized permit is public noticed, the opportunity to submit written comments on the plan and to the draft permit as allowed by 35 Ill. Adm. Code 705.303(b). The Agency must also, in response to a request or at its own discretion, hold a public hearing whenever it determines that such a hearing might clarify one or more issues concerning the closure plan, and the permit.

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- 2) The Agency must give public notice of the hearing 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 267.113 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- e) This subsection (e) corresponds with 40 CFR 267.114, which USEPA has marked "Reserved:". This statement maintains structural consistency with the corresponding federal rules.
- f) Time Allowed for Closure-closure.
 - 1) Within 90 days after the final volume of hazardous waste is sent to a unit, the facility owner or operator must treat or remove all hazardous wastes from the unit following the approved closure plan.
 - 2) The facility owner or operator must complete final closure activities in accordance with the approved closure plan within 180 days after the final volume of hazardous wastes is sent to the unit. The Agency may approve an extension of 180 days to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that the conditions of subsections (f)(2)(A) and (f)(2)(B) ~~of this Section~~ are fulfilled subject to the limitation of subsection (f)(2)(C) ~~of this Section~~:
 - A) The final closure activities will take longer than 180 days to complete due to circumstances beyond the control of the owner or operator, excluding groundwater contamination;
 - B) The facility owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed, but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements.
 - C) The owner or operator must make the demonstration of subsections (f)(2)(A) and (f)(2)(B) ~~of this Section must be made~~ at least 30 days prior to the expiration of the initial 180-day period.

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- 3) Nothing in this subsection (f) precludes the facility owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved final closure plan at any time before or after notification of final closure.

BOARD NOTE: Subsection (f) ~~of this Section~~ is derived from 40 CFR 267.115 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- g) Disposition of Contaminated Equipment, Structure, and Soils ~~soils~~. The facility owner or operator must properly dispose of or decontaminate all contaminated equipment, structures, and soils during the partial and final closure periods. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste following all applicable requirements of 35 Ill. Adm. Code 722.

BOARD NOTE: Subsection (g) ~~of this Section~~ is derived from 40 CFR 267.116 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- h) Certification of Closure ~~closure~~. Within 60 days after the completion of final closure of each unit under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 705, the facility owner or operator must submit to the Agency, by registered mail, a certification that each hazardous waste management unit or facility, as applicable, has been closed following the specifications in the closure plan. Both the owner or operator and an independent registered professional engineer must sign the certification. The owner or operator must furnish documentation supporting the independent registered professional engineer's certification to the Agency upon request until the Agency releases the owner or operator from the financial assurance requirements for closure pursuant to Section 727.240(d)(10).

BOARD NOTE: Subsection (h) ~~of this Section~~ is derived from 40 CFR 267.117 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 727.240 Financial Requirements

- a) Applicability and Substance ~~substance~~ of the Financial Requirements ~~financial requirements~~.

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- 1) The regulations in this Section apply to owners and operators who treat or store hazardous waste under a RCRA standardized permit, except as provided in Section 727.100(a)(2) or subsection (a)(4) ~~of this Section~~.
- 2) The facility owner or operator must do each of the following:
 - A) It must prepare a closure cost estimate as required in subsection (c) ~~of this Section~~;
 - B) It must demonstrate financial assurance for closure as required in subsection (d) ~~of this Section~~; and
 - C) It must demonstrate financial assurance for liability as required in subsection (h) ~~of this Section~~.
- 3) The owner or operator must notify the Agency if the owner or operator is named as a debtor in a bankruptcy proceeding under Title 11 (Bankruptcy) of the United States Code (see also subsection (i) ~~of this Section~~).
- 4) States and the federal government are exempt from the requirements of this Section.

BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.140 (2017) ~~(2013)~~.

- b) Definitions of Terms ~~terms~~ as Used ~~used~~ in This ~~this~~ Section:
 - 1) “Closure plan” means the plan for closure prepared in accordance with the requirements of Section 727.210(c).
 - 2) “Current closure cost estimate” means the most recent of the estimates prepared in accordance with subsections (c)(1), (c)(2), and (c)(3) ~~of this Section~~.
 - 3) This subsection (b)(3) corresponds with 40 CFR 267.141(c), which USEPA has marked “Reserved.”. This statement maintains structural consistency with the corresponding federal rules.
 - 4) “Parent corporation” means a corporation that directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator. In this instance, the owned corporation that is the facility owner or operator is deemed a “subsidiary” of the parent corporation.

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- 5) This subsection (b)(5) corresponds with 40 CFR 267.141(e), which USEPA has marked “Reserved.”. This statement maintains structural consistency with the corresponding federal rules.

- 6) The following terms are used in the specifications for the financial tests for closure 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” means all existing and all probable future economic benefits obtained or controlled by a particular entity.

 - “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.

 - “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.

- 7) In the liability insurance requirements, the terms “bodily injury” and “property damage” have the meanings given them by applicable State law. However, these terms do not include those liabilities that, consistent with standard industry practices, are excluded from coverage in liability insurance policies for bodily injury and property damage. The Agency 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.

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“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.

“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.

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

- 8) “Substantial business relationship” means 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 facility 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 ~~(b)(8)-(d)(8)~~, 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: Subsection ~~(b) of this Section~~ is derived from 40 CFR 267.141 ~~(2017)-(2013)~~. Subsection (b)(8) is also derived from the discussion at 53 Fed. Reg. 33938, 41-43 (Sept. 1, 1988). The term “substantial business relationship” is also independently defined in 35 Ill. Adm. Code 724.241(h) and 725.241(h). 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]~~.

- c) Cost Estimate ~~estimate for Closure~~ ~~closure~~.
- 1) The facility owner or operator must have at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Section 727.210(b) through (f) and applicable closure requirements in Sections 727.270(g), 727.290(l), and 727.900(i).
- A) 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

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would make closure the most expensive, as indicated by the closure plan (see Section 727.210(c)(2)).

- B) 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 who is neither a parent nor a subsidiary of the owner or operator. (See the definition of parent corporation in subsection (b)(4) ~~of this Section.~~) The owner or operator may use costs for on-site disposal if it can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.
 - C) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.
 - D) The facility owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes that might have economic value.
- 2) During the active life of the facility, the facility 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 subsection (d) ~~of this Section.~~ 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 guarantor's fiscal year and before submission of updated information to the Agency as specified in subsection (n)(3) ~~of this Section.~~ The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product (Deflator) published by the U.S. Department of Commerce in its Survey of Current Business, as specified in subsections (c)(2)(A) and (c)(2)(B) ~~of this Section.~~ The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.
- A) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

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- B) 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. 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/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&903=13.

- 3) During the active life of the facility, the facility owner or operator must revise the closure cost estimate 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 (c)(2) ~~of this Section~~.
- 4) The facility 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 (c)(1) and (c)(3) ~~of this Section~~ and, when this estimate has been adjusted in accordance with subsection (c)(2) ~~of this Section~~, the latest adjusted closure cost estimate.

BOARD NOTE: Subsection (c) ~~of this Section~~ is derived from 40 CFR 267.142 (2017) ~~(2013)~~.

- d) Financial ~~Assurance~~ assurance for Closure ~~closure~~. The facility owner or operator must establish financial assurance for closure of each storage or treatment unit that it owns or operates. In establishing financial assurance for closure, the owner or operator must choose from among the financial assurance mechanisms in subsections (d)(1) through (d)(7) ~~of this Section~~. The owner or operator can also use a combination of mechanisms for a single facility if the combination meets the requirement in subsection (d)(8) ~~of this Section~~, or it may use a single mechanism for multiple facilities as in subsection (d)(9) ~~of this Section~~. The Agency must release the owner or operator from the requirements of this subsection (d) after the owner or operator meets the criteria pursuant to subsection (d)(10) ~~of this Section~~.
- 1) Closure Trust Fund ~~trust fund~~. An owner or operator may use the "closure trust fund" that is specified in 35 Ill. Adm. Code 724.243(a)(1), (a)(2), and (a)(6) through (a)(11). For purposes of this subsection (d)(1), the following provisions also apply:

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- A) Payments into the trust fund for a new facility must be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over three years, whichever period is shorter. This period of time is hereafter referred to as the "pay-in period."
- B) For a new facility, the facility owner or operator must make the first payment into the closure trust fund before the facility may accept the initial storage. A receipt from the trustee must be submitted by the owner or operator to the Agency before this initial storage of waste. The first payment must be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period, except as provided in subsection (d)(8) of this Section for multiple mechanisms. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The owner or operator determines the amount of each subsequent payment by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period. Mathematically, the formula is as follows:

$$NP = \frac{(CCE - CVTF)}{YRPP}$$

Where:

NP = the amount of the next payment

CCE = the current closure cost estimate

CVTF = the current value of the trust fund

YRPP = the years remaining in the pay-in period.

- C) The owner or operator of a facility existing on the effective date of this subsection (d)(1) can establish a trust fund to meet the financial assurance requirements of this subsection (d)(1). If the value of the trust fund is less than the current closure cost estimate when a final approval of the permit is granted for the facility, the owner or operator must pay the difference into the trust fund within 60 days.

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- D) The facility owner or operator may accelerate payments into the trust fund or deposit the full amount of the closure cost estimate when establishing the trust fund. 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 subsections (d)(1)(B) or (d)(1)(C) ~~of this Section~~.
- E) The facility owner or operator must submit a trust agreement with the wording specified by the Agency pursuant to subsection (1)(3) ~~of this Section~~.
- 2) Surety Bond Guaranteeing Payment into a Closure Trust Fund ~~closure trust fund~~. An owner or operator may use the “surety bond guaranteeing payment into a closure trust fund;”, as specified in 35 Ill. Adm. Code 724.243(b), including the use of the surety bond instrument designated by the Agency pursuant to subsection (1)(3) ~~of this Section~~, and the standby trust specified at 35 Ill. Adm. Code 724.243(b)(3).
- 3) Surety Bond Guaranteeing Performance ~~bond guaranteeing performance of Closure~~ ~~closure~~. An owner or operator may use the “surety bond guaranteeing performance of closure;”, as specified in 35 Ill. Adm. Code 724.243(c), the submission and use of the surety bond instrument designated by the Agency pursuant to subsection (1)(3) ~~of this Section~~, and the standby trust specified at 35 Ill. Adm. Code 724.243(c)(3).
- 4) Closure Letter ~~letter of Credit~~ ~~credit~~. An owner or operator may use the “closure letter of credit” specified in 35 Ill. Adm. Code 724.243(d), the submission and use of the irrevocable letter of credit instrument designated by the Agency pursuant to subsection (1)(3) ~~of this Section~~, and the standby trust specified in 35 Ill. Adm. Code 724.243(d)(3).
- 5) Closure Insurance ~~insurance~~. An owner or operator may use “closure insurance;”, as specified in 35 Ill. Adm. Code 724.243(e), utilizing the certificate of insurance for closure designated by the Agency pursuant to subsection (1)(3) ~~of this Section~~.
- 6) Corporate Financial Test ~~financial test~~. An owner or operator that satisfies the requirements of this subsection (d)(6) may demonstrate financial assurance up to the amount specified in this subsection (d)(6).
- A) Financial component. See subsection (m) ~~of this Section~~.

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BOARD NOTE: It was necessary for the Board to codify corresponding 40 CFR 267.143(f)(1) as subsection (m) ~~of this Section~~ to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (d), (d)(6), or (d)(6)(A) also include added subsection (m) ~~of this Section~~, as applicable.

- B) Recordkeeping and Reporting Requirements ~~reporting requirements~~. See subsection (n) ~~of this Section~~.

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.143(f)(2) as subsection (n) ~~of this Section~~ to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (d), (d)(6), or (d)(6)(B) also include added subsection (n) ~~of this Section~~, as applicable.

- 7) Corporate Guarantee ~~guarantee~~.

- A) A facility owner or operator may meet the requirements of this subsection (d) by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a “substantial business relationship” with the owner or operator. The guarantor must meet the requirements for owners or operators in subsection (d)(6) ~~of this Section~~ and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording designated by the Agency pursuant to subsection (1)(3) ~~of this Section~~. The certified copy of the guarantee must accompany the letter from the guarantor’s chief financial officer and accountants’ opinions. If the guarantor’s parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor’s chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a “substantial business relationship” with the owner or operator, this letter must describe this “substantial business relationship” and the value received in consideration of the guarantee.
- B) For a new facility, the guarantee must be effective and the guarantor must submit the items in subsection (d)(7)(A) ~~of this~~

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~~Section~~ and the items specified in subsection (n)(1) ~~of this Section~~ to the Agency at least 60 days before the owner or operator places waste in the facility.

- C) The terms of the guarantee must provide as required by subsection (o) ~~of this Section~~.

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.143(g)(3) as subsection (o) ~~of this Section~~ to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (d), (d)(7), or (d)(7)(C) also include added subsection (o) ~~of this Section~~, as applicable.

- D) If a corporate guarantor no longer meets the requirements of subsection (d)(6)(A) ~~of this Section~~, the owner or operator must, within 90 days, obtain alternative assurance, and submit the assurance to the Agency for approval. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days, and submit it to the Agency for approval.

- E) The guarantor is no longer required to meet the requirements of this subsection (d)(7) when either of the following occurs:

- i) The facility owner or operator substitutes alternate financial assurance as specified in this subsection (d); or
- ii) The facility owner or operator is released from the requirements of this subsection (d) in accordance with subsection (d)(10) ~~of this Section~~.

- 8) Use of Multiple Financial Mechanisms ~~multiple financial mechanisms~~. An owner or operator may use more than one mechanism at a particular facility to satisfy the requirements of this subsection (d). The acceptable mechanisms are trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, the financial test, and the guarantee, except owners or operators cannot combine the financial test with the guarantee. The mechanisms must be as specified in subsections (d)(1), (d)(2), (d)(4), (d)(5), (d)(6), and (d)(7) ~~of this Section~~, respectively, except it is the combination of mechanisms rather than a single mechanism that must provide assurance for an amount at least equal to the cost estimate.

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If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, it may use the trust fund as the standby trust for the other mechanisms. A single trust fund can be established for two or more mechanisms. The Agency may use any or all of the mechanisms to provide for closure of the facility.

- 9) Use of a Financial Mechanism for Multiple Facilities ~~multiple facilities~~. An owner or operator may use a financial mechanism for multiple facilities, as specified in 35 Ill. Adm. Code 724.243(h).
- 10) Release of the Owner ~~owner~~ or Operator ~~operator~~ from the Requirements ~~requirements~~ of this Subsection ~~subsection~~ (d). Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Agency will notify the owner or operator in writing that the owner or operator is no longer required by this subsection (d) to maintain financial assurance for final closure of the facility, unless the Agency has reason to believe that final closure has not been completed in accordance with the approved closure plan. The Agency must provide the owner or operator with a detailed written statement of any such reasons to believe that closure has not been conducted in accordance with the approved closure plan.

BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 267.143 (2017) ~~(2013)~~.

- e) This subsection (e) corresponds with 40 CFR 267.144, which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.
- f) This subsection (f) corresponds with 40 CFR 267.145, which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.
- g) This subsection (g) corresponds with 40 CFR 267.146, which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.
- h) Liability Requirements ~~requirements~~.
 - 1) Coverage for Sudden Accidental Occurrences ~~sudden accidental occurrences~~. The owner or operator of a hazardous waste treatment or

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storage facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in subsections ~~subsection~~ (h)(1)(A) through (h)(1)(G) ~~of this Section~~:

- A) Trust ~~Fund fund~~ for Liability Coverage ~~liability coverage~~. The owner or operator may meet the requirements of this subsection (h) by obtaining a trust fund for liability coverage as specified in 35 Ill. Adm. Code 724.247(j).
- B) Surety ~~Bond bond~~ for liability coverage. The owner or operator may meet the requirements of this subsection (h) by obtaining a surety bond for liability coverage as specified in 35 Ill. Adm. Code 724.247(i).
- C) Letter of ~~Credit credit~~ for Liability Coverage ~~liability coverage~~. The owner or operator may meet the requirements of this subsection (h) by obtaining a letter of credit for liability coverage as specified in 35 Ill. Adm. Code 724.247(h).
- D) Insurance for Liability Coverage ~~liability coverage~~. The owner or operator may meet the requirements of this subsection (h) by obtaining liability insurance as specified in 35 Ill. Adm. Code 724.247(a)(1).
- E) Financial ~~Test test~~ for Liability Coverage ~~liability coverage~~. The owner or operator may meet the requirements of this subsection (h) by passing a financial test as specified in subsection (h)(6) ~~of this Section~~.
- F) Guarantee for Liability Coverage ~~liability coverage~~. The owner or operator may meet the requirements of this subsection (h) by obtaining a guarantee as specified in subsection (h)(7) ~~of this Section~~.
- G) Combination of Mechanisms ~~mechanisms~~. The owner or operator may demonstrate the required liability coverage through the use of

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combinations of mechanisms as allowed by 35 Ill. Adm. Code 724.247(a)(6).

- H) An owner or operator must notify the Agency in writing within 30 days whenever either of the following occurs:
- i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subsections (h)(1)(A) through (h)(1)(G) ~~of this Section~~; or
 - ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage pursuant to subsections (h)(1)(A) through (h)(1)(G) ~~of this Section~~; or
 - iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage pursuant to subsections (h)(1)(A) through (h)(1)(G) ~~of this Section~~.
- 2) This subsection (h)(2) corresponds with 40 CFR 267.147(b), which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.
- 3) This subsection (h)(3) corresponds with 40 CFR 267.147(c), which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.
- 4) This subsection (h)(4) corresponds with 40 CFR 267.147(d), which USEPA has marked "Reserved." This statement maintains structural consistency with the corresponding federal rules.
- 5) ~~Period of Coverage coverage~~. Within 60 days after receiving certifications from the facility owner or operator and an independent registered professional engineer that final closure has been completed in

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accordance with the approved closure plan, the Agency must notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage from that facility, unless the Agency has reason to believe that closure has not been in accordance with the approved closure plan.

- 6) Financial ~~Test~~ test for Liability Coverage ~~liability coverage~~. A facility owner or operator that satisfies the requirements of this subsection (h)(6) may demonstrate financial assurance for liability up to the amount specified in this subsection (h)(6):
- A) Financial Component ~~component~~.
- i) If using the financial test for only liability coverage, the owner or operator must have tangible net worth greater than the sum of the liability coverage to be demonstrated by this test plus \$10 million.
- ii) The owner or operator must have assets located in the United States amounting to at least the amount of liability covered by this financial test.
- iii) An owner or operator who is demonstrating coverage for liability and any other environmental obligations, including closure pursuant to subsection (d)(6) ~~of this Section~~, through a financial test must meet the requirements of subsection (d)(6) ~~of this Section~~.
- B) Recordkeeping and Reporting Requirements ~~reporting requirements~~. See subsection (p) ~~of this Section~~.
- BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.147(f)(2) as subsection (p) ~~of this Section~~ to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (h), (h)(6), or (h)(6)(B) also include added subsection (p) ~~of this Section~~, as applicable.
- 7) Guarantee for Liability Coverage ~~liability coverage~~.
- A) Subject to subsection (h)(7)(B) ~~of this Section~~, a facility owner or operator may meet the requirements of this subsection (h) by

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obtaining a written guarantee, hereinafter referred to as “guarantee.”. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a “substantial business relationship” with the owner or operator. The guarantor must meet the requirements for owners or operators in subsections (h)(6)(A) and (h)(6)(B) ~~of this Section~~. The wording of the guarantee must be identical to the wording designated by the Agency pursuant to subsection (l)(3) ~~of this Section~~. A certified copy of the guarantee must accompany the items sent to the Agency, as specified in subsection (h)(6)(B) ~~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, this 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.

- i) If the facility owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.
- ii) This subsection (h)(7)(A)(ii) corresponds with 40 CFR 267.147(g)(1)(ii), which USEPA has marked “Reserved.”. This statement maintains structural consistency with the corresponding federal rules.

B) Foreign Corporations. See subsection (q) ~~of this Section~~.

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.147(g)(2) as subsection (q) ~~of this Section~~ to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to this subsection (h), (h)(7), or (h)(7)(B) also include added subsection

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~~(q) of this Section~~, as applicable. See the further explanation of the differences between subsection ~~(q) of this Section~~ and 40 CFR 267.147(g)(2) in the Board note appended to subsection (q).

BOARD NOTE: Subsection ~~(h) of this Section~~ is derived from 40 CFR 267.147 ~~(2017)-(2013)~~.

- i) Incapacity of Owners ~~owners~~ or Operators, Guarantors, ~~operators, guarantors,~~ or Financial Institutions ~~financial institutions~~.
- 1) The facility owner or operator must notify the Agency by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) of the United States Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in subsections (d)(7) and ~~(h)(7) of this Section~~ must make such a notification if it is named as debtor, as required under the terms of the corporate guarantee designated by the Agency pursuant to subsection ~~(l)(3) of this Section~~.
 - 2) An owner or operator who fulfills the requirements of subsection (d) or (h) ~~of this Section~~ by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

BOARD NOTE: Subsection ~~(i) of this Section~~ is derived from 40 CFR 267.148 ~~(2017)-(2013)~~.

- j) This subsection (j) corresponds with 40 CFR 267.149, which USEPA has marked "Reserved.". This statement maintains structural consistency with the corresponding federal rules.
- k) State Assumption ~~assumption~~ of Responsibility ~~responsibility~~.
- 1) If the State either assumes legal responsibility for an owner's or operator's compliance with the closure care or liability requirements of this Part or assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with the

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requirements of subsection (d) or (h) ~~of this Section~~ if USEPA Region 5 determines that the State's assumption of responsibility is at least equivalent to the financial mechanisms specified in this Section. USEPA has stated that USEPA Region 5 will evaluate the equivalency of State guarantees principally in terms of the following: the certainty of the availability of funds for the required closure care activities or liability coverage; and the amount of funds that will be made available. USEPA has stated that USEPA Region 5 may also consider other factors as it deems appropriate. The facility owner or operator must submit to USEPA Region 5 a letter from the State describing the nature of the State's assumption of responsibility together with a letter from the owner or operator requesting that the State's assumption of responsibility be considered acceptable for meeting the requirements of this Section. The letter from the State must include, or have attached to it, the following information: the facility's USEPA identification number, the facility name and address, and the amount of funds for closure care or liability coverage that are guaranteed by the State. USEPA has stated that USEPA Region 5 will notify the owner or operator of its determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this Section. USEPA has stated that USEPA Region 5 may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of subsection (d) or (h) ~~of this Section~~, as applicable.

- 2) If a State's assumption of responsibility is found acceptable as specified in subsection (k)(1) ~~of this Section~~ except for the amount of funds available, the owner or operator may satisfy the requirements of this Section by use of both the State's assurance and additional financial mechanisms as specified in this Section. The amount of funds available through the State and federal mechanisms must at least equal the amount required by this Section.

BOARD NOTE: Subsection (k) ~~of this Section~~ is derived from 40 CFR 267.150 (2017)-(2013).

- 1) Wording of the Instruments ~~instruments~~.
 - 1) Forms for using the corporate financial test to demonstrate financial assurance for closure. The chief financial officer of an owner or operator of a facility with a RCRA standardized permit who uses a financial test to

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demonstrate financial assurance for that facility must complete a letter as specified in subsection (d)(6) ~~of this Section~~. The letter must be worded as designated by the Agency pursuant to subsection (l)(3) ~~of this Section~~.

- 2) Forms for using the financial test to demonstrate financial assurance for third-party liability. The chief financial officer of an owner or operator of a facility with a RCRA standardized permit who use a financial test to demonstrate financial assurance only for third party liability for that (or other RCRA standardized permit) facility (or those facilities) must complete a letter as specified in subsection (h)(6) ~~of this Section~~. The letter must be worded as designated by the Agency pursuant to subsection (l)(3) ~~of this Section~~.
- 3) The Agency must designate standardized forms based on 40 CFR 264.151 and 40 CFR 267.151 (Wording of the Instruments), each incorporated by reference in 35 Ill. Adm. Code 720.111(b), with such changes in wording as are necessary under Illinois law. Any owner or operator required to establish financial assurance under this Section must do so only upon the standardized forms promulgated by the Agency. The Agency must reject any financial assurance document that is not submitted on such standardized forms.

BOARD NOTE: Subsection (l) ~~of this Section~~ is derived from 40 CFR 267.151 (2017) ~~(2013)~~.

- m) Financial Component ~~component~~ for Using ~~using~~ the Corporate Financial Test ~~corporate financial test~~ to Demonstrate Financial Assurance ~~demonstrate financial assurance~~ for Closure ~~closure~~.

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

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- 2) The tangible net worth of the owner or operator must be greater than both of the following:
 - A) The sum of the current environmental obligations (see subsection (n)(1)(A)(i) ~~of this Section~~), including guarantees, covered by a financial test plus \$10 million, except as provided in subsection (m)(2)(B) ~~of this Section~~; and
 - B) \$10 million in tangible net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the environmental obligations (see subsection (n)(1)(A)(i) ~~of this Section~~) covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Agency.
- 3) The facility owner or operator must have assets located in the United States amounting to at least the sum of environmental obligations covered by a financial test as described in subsection (n)(1)(A)(i) ~~of this Section~~.

BOARD NOTE: Subsection (m) ~~of this Section~~ is derived from 40 CFR 267.143(f)(1) (2017) ~~(2013)~~. The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), (d)(6), or (d)(6)(A) ~~of this Section~~ also include this added subsection (m), as applicable.

- n) Recordkeeping and Reporting Requirements ~~reporting requirements for Using using the Corporate Financial Test corporate financial test to Demonstrate Financial Assurance demonstrate financial assurance for Closure closure.~~
 - 1) The facility owner or operator must submit the following items to the Agency:
 - A) A letter signed by the owner's or operator's chief financial officer that provides the following information:
 - i) It lists all the applicable current types, amounts, and sums of environmental obligations covered by a financial test. These obligations include both obligations in the programs that USEPA directly operates and obligations where USEPA has delegated authority to a State or approved a State's program. These obligations include, but are not

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limited to the information described in subsection (n)(1)(E) ~~of this Section.~~

BOARD NOTE: It was necessary for the Board to codify 40 CFR 267.143(f)(2)(i)(A)(I) through (f)(2)(i)(A)(I)(vii) as subsections ~~subsection~~ (n)(1)(E) through (n)(1)(E)(vii) ~~of this Section~~ to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), (d)(6), or (d)(6)(B) ~~of this Section~~ or to this subsection (n), (n)(1), (n)(1)(A), or (n)(1)(A)(i) also include added subsection (n)(1)(E) through (n)(1)(E)(vii) ~~of this Section~~, as applicable.

- ii) It provides evidence demonstrating that the firm meets the conditions of either subsection (m)(1)(A), (m)(1)(B), or (m)(1)(C) ~~of this Section~~ and subsections (m)(2) and (m)(3) ~~of this Section.~~
- B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Agency may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Agency deems that the matters that form the basis for the qualification are insufficient to warrant disallowance of the test. If the Agency does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section within 30 days after the notification of disallowance.
- C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subsection (m)(1)(B) or (m)(1)(C) ~~of this Section~~ that are different from data in the audited financial statements referred to in subsection (n)(1)(B) ~~of this Section~~ or any other

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audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report must be based upon an agreed upon procedures engagement in accordance with professional auditing standards and must describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

- D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in subsection (m)(2)(B) ~~of this Section~~, then the letter must include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.
- E) Contents of the letter signed by the chief financial officer (for the purposes of subsection (n)(1)(A)(i) ~~of this Section~~):
- i) The liability, closure, post-closure and corrective action cost estimates required for hazardous waste treatment, storage, and disposal facilities pursuant to the applicable provisions of 35 Ill. Adm. Code 724.201, 724.242, 724.244, 724.247, 725.242, 725.244, and 725.247;
 - ii) The cost estimates required for municipal solid waste management facilities pursuant to the applicable provisions of Subpart G of 35 Ill. Adm. Code 811;
 - iii) The current plugging cost estimates required for UIC facilities pursuant to 35 Ill. Adm. Code 704.212;
 - iv) The federally required cost estimates required for petroleum underground storage tank facilities pursuant to 40 CFR 280.93;

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- v) The federally required cost estimates required for PCB storage facilities pursuant to 40 CFR 761.65;
- vi) Any federally required financial assurance required by or as part of an action undertaken pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC 9601 et seq.); and
- vii) Any other environmental obligations that are assured through a financial test.

BOARD NOTE: Subsections (n)(1)(E) through (n)(1)(E)(vi) ~~of this Section~~ are derived from 40 CFR 267.143(f)(2)(i)(A)(I) through (f)(2)(i)(A)(I)(vi) ~~(2017)-(2013)~~. The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), (d)(6), (d)(6)(B), (n), (n)(1), (n)(1)(A), or (n)(1)(A)(i) ~~of this Section~~ also include added subsections (n)(1)(E) through (n)(1)(E)(vi), as applicable.

- 2) The owner or operator of a new facility must submit the items specified in subsection (n)(1) ~~of this Section~~ to the Agency at least 60 days before placing waste in the facility.
- 3) After the initial submission of items specified in subsection (n)(1) ~~of this Section~~, the owner or operator must send updated information to the Agency within 90 days following the close of the owner's or operator's fiscal year. The Agency may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in subsection (n)(1) ~~of this Section~~.
- 4) The owner or operator is no longer required to submit the items specified in this subsection (n) ~~of this Section~~ or comply with the requirements of subsection (d)(6) ~~of this Section~~ when either of the following occurs:
 - A) The owner or operator substitutes alternate financial assurance as specified in subsection (d) ~~of this Section~~ that is not subject to these recordkeeping and reporting requirements; or

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- B) The Agency releases the owner or operator from the requirements of subsection (d) ~~of this Section~~ in accordance with subsection (d)(10) ~~of this Section~~.
- 5) An owner or operator who no longer meets the requirements of subsection (m) ~~of this Section~~ cannot use the financial test to demonstrate financial assurance. Instead an owner or operator who no longer meets the requirements of subsection (m) ~~of this Section~~, must do the following:
 - A) It must send notice to the Agency of intent to establish alternate financial assurance as specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close of the owner's or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this subsection (n) and subsections (d), (m), and (o) ~~of this Section~~; and
 - B) It must provide alternative financial assurance within 120 days after the end of such fiscal year.
- 6) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (m) ~~of this Section~~, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in this subsection (n). If the Agency finds that the owner or operator no longer meets the requirements of subsection (m) ~~of this Section~~, the owner or operator must provide alternate financial assurance that meets the requirements of subsection (d) ~~of this Section~~.

BOARD NOTE: Subsection (n) ~~of this Section~~ is derived from 40 CFR 267.143(f)(2) (2017) (2013). The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), (d)(6), or (d)(6)(B) ~~of this Section~~ also include this added subsection (n), as applicable.

- o) The terms of the guarantee for using the corporate guarantee to demonstrate financial assurance for closure must provide as follows:
 - 1) If the facility owner or operator fails to perform closure at a facility covered by the guarantee, the guarantor will accomplish the following:

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- A) It will perform, or pay a third party to perform closure (performance guarantee); or
 - B) It will establish a fully funded trust fund as specified in subsection (d)(1) ~~of this Section~~ in the name of the owner or operator (payment guarantee).
- 2) The guarantee will remain in force for as long as the facility owner or operator must comply with the applicable financial assurance requirements of this Section unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency as evidenced by the return receipts.
- 3) If notice of cancellation is given, the facility owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the Agency, obtain alternate financial assurance, and submit documentation for that alternate financial assurance to the Agency. If the owner or operator fails to provide alternate financial assurance and obtain the written approval of such alternative assurance from the Agency within the 90-day period, the guarantor must provide that alternate assurance in the name of the owner or operator and submit the necessary documentation for the alternative assurance to the Agency within 120 days after the cancellation notice.

BOARD NOTE: Subsection (o) ~~of this Section~~ is derived from 40 CFR 267.143(g)(3) ~~(2017)-(2013)~~. The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (d), (d)(7), or (d)(7)(C) ~~of this Section~~ also include this added subsection (o), as applicable.

- p) Recordkeeping and Reporting Requirements ~~reporting requirements~~.
- 1) The owner or operator must submit the following items to the Agency:
 - A) A letter signed by the owner's or operator's chief financial officer that provides evidence demonstrating that the firm meets the conditions of subsections (h)(6)(A)(i) and (h)(6)(A)(ii) ~~of this Section~~. If the firm is providing only liability coverage through a financial test for a facility or facilities with a permit pursuant to this Part 727, the letter should use the wording in subsection (1)(2)

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~~of this Section.~~ If the firm is providing only liability coverage through a financial test for facilities regulated pursuant to this Part 727, it should use the letter designated by the Agency pursuant to subsection (l)(3) ~~of this Section.~~ If the firm is providing liability coverage through a financial test for a facility or facilities with a permit pursuant to this Part 727, and it assures closure costs or any other environmental obligations through a financial test, it must use the letter in subsection (l)(1) ~~of this Section~~ for the facilities issued a permit pursuant to this Part 727.

- B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Agency may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Agency deems that the matters that form the basis for the qualification are insufficient to warrant disallowance of the test. If the Agency does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this subsection (h) within 30 days after the notification of disallowance.
- C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subsections (h)(6)(A)(i) and (h)(6)(A)(ii) ~~of this Section~~ that are different from data in the audited financial statements referred to in subsection (p)(1)(B) ~~of this Section~~ or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report must be based upon an agreed upon procedures engagement in accordance with professional auditing standards and must describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with

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the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

- 2) The owner or operator of a new facility must submit the items specified in subsection (p)(1) ~~of this Section~~ to the Agency at least 60 days before placing waste in the facility.
- 3) After the initial submission of items specified in subsection (p)(1) ~~of this Section~~, the facility owner or operator must send updated information to the Agency within 90 days following the close of the owner's or operator's fiscal year. The Agency may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in subsection (p)(1) ~~of this Section~~.
- 4) The owner or operator is no longer required to submit the items specified in this subsection (p) or comply with the requirements of subsection (h)(6) ~~of this Section~~ when either of the following occurs:
 - A) The facility owner or operator substitutes alternate financial assurance as specified in subsection (h) ~~of this Section~~ that is not subject to these recordkeeping and reporting requirements; or
 - B) The Agency releases the facility owner or operator from the requirements of subsection (h) ~~of this Section~~ in accordance with subsection (d)(10) ~~of this Section~~.
- 5) An owner or operator that no longer meets the requirements of subsection (h)(6)(A) ~~of this Section~~ cannot use the financial test to demonstrate financial assurance. An owner or operator who no longer meets the requirements of subsection (h)(6)(A) ~~of this Section~~, must do the following:
 - A) Send notice to the Agency of intent to establish alternate financial assurance as specified in this section. The facility owner or operator must send this notice by certified mail within 90 days following the close of the owner's or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this Section.

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- B) Provide alternative financial assurance within 120 days after the end of that fiscal year.
- 6) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (h)(6)(A) ~~of this Section~~, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in this subsection (p) ~~of this Section~~. If the Agency finds that the owner or operator no longer meets the requirements of subsection (h)(6)(A) ~~of this Section~~, the owner or operator must provide alternate financial assurance that meets the requirements of subsection (h) ~~of this Section~~.

BOARD NOTE: Subsection (p) ~~of this Section~~ is derived from 40 CFR 267.147(f)(2) (2017)-(2013). The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (h), (h)(6), or (h)(6)(B) ~~of this Section~~ also include this added subsection (p), as applicable.

- q) ~~Foreign Corporations corporations.~~
- 1) The guarantor must execute the guarantee in Illinois. The guarantee must be accompanied by a letter signed by the guarantor that states as follows:
- A) The guarantee was signed in Illinois by an authorized agent of the guarantor;
- B) The guarantee is governed by Illinois law; and
- C) The name and address of the guarantor's registered agent for service of process.
- 2) The guarantor must have a registered agent pursuant to Section 5.05 of the Business Corporation Act of 1983 [805 ILCS 5/5.05] or Section 105.05 of the General Not-for-Profit Corporation Act of 1986 [805 ILCS 105/105.05].

BOARD NOTE: Subsection (q) ~~of this Section~~ is derived from 40 CFR 267.147(g)(2) (2017)-(2013). The Board moved the corresponding federal provision to comport with Illinois Administrative Code indent level codification requirements. The Board intends that any citation to subsection (h), (h)(7), or (h)(7)(B) ~~of this Section~~ also includes ~~include~~ this added subsection (q), as

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applicable. The text of 40 CFR 267.147(g)(2) is substantially identical to that of 40 CFR 264.147(g)(2). The Board has substituted the language of 35 Ill. Adm. Code 724.247(g)(2), which corresponds with 40 CFR 264.147(g)(2), for that of 40 CFR 267.147(g)(2).

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 727.270 Use and Management of Containers

- a) Applicability of ~~This this~~ Section. This Section applies to the owner or operator of a facility that treats or stores hazardous waste in containers under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2).

BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.170 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- b) Standards ~~Applicable applicable to Containers-containers~~. Standards apply to the condition of containers, to the compatibility of waste with containers, and to the management of containers holding hazardous waste.
- 1) Condition of ~~Containers-containers~~. If a container holding hazardous waste is not in good condition (for example, it exhibits severe rusting or apparent structural defects) or if it begins to leak, the facility owner or operator must undertake either of the following actions:
 - A) It must transfer the hazardous waste from the defective container to a container that is in good condition; or
 - B) It must manage the waste in some other way that complies with the requirements of this Part.
 - 2) Compatibility of ~~Waste waste with Containers-containers~~. To ensure that the ability of the container to contain the waste is not impaired, the facility owner or operator must use a container made of or lined with materials that are compatible and will not react with the hazardous waste to be stored.
 - 3) Management of ~~Containers-containers~~.

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- A) The facility owner or operator must always keep a container holding hazardous waste closed during storage, except when it adds or removes waste.
- B) The facility owner or operator must never open, handle, or store a container holding hazardous waste in a manner that may rupture the container or cause it to leak.

BOARD NOTE: Subsection (b) ~~of this Section~~ is derived from 40 CFR 267.171 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- c) ~~Inspection Requirements requirements.~~ At least weekly, the facility owner or operator must inspect areas where it stores containers, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

BOARD NOTE: Subsection (c) ~~of this Section~~ is derived from 40 CFR 267.172 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- d) Standards Applicable ~~applicable to the Container Storage Areas container storage areas.~~
 - 1) The facility owner or operator must design and operate a containment system for its container storage areas according to the requirements in subsection (d)(2) ~~of this Section~~, except as otherwise provided by subsection (d)(3) ~~of this Section~~.
 - 2) The design and operating requirements for a containment system are the following:
 - A) A base must underlie the containers that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;
 - B) The base must be sloped, or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

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- C) The containment system must have sufficient capacity to contain 10 percent of the volume of all containers placed in it, or the volume of the largest container, whichever is greater. This requirement does not apply to containers that do not contain free liquids;
 - D) The owner or operator must prevent run-on into the containment system, unless the collection system has sufficient excess capacity to contain the liquid, in addition to that required by subsection (d)(2)(C) ~~of this Section~~; and
 - E) The owner or operator must remove any spilled or leaked waste and accumulated precipitation from the sump or collection area as promptly as is necessary to prevent overflow of the collection system.
- 3) Except as provided in subsection (d)(4) ~~of this Section~~, the owner or operator does not need a containment system, as defined in subsection (d)(2) ~~of this Section~~, for storage areas that store containers holding only wastes with no free liquids if either of the following conditions are fulfilled:
- A) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or
 - B) The containers are elevated or are otherwise protected from contact with accumulated liquid.
- 4) The facility owner or operator must have a containment system defined by subsection (d)(2) ~~of this Section~~ for storage areas that store containers holding F020, F021, F022, F023, F026, and F027 wastes, even if the wastes do not contain free liquids.

BOARD NOTE: Subsection (d) ~~of this Section~~ is derived from 40 CFR 267.173 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- e) Special ~~Requirements~~ requirements for ~~Ignitable ignitable or Reactive Waste reactive waste~~. The facility owner or operator must locate containers holding ignitable or reactive waste at least 15 meters (50 feet) from its facility property line. The owner or operator must also follow the general requirements for ignitable or reactive wastes that are specified in Section 727.110(h)(1).

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BOARD NOTE: Subsection (e) ~~of this Section~~ is derived from 40 CFR 267.174 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- f) ~~Special Requirements~~ requirements for ~~Incompatible Wastes~~ incompatible wastes.
- 1) The facility owner or operator must not place incompatible wastes or incompatible wastes and materials (see appendix V to 40 CFR 264, incorporated by reference in 35 Ill. Adm. Code 720.111(b), for examples) in the same container, unless it complies with Section 727.110(h)(2).
 - 2) The facility owner or operator must not place hazardous waste in an unwashed container that previously held an incompatible waste or material.
 - 3) The facility owner or operator must separate a storage container holding a hazardous waste that is incompatible with any waste or with other materials stored nearby in other containers, piles, open tanks, or surface impoundments from the other materials, or protect the containers by means of a dike, berm, wall, or other device.

BOARD NOTE: Subsection (f) ~~of this Section~~ is derived from 40 CFR 267.175 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- g) Requirements for ~~Stopping~~ stopping the ~~Use~~ use of ~~Containers~~ containers. The facility owner or operator must remove all hazardous waste and hazardous waste residues from the containment system. The owner or operator must decontaminate or remove remaining containers, liners, bases, and soil containing, or contaminated with, hazardous waste or hazardous waste residues.

BOARD NOTE: Subsection (g) ~~of this Section~~ is derived from 40 CFR 267.176 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- h) ~~Air Emission Standards~~ emission standards. The facility owner or operator must manage all hazardous waste placed in a container according to the requirements of Subparts AA, BB, and CC of 35 Ill. Adm. Code 724. Under a RCRA standardized permit, the following control devices are permissible: a thermal vapor incinerator, a catalytic vapor incinerator, a flame, a boiler, a process heater, a condenser, or a carbon absorption unit.

BOARD NOTE: Subsection (h) ~~of this Section~~ is derived from 40 CFR 267.177 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

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(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 727.290 Tank Systems

- a) Applicability of ~~This this~~ Section. This Section applies to the owner or operator of a facility that treats or stores hazardous waste in above-ground or on-ground tanks under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2).
- 1) A facility owner or operator does not have to meet the secondary containment requirements in subsection (f) if its tank systems do not contain free liquids and are situated inside a building with an impermeable floor. The owner or operator must demonstrate the absence or presence of free liquids in the stored or treated waste, using Method 9095B (Paint Filter Liquids Test) as described in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” USEPA Publication SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111(a).
 - 2) The facility owner or operator does not have to meet the secondary containment requirements of subsection (f)(1) if its tank system, including sumps, as defined in 35 Ill. Adm. Code 720.110, is part of a secondary containment system to collect or contain releases of hazardous wastes.

BOARD NOTE: Subsection (a) is derived from 40 CFR 267.190 ~~(2017)~~(2015).

- b) Required Design and Construction Standards for New Tank Systems or Components. The facility owner or operator must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the wastes to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment, reviewed and certified by an independent, qualified registered professional engineer, following 35 Ill. Adm. Code 702.126(d), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include, at a minimum, the following information:
- 1) Design standards for the construction of tanks or the ancillary equipment.
 - 2) Hazardous characteristics of the wastes to be handled.

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- 3) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of the following:
 - A) Factors affecting the potential for corrosion, such as the following:
 - i) Soil moisture content;
 - ii) Soil pH;
 - iii) Soil sulfides level;
 - iv) Soil resistivity;
 - v) Structure to soil potential;
 - vi) Existence of stray electric current; and
 - vii) Existing corrosion-protection measures (for example, coating, cathodic protection, etc.).
 - B) The type and degree of external corrosion protection needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:
 - i) Corrosion-resistant materials of construction (such as special alloys, fiberglass reinforced plastic, etc.);
 - ii) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (for example, impressed current or sacrificial anodes); and
 - iii) Electrical isolation devices (such as insulating joints, flanges, etc.).
- 4) Design considerations to ensure that the following will occur:
 - A) Tank foundations will maintain the load of a full tank;
 - B) Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located

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within a seismic fault zone subject to the standards of Section 727.110(i)(1); and

- C) Tank systems will withstand the effects of frost heave.

BOARD NOTE: Subsection (b) is derived from 40 CFR 267.191 (2017)~~(2015)~~.

- c) Handling and Inspection Procedures During Installation of New Tank Systems:
 - 1) The facility owner or operator must ensure that it follows proper handling procedures to prevent damage to a new tank system during installation. Before placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:
 - A) Weld breaks;
 - B) Punctures;
 - C) Scrapes of protective coatings;
 - D) Cracks;
 - E) Corrosion; or
 - F) Other structural damage or inadequate construction or installation.
 - 2) The facility owner or operator must remedy all discrepancies before the tank system is placed in use.

BOARD NOTE: Subsection (c) is derived from 40 CFR 267.192 (2017)~~(2015)~~.

- d) Testing Requirements. The facility owner or operator must test all new tanks and ancillary equipment for tightness before you place them in use. If the owner or operator finds a tank system that is not tight, it must perform all repairs necessary to remedy the leaks in the system before it covers, encloses, or places the tank system into use.

BOARD NOTE: Subsection (d) is derived from 40 CFR 267.193 (2017)~~(2015)~~.

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- e) Installation Requirements-
- 1) The facility owner or operator must support and protect ancillary equipment against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.
 - 2) The facility owner or operator must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided pursuant to subsection (b)(3), to ensure the integrity of the tank system during use of the tank system. An independent corrosion expert must supervise the installation of a corrosion protection system that is field fabricated to ensure proper installation.
 - 3) The facility owner or operator must obtain, and keep at the facility, written statements by those persons required to certify the design of the tank system and to supervise the installation of the tank system as required in subsections (c), (d), (e)(1), and (e)(2). The written statement must attest that the tank system was properly designed and installed and that the owner or operator made repairs pursuant to subsections (c) and (d). These written statements must also include the certification statement as required in 35 Ill. Adm. Code 702.126(d).

BOARD NOTE: Subsection (e) is derived from 40 CFR 267.194 (2017)-(2015).

- f) Secondary Containment Requirements. To prevent the release of hazardous waste or hazardous constituents to the environment, the owner or operator must provide secondary containment that meets the requirements of this subsection (f) for all new and existing tank systems.
- 1) Secondary containment systems must meet both of the following requirements:
 - A) It must be designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to any soil, groundwater, or surface water at any time during the use of the tank system; and
 - B) It must be capable of detecting and collecting releases and accumulated liquids until the collected material is removed.
 - 2) To meet the requirements of subsection (f)(1), secondary containment systems must meet all of the following minimum requirements:

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- A) It must be constructed of or lined with materials that are compatible with the wastes to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic);
- B) It must be placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;
- C) It must be provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours; and
- D) It must be sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. The facility owner or operator must remove spilled or leaked waste and accumulated precipitation from the secondary containment system within 24 hours, or as promptly as possible, to prevent harm to human health and the environment.

BOARD NOTE: Subsection (f) is derived from 40 CFR 267.195 (2017)-(2015).

- g) Required Devices for Secondary Containment and Their Design, Operating, and Installation Requirements:
 - 1) Secondary containment for tanks must include one or more of the following features:
 - A) A liner (external to the tank);
 - B) A double-walled tank; and
 - C) An equivalent device; the owner or operator must maintain documentation of equivalency at the facility.
 - 2) An external liner system must fulfill the following requirements:

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- A) It must be designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;
 - B) It must be designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. The additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;
 - C) It must be free of cracks or gaps; and
 - D) It must be designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tanks (that is, it must be capable of preventing lateral as well as vertical migration of the waste).
- 3) A double-walled tank must fulfill the following requirements:
- A) It must be designed as an integral structure (that is, it must be an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;
 - B) It must be protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and
 - C) It must be provided with a built-in continuous leak detection system capable of detecting a release within 24 hours.

BOARD NOTE: Subsection (g) is derived from 40 CFR 267.196 (2017)~~(2015)~~.

- h) Requirements for Ancillary Equipment. The facility owner or operator must provide ancillary equipment with secondary containment (for example, trench, jacketing, double-walled piping, etc.) that meets the requirements of subsections (f)(1) and (f)(2), except for the following:
 - 1) Above ground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;
 - 2) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

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- 3) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and
- 4) Pressurized above ground piping systems with automatic shut-off devices (for example, excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices, etc.) that are visually inspected for leaks on a daily basis.

BOARD NOTE: Subsection (h) is derived from 40 CFR 267.197 (2017)~~(2015)~~.

- i) General Operating Requirements for Tank Systems:
 - 1) The facility owner or operator must not place hazardous wastes or treatment reagents in a tank system if the substances could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.
 - 2) The facility owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include the following minimum requirements:
 - A) Spill prevention controls (for example, check valves, dry disconnect couplings, etc.);
 - B) Overfill prevention controls (for example, level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank, etc.); and
 - C) Sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.
 - 3) The facility owner or operator must comply with the requirements of subsection (k) if a leak or spill occurs in the tank system.

BOARD NOTE: Subsection (i) is derived from 40 CFR 267.198 (2017)~~(2015)~~.

- j) Inspection Requirements. The facility owner or operator must comply with the following requirements for scheduling, conducting, and documenting inspections:
 - 1) It must develop and follow a schedule and procedure for inspecting overfill controls;

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- 2) It must inspect the following at least once each operating day:
 - A) Aboveground portions of the tank system to detect corrosion or releases of waste;
 - B) Data gathered from monitoring and leak detection equipment (for example, pressure or temperature gauges, monitoring wells, etc.) to ensure that the tank system is being operated according to its design; and
 - C) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (for example, dikes) to detect erosion or signs of releases of hazardous waste (for example, wet spots, dead vegetation, etc.);
- 3) It must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:
 - A) It must confirm that the cathodic protection system is operating properly within six months after initial installation and annually thereafter; and
 - B) It must inspect or test all sources of impressed current, as appropriate, at least every other month; and
- 4) It must document, in the operating record of the facility, an inspection of those items in subsections (j)(1) through (j)(3).

BOARD NOTE: Subsection (j) is derived from 40 CFR 267.199 (2017)-~~(2015)~~.

- k) Required Actions in Case of a Leak or a Spill. If there has been a leak or a spill from a tank system or secondary containment system, or if either system is unfit for use, the facility owner or operator must remove the system from service immediately, and it must satisfy the following requirements:
 - 1) It must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release;

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- 2) It must remove the waste from the tank system or secondary containment system, as follows:
 - A) If the release was from the tank system, the owner or operator must, within 24 hours after detecting the leak, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed; or
 - B) If the material released was to a secondary containment system, the owner or operator must remove all released materials within 24 hours or as quickly as possible to prevent harm to human health and the environment;
- 3) It must immediately conduct a visual inspection of the release and, based on that inspection, undertake the following actions:
 - A) It must prevent further migration of the leak or spill to soils or surface water; and
 - B) It must remove, and properly dispose of, any visible contamination of the soil or surface water;
- 4) It must report any release to the environment, except as provided in subsection (k)(4)(A), to the Agency within 24 hours after its detection. If the owner or operator has reported the release to USEPA pursuant to federal 40 CFR 302, that report will satisfy this requirement, subject to the following exceptions:
 - A) The facility owner or operator does not need to report on a leak or spill of hazardous waste if it fulfills the following conditions:
 - i) The spill was less than or equal to a quantity of one pound (0.45 kg); and
 - ii) The facility owner or operator immediately contained and cleaned up the spill; and
 - B) Within 30 days of detection of a release to the environment, the owner or operator must submit a report to the Agency that contains the following information:

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- i) The likely route of migration of the release;
 - ii) The characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate, etc.);
 - iii) The results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, the owner or operator must submit these data to the Agency as soon as they become available;
 - iv) The proximity to downgradient drinking water, surface water, and populated areas; and
 - v) A description of response actions taken or planned;
- 5) It must either close the system or make necessary repairs, as follows:
- A) Unless the owner or operator satisfies the requirements of subsections (k)(5)(B) and (k)(5)(C), it must close the tank system according to subsection (l);
 - B) If the cause of the release was a spill that has not damaged the integrity of the system, the owner or operator may return the system to service as soon as it removes the released waste and makes any necessary repairs; or
 - C) If the cause of the release was a leak from the primary tank system into the secondary containment system, the owner or operator must repair the system before returning the tank system to service; and
- 6) If the owner or operator has made extensive repairs to a tank system in accordance with subsection (k)(5) (for example, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel, etc.), it may not return the tank system to service unless the repair is certified by an independent, qualified, registered, professional engineer in accordance with 35 Ill. Adm. Code 702.126(d), as follows:
- A) The engineer must certify that the repaired system is capable of handling hazardous wastes without release for the intended life of the system; and

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- B) The facility owner or operator must submit this certification to the Agency within seven days after returning the tank system to use.

BOARD NOTE: Subsection (k) is derived from 40 CFR 267.200 (2017)-(2015).

- l) Requirements When the Owner or Operator Stops Operating the Tank System. When the facility owner or operator close a tank system, it must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless 35 Ill. Adm. Code 721.103(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in Sections 727.210 and 727.240.

BOARD NOTE: Subsection (l) is derived from 40 CFR 267.201 (2017)-(2015).

- m) Special Requirements for Ignitable or Reactive Wastes-

- 1) The facility owner or operator may not place ignitable or reactive waste in tank systems, unless any of the following three conditions are fulfilled:
- A) The owner or operator treats, renders, or mixes the waste before or immediately after placement in the tank system so that the following is true:
- i) The owner or operator complies with Section 727.110(h)(2); and
- ii) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste pursuant to 35 Ill. Adm. Code 721.121 or 721.123;
- B) The owner or operator stores or treats the waste 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 facility owner or operator uses the tank system solely for emergencies.
- 2) If the facility owner or operator stores or treats ignitable or reactive waste in a tank, it must comply with the requirements for the maintenance of protective distances between the waste management area and any public

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ways, streets, alleys, or an adjoining property line that can be built on, as required 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)).

BOARD NOTE: Subsection (m) is derived from 40 CFR 267.202 (2017)-(2015).

- n) Special Requirements for Incompatible Wastes-
- 1) A facility owner or operator may not place incompatible wastes or incompatible wastes and materials in the same tank system, unless it complies with Section 727.110(h)(2).
 - 2) A facility owner or operator may not place hazardous waste in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless it complies with Section 727.110(h)(2).

BOARD NOTE: Subsection (n) is derived from 40 CFR 267.203 (2017)-(2015).

- o) Air Emission Standards. The facility owner or operator must manage all hazardous waste placed in a tank following the requirements of Subparts AA, BB, and CC of 35 Ill. Adm. Code 724. Under a RCRA standardized permit, the following control devices are permissible: a thermal vapor incinerator, a catalytic vapor incinerator, a flame, a boiler, a process heater, a condenser, or a carbon absorption unit.

BOARD NOTE: Subsection (o) is derived from 40 CFR 267.204 (2017)-(2015).

(Source: Amended at 42 Ill. Reg. _____, effective _____)

Section 727.900 Containment Buildings

- a) Applicability of ~~This this~~ Section. This Section applies to the owner or operator of a facility that treats or stores hazardous waste in containment buildings under a RCRA standardized permit pursuant to Subpart J of 35 Ill. Adm. Code 703, except as provided in Section 727.100(a)(2). Storage or treatment in a containment building is not land disposal, as defined in 35 Ill. Adm. Code 728.102, if the unit meets the requirements of subsections (b), (c), and (d) ~~of this Section~~.

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BOARD NOTE: Subsection (a) ~~of this Section~~ is derived from 40 CFR 267.1100 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).~~

- b) Design and Operating Standards ~~operating standards for Containment Buildings~~ ~~containment buildings~~. A containment building must comply with the design and operating standards in this subsection (b). The Agency may consider standards established by professional organizations generally recognized by the industry, such as the American Concrete Institute (ACI) or the American Society of Testing Materials (ASTM), in judging the structural integrity requirements of this subsection (b).
- 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, runoff, etc.), and to assure containment of managed wastes.
 - 2) The floor and containment walls of the unit, including the secondary containment system, if required pursuant to subsection (d) ~~of this Section~~, must be designed and constructed of manmade materials of sufficient strength and thickness to accomplish the following:
 - A) They must support themselves, the waste contents, and any personnel and heavy equipment that operates within the unit;
 - B) They must prevent failure due to any of the following causes:
 - i) Pressure gradients, settlement, compression, or uplift;
 - ii) Physical contact with the hazardous wastes to which they are exposed;
 - iii) Climatic conditions;
 - iv) Stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls; or
 - v) Collapse or other failure.
 - 3) All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes.

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- 4) The facility owner or operator must not place incompatible hazardous wastes or treatment reagents in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.
- 5) 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.
- 6) 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) The doors and windows provide an effective barrier against fugitive dust emissions pursuant to subsection (c)(4) ~~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.
- 7) The facility owner or operator must inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment 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.
- 8) The facility owner or operator must obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of subsections (b)(1) through (b)(6), (c), and (d) ~~of this Section~~.

BOARD NOTE: Subsection (b) ~~of this Section~~ is derived from 40 CFR 267.1101 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- c) Other Requirements ~~requirements~~ for Preventing Releases ~~preventing releases~~. The facility owner or operator must use controls and practices to ensure containment of the hazardous waste within the unit and must meet the following minimum requirements:

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- 1) 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;
- 2) 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;
- 3) It must take measures to prevent personnel or by equipment used in handling the waste from tracking hazardous waste out of the unit. The owner or operator must designate an area to decontaminate equipment, and it must collect and properly manage any rinsate; and
- 4) 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 of appendix A to 40 CFR 60 (Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares), incorporated by reference in 35 Ill. Adm. Code 720.111(b)). In addition, the owner or operator must operate and maintain all associated particulate collection devices (for example, fabric filter, electrostatic precipitator, etc.) with sound air pollution control practices. The owner or operator must effectively maintain this state of no visible emissions at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

BOARD NOTE: Subsection (c) of this Section is derived from 40 CFR 267.1102 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- d) Additional Design design and Operating Standards When Liquids Are operating standards when liquids are in the Containment Building-containment building. If a containment building will be used to manage hazardous wastes containing free liquids or treated with free liquids, as determined by the paint filter test, by a visual examination, or by other appropriate means, the facility owner or operator must include the following:
 - 1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (for example, 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, as follows:

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- A) The primary barrier must be sloped to drain liquids to the associated collection system; and
 - B) The facility owner or operator must collect and remove liquids and waste 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 capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practical time, as follows:
- A) The facility owner or operator may meet the requirements of the leak detection component of the secondary containment system by installing a system that meets the following minimum construction requirements:
 - i) It is constructed with a bottom slope of one 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;
 - B) If the facility owner or operator will be conducting treatment in the building, it must design the area in which the treatment will be conducted to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building; and
 - C) The facility owner or operator must construct the secondary containment system using 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.

BOARD NOTE: Subsection (d) of this Section is derived from 40 CFR 267.1103 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

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- e) Alternatives to Secondary Containment Requirements ~~secondary containment requirements~~. Notwithstanding any other provision of this Section, 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 both of the following:
- 1) The only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and
 - 2) The containment of managed wastes and dust suppression liquids can be assured without a secondary containment system.

BOARD NOTE: Subsection (e) ~~of this Section~~ is derived from 40 CFR 267.1104 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

- f) Requirements Where where the Containment Building Contains Areas Both ~~containment building contains areas both~~ with and without Secondary Containment ~~secondary containment~~. For a containment building that contains both areas that have secondary containment and areas that do not have secondary containment, the facility owner or operator must fulfill the following requirements:
- 1) It must design and operate each area in accordance with the requirements enumerated in subsections (b) through (d) ~~of this Section~~;
 - 2) It must take measures to prevent the release of liquids or wet materials into areas without secondary containment; and
 - 3) It must maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

BOARD NOTE: Subsection (f) ~~of this Section~~ is derived from 40 CFR 267.1105 (2017), ~~as added at 70 Fed. Reg. 53420 (Sep. 8, 2005)~~.

- g) Requirements in the Event event of a Release ~~release~~. Throughout the active life of the containment building, if the facility 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.

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- 1) Upon detection of a condition that has lead to a release of hazardous waste (for example, upon detection of leakage from the primary barrier), the owner or operator must undertake each of the following actions:
 - A) It must enter a record of the discovery in the facility operating record;
 - B) It must immediately remove the portion of the containment building affected by the condition from service;
 - C) It must determine what steps it will need to take to repair the containment building, to remove any leakage from the secondary collection system, and to establish a schedule for accomplishing the cleanup and repairs; and
 - D) Within seven days after the discovery of the condition, it must notify the Agency 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.
- 2) 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.
- 3) Upon completing all repairs and cleanup, the facility owner or operator must notify the Agency in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with subsection (g)(1)(D) ~~of this Section.~~

BOARD NOTE: Subsection (g) ~~of this Section~~ is derived from 40 CFR 267.1106 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- h) A Containment Building That Can Be Considered Secondary Containment ~~containment building that can be considered secondary containment.~~ A containment building can serve as an acceptable secondary containment system for tanks placed within the building if both of the following conditions are fulfilled:

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- 1) The containment building can serve as an external liner system for a tank if it meets the requirements of Section 727.290(g)(2); and
- 2) The containment building also meets the requirements of Sections 727.290(f)(1), (f)(2)(A), and (f)(2)(B).

BOARD NOTE: Subsection (h) of this Section is derived from 40 CFR 267.1107 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

- i) Requirements ~~When when the Owner owner or Operator Stops Operating operator stops operating the Containment Building containment building.~~ When the facility owner or operator close a containment building, it must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate and manage them as hazardous waste unless 35 Ill. Adm. Code 721.103(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in Sections 727.210 and 727.240.

BOARD NOTE: Subsection (i) of this Section is derived from 40 CFR 267.1108 (2017), as added at 70 Fed. Reg. 53420 (Sep. 8, 2005).

(Source: Amended at 42 Ill. Reg. _____, effective _____)