

ILLINOIS POLLUTION CONTROL BOARD
May 21, 1998

IN THE MATTER OF:)
)
LIVESTOCK WASTE REGULATIONS:) R97-15(B)
35 ILL. ADM. CODE 506) (Rulemaking - Land)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by M. McFawn):

In 1996, the Illinois General Assembly enacted the Livestock Management Facilities Act (LMFA) (510 ILCS 77/1 *et seq.* (1998)) to address concerns arising from changes sweeping the livestock industry, including larger concentrations of animals at livestock facilities and the resulting impact on surrounding areas. See 510 ILCS 77/5(5), (6). Section 17 of the LMFA (510 ILCS 77/17 (1998)) requires owners of new or modified livestock waste lagoons to provide evidence of financial responsibility for lagoon closure. The Board today sends to first notice rules to implement Section 17 of the LMFA.

This is docket B of this rulemaking proceeding. On March 20, 1997, the Board adopted for second notice the majority of the livestock waste regulations under docket A.¹ At that time, the Board opened docket B to adopt rules regarding evidence of financial responsibility, since the original proposal of the Illinois Department of Agriculture (Department) had not included such rules. See In re Livestock Waste Regulations (March 20, 1997), R97-15(A) & (B), slip op. at 9-10.

On July 22, 1997, the Department filed a proposal with the Board. The Board held hearings in Chicago on October 14, 1997, and in Springfield on October 21, 1997.² A third public hearing was held in Springfield on March 17, 1998, solely on the Illinois Department of Development and Community Affairs' determination not to perform an economic impact study in connection with this rulemaking. The Board received nine public comments (cited in this opinion as "PC __") on the proposal.

The proposed rules would implement Section 17 of the LMFA,³ which provides:

¹ Final rules adopted under docket A became effective on May 20, 1997.

² Transcripts of the October 14 and October 21 hearings are cited in this opinion as "Tr.1" and "Tr.2" respectively.

³ Section 17 of the LMFA was amended by P.A. 90-565, which added item 6 ("Participation in a livestock waste lagoon closure fund managed by the Illinois Farm Development Authority"). This amendment will be effective June 1, 1998. Since this date is prior to anticipated adoption of final rules in this proceeding, the proposed rules have been drafted and are discussed assuming the effectiveness of the amendment to Section 17. Section 17 as amended is quoted here.

Owners of new or modified lagoons registered under the provisions of this Act shall establish and maintain evidence of financial responsibility to provide for the closure of the lagoons and the proper disposal of their contents within the time provisions outlined in this Act. Financial responsibility may be evidenced by any combination of the following:

- 1) Commercial or private insurance;
- 2) Guarantee;
- 3) Surety bond;
- 4) Letter of credit;
- 5) Certificate of Deposit or designated savings account;
- 6) Participation in a livestock waste lagoon closure fund managed by the Illinois Farm Development Authority.

The level of surety required shall be determined by rule and be based upon the volumetric capacity of the lagoon. Surety instruments required under this Section shall be required after the effective date of rules adopted for the implementation of this Act.

The “closure of the lagoons and the proper disposal of their contents within the time provisions outlined in this Act” is governed by Section 15(e) of the LMFA (510 ILCS 77/15(e) (1998)), which provides:

When any earthen livestock waste lagoon is removed from service, it shall be completely emptied. Appropriate closure procedures shall be followed as determined by rule. The remaining hole must be filled. The closure requirements shall be completed within two years from the date of cessation of operation unless the lagoon is maintained or serviced. The Department may grant a waiver to the before-stated closure requirements that will permit the lagoon to be used for an alternative purpose.

Upon a change in ownership of a registered earthen livestock lagoon, the owner shall notify the Department of the change within 30 working days of the closing of the transaction.

SUMMARY OF PROPOSED RULES

Operation of Proposed Rules

All owners of lagoons registered under the LMFA are required to provide and maintain evidence of financial responsibility for lagoon closure. Under the LMFA, financial responsibility may be evidenced by any combination of the six surety instruments listed in Section 17 of the LMFA. The proposed rules require lagoon owners to have financial assurance in place either within 180 days of the effective date of the proposed rules or before the lagoon is placed in service, whichever is later. (Section 506.601) The proposed rules set forth criteria for each of the six surety instruments, as well as the procedures under which such instruments are called upon. The initial term of the surety instrument must be at least three years, and the term of coverage may never be less than two years. (Section 506.602) This requirement is to ensure that the lagoon can be closed within the statutory time period. Under Section 15(e) of the LMFA, a lagoon must be closed within two years of being removed from service. The proposed rules also establish that the level of surety required is equal to the volumetric capacity of the lagoon multiplied by a cost factor. The initial cost factor is ten cents per cubic foot of lagoon volume. (Section 506.603)

The proposed rules include conditions under which a lagoon is considered removed from service. Removal from service triggers the lagoon owner's obligation under Section 506.209 to submit a closure plan to the Department. If the owner does not file a plan, and either cannot be found or fails to cure the omission within 30 days of notice from the Department, then surety liability is triggered. If the owner files a plan, then the Department approves the plan, rejects the plan, or requests more information. If no plan is approved within one year, then again surety liability is triggered. Finally, surety liability is triggered if an owner fails to follow an approved closure plan and does not cure noncompliance within 30 days of notice from the Department. (Section 506.606(a))

Once surety liability has triggered, the Department sends a notice to the financial institution. The financial institution must then deposit the proceeds of the surety instrument in an account upon which the Department is authorized to draw for lagoon closure. The Department then proceeds to close the lagoon. Alternatively, the financial institution may assume liability for lagoon closure itself. (Section 505.606(b)) In that case, the financial institution does not deposit the funds in an account accessible by the Department. Instead, the financial institution is obligated to close the lagoon in accordance with the closure regulations. Should it fail to do so, the financial institution is still obligated to deposit the proceeds from surety instrument in an account accessible by the Department so that it can close the lagoon.

Development of the Rules

Since the Department filed its proposal, the Board has held three public hearings. The record in this proceeding now contains the Department's rationale for its proposal, public comments from individuals, comments and suggestions from the Illinois Environmental Protection Agency (Agency), and a proposal from the Illinois Beef Association, Illinois Pork Producers Association (Pork Producers), and the Illinois Farm Bureau (collectively, Farm Groups). The Farm Groups sought inclusion of an additional mechanism for demonstrating financial responsibility, namely, participation in a lagoon closure fund to be administered by the Illinois Farm Development Authority. Since the Farm Groups' proposal was submitted on the record, the LMFA has been amended to include such a fund as one of the financial mechanisms available to lagoon owners.

The Board has examined the record that has developed through the course of the proceeding. Based upon that examination, the Board concludes that the record provides the information necessary to develop a financial assurance regulatory program which fulfills the mandates of the LMFA. When read together, Sections 17 and 15 of the LMFA provide (1) that the lagoon owner must provide continuous financial assurance to properly close the lagoon; and (2) that once it has been determined that the lagoon must be closed, closure be completed within two years. The Department's proposal provides the majority of the regulatory scheme necessary to fulfill these mandates. However, some necessary elements are needed. For example, the Board has added minimum term requirements for surety instruments at Section 506.602(b). These provisions are designed to ensure that the surety instrument will not expire before the associated lagoon is closed.

The Board appreciates that the program should provide maximum flexibility and economy to lagoon owners and financial institutions providing the financial assurance. The Board finds that these goals can best be accomplished by simple and explicit regulations. For example, the Farm Groups submitted a lengthy proposal about a lagoon closure fund to be administered by the Illinois Farm Development Authority to provide lagoon owners with an economical method for financial assurance. This proposal was submitted prior to the legislative amendment adding participation in such a lagoon closure fund to the list of financial mechanisms authorized under Section 17 of the LMFA. Because of that legislation, the Board is able to propose simpler regulations to accomplish the legislative purpose and the Farm Groups' proposal. The details of how such a fund would work no longer need to be in the regulations. Instead, the rules proposed at Section 506.615 governing this fund need only contain the criteria necessary to insure adequate funds are available to close the lagoons covered by it. There are two such criteria. First, the lagoon fund must maintain a prescribed minimum reserve; and second, the fund must guarantee payment of the assured amount for a participating lagoon.

To ensure the smooth and cohesive operation of the livestock lagoon regulatory system, the Board has also modified the Department's proposal. For example, under the Department's proposal, a financial institution's liability on a surety instrument (or, the Department's ability

to draw on a designated savings account or certificate of deposit) was contingent on (a) abandonment of the lagoon, and (b) transfer of title to the lagoon to a unit of local government. The concept of abandonment is not found in the LMFA. Therefore, the Board has instead proposed to condition liability based on the statutory concept, “removed from service.” Likewise, the record demonstrates that a requirement that the lagoon must transfer to a unit of local government is not consistent with the statutory intent. Due to the delays inherent in such an action, such a condition is incompatible with the two-year statutory time frame for closure of the lagoon. Therefore, this condition is not included in the regulatory scheme for financial assurance.

Following is a section-by-section review of the proposed rules. Other changes and additions to the Department’s proposal are discussed in detail therein. That discussion further explains how the regulatory program proposed today for first notice fulfills the statutory mandates of Sections 17 and 15 of the LMFA.

Overall, the Board developed the proposed rules based upon the record. These rules provide a regulatory program which ensures that proceeds from the financial assurance obtained by the lagoon owners will be available to the Department in the event the lagoon owner will not or cannot be compelled to close the lagoon properly when it is removed from service. The proposed rules are also intended to concisely inform the lagoon owners and the financial institutions providing financial assurance of their obligations. Likewise, the proposed rules are intended to set forth the obligations, duties and authority of the Department in the event liability of the surety is triggered.

DISCUSSION OF PROPOSED RULES

Rules relating to financial responsibility requirements are found at 35 Ill. Adm. Code 506.Subpart F. For the most part, the proposed rules amend Subpart F. In constructing these amendments, the Board has attempted, as suggested by the Agency (PC 2, PC 3), to follow the organization of the financial assurance rules for landfills found at 35 Ill. Adm. Code 807.Subpart F.

In this opinion the Board discusses each section of Subpart F in order. In several circumstances, however, the Board has found it necessary to amend sections from other subparts of Part 506 to ensure that the livestock waste regulatory program operates smoothly. Specifically, the Board has added definitions to Section 506.103 and several new provisions to Section 506.209, dealing with lagoon closure and ownership transfer. Proposed amendments to these sections are discussed in connection with Section 506.606.

Section 506.601: Scope, Applicability, And Definitions

Section 506.601 now includes, in addition to a statement of the scope of Subpart F, the date by which owners of registered lagoons are required to provide evidence of financial responsibility, and new definitions of “financial institution,” “level of surety,” and “surety instrument.”

Date of Applicability

The Department has noted that, with adoption of these rules, there will be at least three different effective dates for rules adopted to implement the LMFA: the effective date of the emergency rules, the effective date of the rules adopted under Docket A in this proceeding, and the effective date of these rules. Tr.2 at 8-9. In order to avoid confusion as to the date on which these rules will be effective, the Department has proposed that the following language be added to Section 506.601: “This Subpart shall apply only to the owners of new or modified lagoons registered under Subpart B of this Part after the effective date of rules adopted in R97-15(B) at [##] Ill. Reg. [#####], effective [DATE], 1998.” Ex. 7. This language means that only lagoons registered after the effective date of these rules need provide evidence of financial responsibility for closing the lagoons.

The Board agrees with the Department that the effective date of these rules must be explicit, but concludes that the Department’s proposed language improperly excludes lagoons registered prior to the adoption of these rules. Under Section 17 of the LMFA, all owners of new or modified lagoons registered under the LMFA are required to provide and maintain evidence of financial responsibility for lagoon closure. Section 17 contemplated that the financial responsibility standards would be established after the effective date of the LMFA. We do not read Section 17 to release owners of new or modified lagoons registered prior to the effective date of these rules from the financial responsibility requirements. The effective date of the rules is not, therefore, significant in determining which lagoons are subject to these rules.

However, to provide lagoon owners with time to obtain one of the listed surety instruments in order to comply with the LMFA and these rules, the Board has included a future date certain by which compliance must be demonstrated. Subsection (b) to Section 506.601 provides that lagoon owners will have at least 180 days from the effective date of the rules adopted under this docket B to provide evidence of financial responsibility for lagoon closure.

Definitions

The definitions in Section 506.601 have been added to provide convenient shorthand for use in subsequent sections of Subpart F. “Surety instrument” is a generic term for any of the mechanisms available under Section 17 of the LMFA. “Financial institution” is a generic term for the issuer of a surety instrument (other than a certificate of deposit or designated savings account). “Level of surety” is defined as the amount calculated under the formula set forth in Section 506.603 of the proposed rules.

Section 506.602: Mechanisms For Providing Evidence Of Financial Responsibility

List of Financial Responsibility Mechanisms

Section 506.602(a) enumerates the mechanisms by which a lagoon owner may provide evidence of financial responsibility for lagoon closure. As proposed, Section 506.602 initially

listed only five mechanisms (506.602(a)(1)-(5)). In their public comments and testimony, the Farm Groups sought the inclusion of an additional mechanism for compliance with the requirements of Section 17, namely, participation in a livestock waste lagoon closure fund to be administered by the Illinois Farm Development Authority. See PC 1, 9; Tr.1 at 55 *et seq.*; Tr.2 at 44 *et seq.*; Ex. 5, 6, 10, 10A, 11, 12. This option was not included in the original version of the LFMA, but P.A. 90-565 amended the LMFA (effective June 1, 1998) to add a sixth mechanism to Section 17: “Participation in a livestock waste lagoon closure fund managed by the Illinois Farm Development Authority.” This new mechanism has been added to the list in Section 506.602(a).

Term of Coverage

The Board has included as subsection (b) to Section 506.602 a rule which establishes the length of time for which financial responsibility must be evidenced. Initially, the term of any surety instrument must be at least three years. At least two years prior to the expiration date of a surety instrument, the owner must provide evidence that the period of effective coverage has been extended for at least an additional year. This requirement ensures that at no time will a lagoon be covered for a period of less than two years. Thus, even under a worst-case scenario, there will still be coverage available at the point when the Department is authorized under these rules to call upon a surety instrument. Thus, the two-year time frame for closure under Section 15(e) of the LMFA can be met.

Change in Ownership

Section 506.602(c) of the proposed rules is substantively the same as Section 506.602(b) of the Department’s proposal. As proposed by the Department, when title to property is transferred, the new owner is responsible for establishing and maintaining evidence of financial responsibility. The Board has only added language to clarify the applicability of this section.

The Agency suggested that this Section repeat the 30 day notification deadline of Section 15(e) of the LMFA for a new owner to inform the Department of a change in ownership. PC 3 at 2. This requirement is already contained in the rules at Section 506.209(b) (renumbered 506.209(c) in the proposed rules). We do not therefore repeat it here.

Validity of Financial Instrument

The Agency has suggested that Section 506.602(c) of the Department’s proposal (now Section 506.602(d)) be amended to clarify that the lagoon owner needs to ensure the validity of only those financial instruments used by the lagoon owner rather than the entire list. The Board has amended the language of Section 506.602(d) to make this clarification. The Board questions, however, whether this subsection imposes any duty or liability on a lagoon owner to which a lagoon owner is not already subject under the LMFA or other provisions of Part 506. Interested persons are asked to comment on the necessity of this subsection.

Other Provisions

Subsections (e) and (f) of Section 506.602 of the Department's proposal concerned use of multiple surety instruments. This subject is addressed by Section 506.607 of the proposed rules, discussed below.

Section 506.603: Level Of Surety

Section 506.603 of the proposed rules replaces the current recitation of the requirements of Section 17 with a formula for computing the level of surety for a given lagoon. This formula is taken from the Department's proposal.

The Department's proposal sets the level of surety for lagoons subject to Section 17 at 10¢/ft³. The Department bases this amount on estimates from firms engaged in the services required to close a lagoon. Ex. 1 at 3. The Farm Groups conducted their own analysis, and determined, based on a 2,000,000 gallon lagoon, that closure requires expenditures of 1.5¢/gal. PC 1 at 5. The Farm Groups also noted that there are fixed costs associated with closure which are not based on volumetric capacity, and therefore proposed that the level of surety be set as follows:

The level of surety required shall be \$15,000 for any lagoon registered under the LMFA with a design capacity of 1,000,000 gallons or less and an additional \$1,500 per each 100,000 gallons designed capacity or part thereof over the 1,000,000 gallons.

Given the legislative mandate that the level of surety be based on volumetric capacity (see Section 17 of the LMFA), as well as the lack of evidence regarding fixed costs associated with closure, the Board has not adopted a minimum level of surety. Interested persons are invited to comment on (a) whether the Board may adopt such a provision in light of the mandate of Section 17, and (b) if permissible, the level at which the minimum level of surety should be set.

The Department noted that the 10¢/ft³ cost factor was an average, and that it might cost more than that to actually close a lagoon. The Department assumed that these extra costs could be recovered from sale of manure or sale of the land on which the lagoon sits. Tr.1 at 10-11. The Department's proposal, however, predicated liability on lagoon ownership being transferred to a local unit of government. The Board has not included this condition in the proposed rules. (This issue is discussed in detail under Section 506.606 below.) Interested persons are invited to comment on whether the cost factor should be adjusted in light of this change.

The Department's proposal required the Department to conduct a review of the cost factor in time for any rule changes to be effective by January 1, 2008. The Department is certainly encouraged to evaluate cost factors and propose amendments to the rules where appropriate. The Board does not, however, find it necessary or appropriate to require such a review in a rule.

Section 506.604: Upgrading Surety Instrument

Deputy Director Chet Boruff of the Department testified that there should be flexibility in the rule to change the amount of surety required if part of a facility is closed. Tr.1 at 23-24. The Board has added Section 506.604, which provides that the level of surety may be recalculated when the volumetric capacity of a lagoon changes. When the capacity of a lagoon increases (or the cost factor increases), an owner is required to increase the amount of surety within 90 days of the change. When the capacity of a lagoon decreases, the owner may submit documentation of the change to the Department. If the owner does so, the Department must within 90 days of the owner's submission either release surety above the level of surety as calculated after the reduction in capacity, or conduct an inspection to determine the decrease in capacity. If the Department chooses to conduct an inspection, then it must subsequently release any surety above the level of surety as calculated based on the results of the inspection.

Section 506.605: Release of Lagoon Owner and Financial Institution

Section 506.605 sets forth the conditions under which an owner will be released from the obligation to maintain evidence of financial responsibility under Part 506, as well as the conditions under which a financial institution will be released from its obligations under a surety instrument. This section is based on Section 506.604 of the Department's proposal, although it has been organized differently. The Board has added language to subsection (a) to clarify that upon a sale of property with a lagoon, the surety will be released when the new owner has posted surety in accordance with Section 17. Mr. Boruff testified that this was the intended operation of this section. Tr.1 at 34, 40.

The Agency suggested that release of the requirement to maintain the surety instrument should be provided in writing to the owner within the same time frame as the Department's post-closure inspection and issuance of the written notice of closure completion pursuant to Section 506.209(a)(3).⁴ The Department suggested a sixty-day time frame for notification of a release. See Tr.1 at 41; Tr.2 at 9-10. In response to these suggestions the Board has added subsection 506.605(c).

Section 506.606: Financial Responsibility Proceeds

Overview

Under Section 506.606(a) of the proposed rules, a financial institution becomes liable on a surety instrument when a lagoon is removed from service and the owner fails in one of the following three respects to meet closure requirements:

- 1) The owner fails to file a closure plan as required under Section 506.209 and either cannot be found or does not cure the omission upon notice from the Department;

⁴ Under the proposed rules, Section 506.209(a)(3) is renumbered 506.209(a)(4). Proposed changes to Section 506.209 are discussed with Section 506.606 below.

- 2) The owner fails to obtain approval of a closure plan within one year from the time the lagoon is removed from service, unless the lagoon is maintained or serviced; or
- 3) The owner fails to comply with an approved closure plan and either cannot be found or does not cure noncompliance upon notice from the Department.

Under Section 506.606(b), the Department provides a notice of liability to the financial institution when one of the conditions in Section 506.606(a) is met. Once the financial institution is notified of its liability, the proposed rules require the financial institution, within 30 days, to deposit the proceeds of the surety instrument into an account upon which the Department is authorized to draw for closure costs.

However, a financial institution is given the opportunity to control the expenditure of its funds. To do so, the financial institution must assume full responsibility for closure of a lagoon. A financial institution exercising this option must submit a closure plan as required under Section 506.209 and undertake closure in accordance with an approved plan. Thus, the financial institution would control the expenditure of funds but would lose the limitation on its liability. In other words, if completing closure costs more than the level of surety, the financial institution is nevertheless responsible for completing all closure requirements.

Furthermore, once the financial institution has assumed responsibility for closure, the financial institution remains potentially liable for up to the level of surety until closure is certified by the Department as described in Section 506.209. This means that if a closure plan is either not filed, not approved within one year (unless the lagoon is maintained or serviced), or not followed after approval, the financial institution has not fulfilled its obligation and is therefore once again liable under the surety instrument. In that event, amounts expended by the financial institution in service, maintenance or partial closure are not deducted from the amount of liability. Such activities may, however, reduce the costs incurred by the Department to complete closure, and thus increase the dollar amount released to the financial institution upon completion of closure by the Department.

Transfer of Title to a Unit of Local Government

The Department's proposal required that a lagoon be both abandoned and transferred to a unit of local government before surety liability would attach. In PC 3, the Agency raised several objections to this condition. The Agency pointed out that under Section 15(e) of the LMFA and Section 506.209, closure is to be completed within two years of the lagoon being removed from service. The Agency also noted that the term "abandoned" was not defined so as to connect it to the concept used in the LMFA ("removed from service"). Furthermore, as the Agency points out, the transfer of title to lagoons to units of local government occurs neither automatically nor promptly. PC 3 at 3. As a result, if devolution of liability to a unit of local government is a prerequisite to surety liability, then a surety may never become liable, much less within the two-year time limit set by the statute.

The Board concludes that requiring a lagoon to be transferred to a unit of local government as a precondition to surety liability would render the financial responsibility rules ineffective in bringing about the requirements of Section 17. A surety instrument so conditioned would not be “evidence of financial responsibility to provide for the closure of the lagoons and the proper disposal of their contents within the time provisions outlined in [the LMFA]” (emphasis added). The Board accordingly has removed this requirement from the proposed rules.

The Department has introduced statements of legislative intent which suggest that the addition of the financial responsibility requirements was motivated by concern for taxpayers and a desire to prevent a situation where taxpayers would have to pay for closure. Ex. 2; Ex. 8. To fulfill that purpose, the lagoon need not devolve to a unit of local government. The statutory two-year limit on closure, coupled with the proposed three year term for surety instruments, acts to insulate taxpayers from having to pay for lagoon closure. The Board concludes that to apply the restrictions proposed by the Department would undercut the statutory time limits for closure set forth in Section 15 and incorporated in Section 17 of the LMFA.

Amendments to Section 506.209 and 506.103

“Removed from Service”

Farm Group Proposal. The chain of events which may ultimately result in surety liability for closure of a lagoon begins when a lagoon is “removed from service.” The rules governing surety liability must therefore define when this occurs. The Farm Groups suggested the following conditions under which a lagoon would be considered “removed from service”:

- a) A registered lagoon shall be considered removed from service when one of the following occurs:
 - 1) Such lagoon no longer receives livestock waste and the lagoon is not being maintained or serviced;
 - 2) The Department has issued its final administrative decision denying a waiver for an alternate use;
 - 3) In the case of a bankruptcy proceeding, the court has issued a final order and the lagoon is no longer being maintained or serviced; [or]
 - 4) A court of competent jurisdiction determines such lagoon should be removed from service.
- b) The IDOA shall notify the surety when a registered lagoon is removed from service. PC 1 at 6-7.

The Farm Groups have also suggested the following conditions under which a lagoon would be required to be closed:

- a) A registered lagoon shall be required to be closed when one of the following occurs:
 - 1) The owner or operator of the lagoon determines that such lagoon is to be closed.
 - 2) The lagoon has been declared abandoned and no legal owner or responsible person has been determined to exist or no person will purchase or assume legal responsibility for servicing and maintaining the lagoon; [or]
 - 3) The lagoon is ordered closed by a court of competent jurisdiction.
- b) The IDOA shall notify the surety when a registered lagoon is required to be closed. PC 1 at 7.

As noted, Section 15 of the LMFA requires that a lagoon be closed when it is removed from service. Thus, there should be no distinction between conditions under which a lagoon is removed from service and conditions under which the lagoon is to be closed. The Board has combined a number of the conditions suggested by the Farm Groups in PC 1 into one subsection setting forth the conditions under which a lagoon is considered removed from service (and consequently must be closed). They are:

- 1) The lagoon no longer receives livestock waste and the lagoon is not being maintained or serviced;
- 2) The Department has issued its final administrative decision denying a waiver for an alternate use;
- 3) A tribunal of competent jurisdiction determines such lagoon should be removed from service; or
- 4) The owner or operator of the lagoon determines that the lagoon is to be closed.

These conditions are set forth in a new Section 506.209(b), items (2), (3), (5), and (6) respectively, in the proposed rules.⁵

Additional Conditions. The Board has added two additional conditions under which a lagoon will be considered removed from service. Under proposed Section 506.209(b)(1), a lagoon is considered removed from service when the Department orders it removed from

⁵ Former subsection 506.209(b) has been renumbered 506.209(c).

service under proposed Section 506.620. Under proposed Section 506.209(b)(4), a lagoon is considered removed from service when the owner fails to extend the term for which evidence of financial responsibility is shown as required in proposed Section 506.602(b). This provision has been added to ensure that even if an owner fails to maintain evidence of financial responsibility as required by Section 17, the lagoon can be closed before the existing surety instrument lapses. Without such a provision, a situation could arise where, at the time the lagoon is to be closed, there would be no source of funds to pay for closure.

Conditions Not Included. The Board has not included all the conditions suggested by the Farm Groups. For the following reasons, there is no bankruptcy-specific provision in the proposed rules, nor a provision predicating closure on abandonment of a lagoon.

Bankruptcy. A bankruptcy will not necessarily result in the need to remove a lagoon from service. Where a lagoon at a facility in bankruptcy is removed from service for other reasons, there is no reason to limit the Department's ability to act to close the lagoon until a final order has been entered in the bankruptcy case. Indeed, in the case of a proceeding under chapter 11 of the Bankruptcy Code (11 U.S.C. §§ 101 *et seq.*), entry of a final order may not occur for years; imposing such a regulatory limitation on the Department's ability to act would undercut the statutory time limit for lagoon closure.

Abandonment. The concept of abandonment appears nowhere in Section 15 or 17 of the LMFA. Obviously a lagoon which has been abandoned (as that term is generally understood) should be closed, but any abandoned lagoon will fall into one of the other categories of lagoons considered removed from service pursuant to Section 506.209(b). The Board consequently does not find it necessary to include the concept of abandonment in these rules in order to accomplish the purposes of the LMFA.

Idle Lagoons.

At the hearing, the Pork Producers addressed idle lagoons. The Pork Producers advocate that a lagoon should not be considered removed from service just because it is not receiving waste, as long as it is being maintained or serviced. The Pork Producers explained that market forces or personal finances may cause operations at a facility to be suspended from time to time. Tr.1 at 52-53. Whether an idle lagoon is considered removed from service is addressed in proposed Section 506.209(b)(3). That section provides that a lagoon is considered removed from service when "[t]he lagoon no longer receives livestock waste and the lagoon is not being maintained or serviced." Therefore, under the proposed rules a lagoon can remain idle as long as it is maintained or serviced. Interested persons are invited to comment on whether the final rules should specify a maximum time that a lagoon can remain idle before being presumed removed from service.

Definitions of "Maintained" and "Serviced".

The addition of Section 506.209(b)(3) requires definitions of "maintained" and "serviced." These definitions have been added to Section 506.103. Under the proposed definitions, a lagoon is "maintained" when actions are taken to prevent deterioration; a lagoon

is “serviced” when actions are taken to repair damage which may have occurred. These definitions are based in part on a proposal of the Farm Groups, Ex. 10A at 3, ¶ (b)(2)(G).

Other Amendments to Section 506.209.

Currently Section 506.209(a) requires that the owner of a lagoon removed from service submit a lagoon closure plan to the Department. In this rulemaking, the Board is adding provisions to that Section to require the owner or operator to notify the Department when a lagoon is removed from service, and to require that the lagoon closure plan be submitted within 60 days of the lagoon being removed from service. Section 506.209(a) is also being amended to provide that if the closure plan is not submitted within this time, the Department must send the owner a notice of default. These three new provisions are necessary to ensure that the lagoon will be closed within the two year time period specified in Section 15(e) of the LMFA. That two year time period begins on the date specified in the notice that the lagoon was removed from service.

With the date on which the lagoon was removed from service identified in this way, all parties concerned can determine at what point in time their obligations must be met. They will know exactly when the closure plan is due, *i.e.*, within 60 days of the notice date. They will know that if it is not filed within that time, the Department will send a notice of default. They will also know that pursuant to Section 506.606(a) the owner or operator has 30 days to cure the default. Finally, they will know that if the owner or operator fails to cure the default within that time period, surety liability is triggered. In the event of such a default, the financial institution’s obligations are contained in Section 505.606(b). For example, the financial institution then has 30 days from the date it is notified by the Department of such a default to either assume liability for closure of the lagoon, or deposit the proceeds of the surety instrument into an account accessible to the Department for the purpose of closing the lagoon.

SECTION 506.607: USE OF MULTIPLE SURETY INSTRUMENTS

The Department proposed that lagoon owners be allowed to use multiple surety instruments to provide the evidence of financial responsibility; see Section 506.602(e) and (f) of the Department’s proposal. The Board has added Section 506.607 to the proposed rules, with additional language to address the term of a replacement financial instrument.

SECTION 506.608: USE OF A SURETY INSTRUMENT FOR MULTIPLE SITES

The Agency suggested including a provision to allow a single financial mechanism to demonstrate financial assurance for multiple facilities, much like the regulations governing landfill financial assurance allow. The Board has added Section 506.208 to the proposed rules for this purpose. Section 506.108 is based on 35 Ill. Adm. Code 807.642.

CRITERIA FOR SURETY INSTRUMENTS

Insurance, Guarantee, Surety Bond, and Letter of Credit

Sections 506.610, 611, 612, and 613 of the proposed rules set forth the criteria which must be met by a commercial or private insurance policy, a guarantee, a surety bond, or a letter of credit, respectively, in order to provide evidence of financial responsibility. These sections are based on Sections 506.606, 607, 608, and 609 of the Department's proposal, with modifications reflecting the other provisions added by the Board. Section 506.612 also includes concepts from 35 Ill. Adm. Code 807.662. Appendix A to Part 506 includes a form bond and a form letter of credit for use under Sections 506.612 and 613.

Section 506.614: Certificate Of Deposit Or Designated Savings Account

Section 506.614 of the proposed rules sets forth criteria and procedures for use of one or more certificates of deposit or savings accounts to evidence financial responsibility. The Director of the Department must be listed as the trustee of the certificate or account. The Department may draw on the certificate or savings account when any of the conditions under which a financial institution would become liable under Section 506.606 is met.

The definition of "financial institution" under Section 506.601 of the proposed rules does not include a depository bank or depositor utilizing a certificate of deposit or designated savings account as a surety instrument. In either case, neither the depositor nor the bank is a guarantor of an owner's obligation. Accordingly, the rules at Section 506.606 which govern how to access the other surety instruments do not apply to certificates of deposit or savings accounts. Instead, the conditions under which the Department may draw upon these instruments are set out in Section 506.614(c). Likewise, the conditions under which the Department will relinquish trusteeship of a certificate or account are set forth in Section 506.614(f). Certificates of deposit and savings accounts are also not subject to the three year term requirements of Section 506.602(b) of the proposed rules. Instead, upon maturity of a certificate of deposit, the certificate must be renewed or the proceeds deposited into a savings account that meets the requirements of Section 506.614.

Section 506.615: Participation in a Livestock Waste Lagoon Closure Fund

The Farm Groups wanted lagoon operators to be able to self-insure. Towards that end, they submitted very detailed proposed language providing for a lagoon closure fund. Ex. 10A, as modified by PC 9.

The Farm Groups proposed that the fund be administered by the Department and the Illinois Farm Development Authority. The Farm Groups' proposal includes primarily the terms of the agreements between the closure fund and its participants, or between the Department and the Illinois Farm Development Authority. These details are most helpful, but because the LMFA has now been amended to allow financial responsibility to be demonstrated

by participation in a lagoon closure fund, they are not necessary as part of the livestock rules. Instead, the rules need only to ensure that the lagoon closure fund has sufficient reserves at all times to close lagoons covered by the fund which have been removed from service.

As long as the fund meets certain minimum criteria, specific provisions of the contractual relationships between the parties involved need not be mandated by rule. Provisions of this contractual nature include whether and to what extent agricultural associations are involved in the lagoon closure fund, whether the Department and the Illinois Farm Development Authority enter into a memorandum of understanding, whether or under what circumstances a lien arises on the property underlying the lagoon, the meaning of terms used in any agreement, investment of funds deposited into the fund, whether and under what circumstances money from the fund can be used for purposes other than lagoon closure, the method used to determine the amount required of a particular participant to obtain coverage from the fund, conditions under which interest or refunds will be paid to participants, and internal management of the fund. The Board accordingly has not included provisions addressing any of these subjects in the proposed rules.

In setting the minimum requirements the fund must meet, the Board has set a minimum reserve level of either twice the average surety level of participants or the surety level of the largest participant. This is based upon paragraph (b)(9)(C)(ii) of the Farm Groups' proposal. Ex. 10A at 6. The Board did not adopt the alternate calculation proposed by the Farm Groups—not less than 2% nor more than 5% of the level of surety of each participant—because such a calculation does not ensure that there will be sufficient money in the fund if called upon to cover closure of a lagoon. In order to be sure that sufficient funds are on hand for closure of even an average sized lagoon, there would need to be a minimum of from 20 (at the high end of the contribution range) to 50 (at the low end) participants in the fund, and more than that to close an above-average sized lagoon. Without restrictions on the minimum number of participants in the fund (and the Board does not believe such restriction is appropriate), the Board concludes that a fixed minimum reserve level is necessary.

Under the Farm Groups' proposal (Ex. 10A at 6, ¶ (b)(9)(E)), the balance of the fund could drop to 75% of the fund level set by its formula before members would be called upon to make up the shortfall by additional assessments. The Board has not included this provision because, again, to do so would allow the possibility that lagoon closure would be required and the fund would not have sufficient funds to meet its requirements.

The proposed rules also require an unconditional guarantee by the fund to pay closure costs as required under Section 506.606. The fund may not limit its liability to the available fund balance, as paragraph (b)(9)(G) of the Farm Groups' proposal would provide. Ex. 10A at 6. The fund will become liable under the same circumstances as any other financial institution, in accordance with Section 506.606.

Section 506.620: Penalties

Section 506.620 provides that the Department may order a lagoon removed from service where the owner fails to provide evidence of financial responsibility to the Department or fails to maintain evidence of financial responsibility at the level of surety. This section is based on Section 506.611 of the Department's proposal. This provision should not be interpreted to obviate in any way an owner's obligation to maintain evidence of financial responsibility for the time periods required in Section 506.602(b) of the proposed rules or the Department's obligations under Section 506.606(b).

RESOLUTION OF DISPUTES

The Department's proposal contained no provision for resolution of disputes between the Department and an owner. In PC 3, the Agency suggested that this topic be addressed at the hearings, PC 3 at 5, but no testimony was offered on this issue. The Board has not added any provision regarding resolution of disputes between the Department and an owner, but invites comments by interested persons regarding such a provision.

ORDER

The Board directs the clerk to cause the filing of the following proposal for first notice in the *Illinois Register*:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE E: AGRICULTURE RELATED POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 506
LIVESTOCK WASTE REGULATIONS

SUBPART A: GENERAL PROVISIONS

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SUBPART B: STANDARDS FOR LIVESTOCK WASTE LAGOONS

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506.203	Registration
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506.207	Certification of Construction
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506.306	Adjustments to Nitrogen Availability
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SUBPART D: CERTIFIED LIVESTOCK MANAGER

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506.401	Applicability

SUBPART E: PENALTIES

Section	
506.501	General

SUBPART F: FINANCIAL RESPONSIBILITY

Section	
506.601	<u>Scope, Applicability, and Definitions</u>
506.602	<u>Mechanisms for Providing Evidence of Financial Responsibility</u>
506.603	Level of Surety
506.604	<u>Upgrading Surety Instrument</u>
506.605	<u>Release of Lagoon Owner and Financial Institution</u>
506.606	<u>Application of Proceeds</u>

<u>506.607</u>	<u>Use of Multiple Surety Instruments</u>
<u>506.608</u>	<u>Use of a Surety Instrument for Multiple Lagoons</u>
<u>506.610</u>	<u>Commercial or Private Insurance</u>
<u>506.611</u>	<u>Guarantee</u>
<u>506.612</u>	<u>Surety Bond</u>
<u>506.613</u>	<u>Letter of Credit</u>
<u>506.614</u>	<u>Certificate of Deposit or Designated Savings Account</u>
<u>506.615</u>	<u>Participation in a Livestock Waste Lagoon Closure Fund</u>
<u>506.620</u>	<u>Penalties</u>

SUBPART G: SETBACKS

Section	
506.701	Applicability
506.702	Procedures
506.703	Initial Determination of Setbacks
506.704	Penalties

APPENDIX A Surety Instruments

ILLUSTRATION A Surety Bond

ILLUSTRATION B Irrevocable Standby Letter of Credit

AUTHORITY: Authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/27] and Section 55 of the Livestock Management Facilities Act and implementing the Livestock Management Facilities Act (see P.A. 89-456, effective May 21, 1996 [510 ILCS 77/1]).

SOURCE: Adopted in R97-15(A) at 21 Ill. Reg. 6551, effective May 20, 1997; amended in R97-15(B) at 22 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 506.103 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part shall be the same as that applied to the same words or terms in the Environmental Protection Act [415 ILCS 5] or the Livestock Management Facilities Act [510 ILCS 77]. For the purposes of this Part, the terms included herein shall have their associated meaning as follows:

“AGENCY” MEANS THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY. [510 ILCS 77/10.5]

“ANIMAL FEEDING OPERATION” MEANS A FEEDING OPERATION AS DEFINED IN THE ILLINOIS ENVIRONMENTAL PROTECTION ACT AND THE

RULES PROMULGATED UNDER THAT ACT CONCERNING AGRICULTURE
RELATED POLLUTION. [510 ILCS 77/10.7]

“ANIMAL UNIT” MEANS A UNIT OF MEASUREMENT FOR ANY ANIMAL
FEEDING OPERATION CALCULATED AS FOLLOWS:

BROOD COWS AND SLAUGHTER AND FEEDER CATTLE
MULTIPLIED BY 1.0.

MILKING DAIRY COWS MULTIPLIED BY 1.4.

YOUNG DAIRY STOCK MULTIPLIED BY 0.6.

SWINE WEIGHING OVER 55 POUNDS MULTIPLIED BY 0.4.

SWINE WEIGHING UNDER 55 POUNDS MULTIPLIED BY 0.03.

SHEEP, LAMBS, OR GOATS MULTIPLIED BY 0.1.

HORSES MULTIPLIED BY 2.0.

TURKEYS MULTIPLIED BY 0.02.

LAYING HENS OR BROILERS MULTIPLIED BY 0.01 (IF THE
FACILITY HAS CONTINUOUS OVERFLOW WATERING).

LAYING HENS OR BROILERS MULTIPLIED BY 0.03 (IF THE
FACILITY HAS A LIQUID MANURE HANDLING SYSTEM).

DUCKS MULTIPLIED BY 0.02. [510 ILCS 77/10.10]

“Aquifer material” means sandstone which is five feet or more in thickness, or fractured carbonate which is ten feet or more in thickness; or, sand, gravel, or sand and gravel, as defined herein, such that there is at least two feet or more present within any five foot section of a soil boring performed in accordance with Section 506.202 of this Part.

“CERTIFIED LIVESTOCK MANAGER” MEANS A PERSON THAT HAS BEEN
DULY CERTIFIED BY THE DEPARTMENT AS AN OPERATOR OF A
LIVESTOCK WASTE HANDLING FACILITY. [510 ILCS 77/10.15]

“DEPARTMENT” MEANS THE ILLINOIS DEPARTMENT OF AGRICULTURE.
[510 ILCS 77/10.20]

“FARM RESIDENCE” MEANS ANY RESIDENCE ON A FARM OWNED OR OCCUPIED BY THE FARM OWNERS, OPERATORS, TENANTS, OR SEASONAL OR YEAR-ROUND HIRED WORKERS. FOR PURPOSES OF THIS DEFINITION, A “FARM” IS THE LAND, BUILDINGS, AND MACHINERY USED IN THE COMMERCIAL PRODUCTION OF FARM PRODUCTS, AND "FARM PRODUCTS" ARE THOSE PLANTS AND ANIMALS AND THEIR PRODUCTS WHICH ARE PRODUCED OR RAISED FOR COMMERCIAL PURPOSES AND INCLUDE BUT ARE NOT LIMITED TO FORAGES AND SOD CROPS, GRAINS AND FEED CROPS, DAIRY AND DAIRY PRODUCTS, POULTRY AND POULTRY PRODUCTS, LIVESTOCK, FRUITS, VEGETABLES, FLOWERS, SEEDS, GRASSES, TREES, FISH, HONEY AND OTHER SIMILAR PRODUCTS, OR ANY OTHER PLANT, ANIMAL, OR PLANT OR ANIMAL PRODUCT WHICH SUPPLIES PEOPLE WITH FOOD, FEED, FIBER, OR FUR. [510 ILCS 77/10.23]

“Gravel” or “Sand and gravel” means unconsolidated materials that contain a matrix (particles of two millimeters or less) that is consistent with the definition of “sand” and particles larger than two millimeters in size.

“LAGOON” or “Earthen livestock waste lagoon” MEANS ANY EXCAVATED, DIKED, OR WALLED STRUCTURE OR COMBINATION OF STRUCTURES DESIGNED FOR BIOLOGICAL STABILIZATION AND STORAGE OF LIVESTOCK WASTES. A LAGOON DOES NOT INCLUDE STRUCTURES SUCH AS MANUFACTURED SLURRY STORAGE STRUCTURES OR PITS UNDER BUILDINGS AS DEFINED IN RULES UNDER THE ENVIRONMENTAL PROTECTION ACT CONCERNING AGRICULTURE RELATED POLLUTION. [510 ILCS 77/10.25]

“LICENSED PROFESSIONAL ENGINEER” MEANS A PERSON, CORPORATION OR PARTNERSHIP LICENSED UNDER THE LAWS OF THE STATE OF ILLINOIS TO PRACTICE PROFESSIONAL ENGINEERING. [415 ILCS 5/57.2]

“LICENSED PROFESSIONAL GEOLOGIST” MEANS AN INDIVIDUAL WHO IS LICENSED UNDER the laws of the State of Illinois TO ENGAGE IN THE PRACTICE OF PROFESSIONAL GEOLOGY IN ILLINOIS. [225 ILCS 745/15]

“LIVESTOCK MANAGEMENT FACILITY” MEANS ANY ANIMAL FEEDING OPERATION, LIVESTOCK SHELTER, OR ON-FARM MILKING AND ACCOMPANYING MILK-HANDLING AREA. TWO OR MORE LIVESTOCK MANAGEMENT FACILITIES UNDER COMMON OWNERSHIP, WHERE THE FACILITIES ARE NOT SEPARATED BY A MINIMUM DISTANCE OF 1/4 MILE, AND THAT SHARE A COMMON LIVESTOCK WASTE HANDLING FACILITY SHALL BE CONSIDERED A SINGLE LIVESTOCK MANAGEMENT FACILITY. LIVESTOCK MANAGEMENT Facilities AT EDUCATIONAL INSTITUTIONS, LIVESTOCK PASTURE OPERATIONS, facilities WHERE ANIMALS ARE

HOUSED ON A TEMPORARY BASIS SUCH AS COUNTY AND STATE FAIRS, LIVESTOCK SHOWS, RACE TRACKS, AND HORSE BREEDING AND FOALING FARMS, AND MARKET HOLDING FACILITIES ARE NOT SUBJECT TO THE Livestock Management Facilities Act or the requirements of this Part. [510 ILCS 77/10.30]

“LIVESTOCK WASTE” MEANS LIVESTOCK EXCRETA AND ASSOCIATED LOSSES, BEDDING, WASH WATERS, SPRINKLING WATERS FROM LIVESTOCK COOLING, PRECIPITATION POLLUTED BY FALLING ON OR FLOWING ONTO AN ANIMAL FEEDING OPERATION, AND OTHER MATERIALS POLLUTED BY LIVESTOCK. [510 ILCS 77/10.35]

“LIVESTOCK WASTE HANDLING FACILITY” MEANS INDIVIDUALLY OR COLLECTIVELY THOSE IMMOVABLE CONSTRUCTIONS OR DEVICES, EXCEPT SEWERS, USED FOR COLLECTING, PUMPING, TREATING, OR DISPOSING OF LIVESTOCK WASTE OR FOR THE RECOVERY OF BY-PRODUCTS FROM THE LIVESTOCK WASTE. TWO OR MORE LIVESTOCK WASTE HANDLING FACILITIES UNDER COMMON OWNERSHIP AND WHERE THE FACILITIES ARE NOT SEPARATED BY A MINIMUM DISTANCE OF 1/4 MILE SHALL BE CONSIDERED A SINGLE LIVESTOCK WASTE HANDLING FACILITY. [510 ILCS 77/10.40]

“Maintained” means, with reference to a livestock waste lagoon, that the livestock waste lagoon is inspected (including but not limited to inspection for burrow holes, trees and woody vegetation, proper freeboard, erosion, settling of berm, berm top integrity, leaks, and seepage) and preventive action is taken as necessary to assure the integrity of the lagoon and its berm and associated appurtenances.

“MODIFIED” MEANS STRUCTURAL CHANGES TO A LAGOON THAT INCREASE ITS VOLUMETRIC CAPACITY. [510 ILCS 77/10.43]

“NEW FACILITY” MEANS A LIVESTOCK MANAGEMENT FACILITY OR A LIVESTOCK WASTE HANDLING FACILITY THE CONSTRUCTION OR EXPANSION OF WHICH IS COMMENCED ON OR AFTER May 21, 1996 (THE EFFECTIVE DATE OF THE Livestock Management Facilities ACT). EXPANDING A FACILITY WHERE THE FIXED CAPITAL COST OF THE NEW COMPONENTS CONSTRUCTED WITHIN A 2-YEAR PERIOD DOES NOT EXCEED 50% OF THE FIXED CAPITAL COST OF A COMPARABLE ENTIRELY NEW FACILITY SHALL NOT BE DEEMED A NEW FACILITY AS USED IN THE Livestock Management Facilities ACT. [510 ILCS 77/10.45]

“NON-FARM RESIDENCE” MEANS ANY RESIDENCE WHICH IS NOT A FARM RESIDENCE. [510 ILCS 77/10.47]

“Occupied residence” means a house or other type of shelter that is intended or used for human occupancy and has been occupied by humans for more than a total of six months in the last two years at that location. For the purposes of this definition, “intended or used for human occupancy” means running water and sanitation are provided within the residence.

“OWNER OR OPERATOR” MEANS ANY PERSON WHO OWNS, LEASES, CONTROLS, OR SUPERVISES A LIVESTOCK MANAGEMENT FACILITY OR LIVESTOCK WASTE-HANDLING FACILITY. [510 ILCS 77/10.50]

“PERSON” MEANS ANY INDIVIDUAL, PARTNERSHIP, CO-PARTNERSHIP, FIRM, COMPANY, CORPORATION, ASSOCIATION, JOINT STOCK COMPANY, TRUST, ESTATE, POLITICAL SUBDIVISION, STATE AGENCY, OR ANY OTHER LEGAL ENTITY OR THEIR LEGAL REPRESENTATIVE, AGENT, OR ASSIGNS. [510 ILCS 77/10.55]

“Placed in service” means the placement of livestock waste in a livestock waste lagoon upon the completion of construction or modification in accordance with the requirements of this Part.

“POPULATED AREA” MEANS ANY AREA WHERE AT LEAST 10 INHABITED NON-FARM RESIDENCES ARE LOCATED OR WHERE AT LEAST 50 PERSONS FREQUENT A COMMON PLACE OF ASSEMBLY OR A NON-FARM BUSINESS AT LEAST ONCE PER WEEK. [510 ILCS 77/10.60] The existence of a populated area shall be determined by identifying the area around the livestock management or livestock waste handling facility delineated by a distance equal to the applicable setback distance and identifying the number of residences or the existence of a non-farm business or the existence of a common place of assembly within that area. For the purpose of setback requirements, common places of assembly or non-farm businesses include but are not limited to churches, hospitals, schools, day care centers, manufacturing companies, land managed for recreational or conservation purposes, museums, camps, parks, retail and wholesale facilities, and shopping centers. A common place of assembly or a non-farm business includes places that operate less than 52 weeks per year, such as schools with seasonal vacation periods and businesses or other places which experience seasonal shutdowns, and parks, camps, and recreational areas which experience seasonal shutdowns or reduced attendance during a portion of the calendar year, provided that such places are frequented by at least 50 persons at least once per week during the portions of the year when seasonal shutdowns or reductions in attendance do not occur.

“Residence” means a house or other structure, including all attachments to the house or structure, which is used as a place of human habitation.

“Sand” means unconsolidated materials, where 70% or more of the particles are of size 0.06 millimeters to 2.00 millimeters, and which according to the USDA soil texture

classification scheme includes soil textures of sand, and loamy sand, and portions of sandy loam and sandy clay loam.

“Serviced” means, with reference to a livestock waste lagoon, that corrective action is taken as necessary to assure the integrity of the lagoon and its berm and associated appurtenances, including but not limited to removal or repair of burrow holes, trees and woody vegetation, freeboard level, erosion, settling of berm, berm top maintenance, leaks, and seepage.

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

SUBPART B: STANDARDS FOR LIVESTOCK WASTE LAGOONS

Section 506.209 Lagoon Closure and Ownership Transfer

- a) WHEN ANY EARTHEN LIVESTOCK WASTE LAGOON IS REMOVED FROM SERVICE, IT SHALL BE COMPLETELY EMPTIED. APPROPRIATE CLOSURE PROCEDURES SHALL BE FOLLOWED AS DETERMINED BY the requirements of this Part. [510 ILCS 77/15(e)]
 - 1) In the event that any earthen livestock waste lagoon is ~~to be~~ removed from service, the requirements contained in Section 15(e) of the Livestock Management Facilities Act [510 ILCS 77/15(e)] shall be met. The owner or operator shall notify the Department in writing when a lagoon is removed from service. Within 60 days of removal of the lagoon from service, and the owner or operator shall submit a lagoon closure plan to the Department for review and approval. If no lagoon closure plan is received within 60 days, the Department shall send the lagoon owner a notice of default.
 - 2) The lagoon closure plan shall provide for the following:
 - A) The sampling, analysis and reporting of results of all remaining livestock waste, sludge and minimum six-inch thickness of soil from throughout the lagoon interior consistent with the requirements of Section 506.312 of this Part;
 - B) The removal of all remaining livestock waste including sludge, the removal of a minimum 6 inch thickness of soil from throughout the lagoon interior, and the application of these materials to crop land at agronomic rates consistent with the provisions of the site livestock waste management plan or their otherwise proper disposal;

- C) The removal of all associated appurtenances, including but not limited to transfer lines, ramps, pumping ports and other waste conveyance structures;
- D) The proper management of any impounded precipitation in the remaining excavation if it is not immediately filled and the area immediately returned to its pre-construction condition;
- E) The proper abandonment of any monitoring wells installed pursuant to Section 506.206 of this Part which shall be conducted pursuant to the Illinois Water Well Construction Code at 77 Ill. Adm. Code 920.120; and
- F) A proposed time frame for the completion of the closure activities which will be no greater than two years from the cessation of operation date unless the lagoon is maintained or serviced.

23) The Department shall review and approve, reject, or request additional information relative to the lagoon closure plan. THE DEPARTMENT MAY also GRANT A WAIVER TO any of THE BEFORE-STATED CLOSURE REQUIREMENTS THAT WILL PERMIT THE LAGOON TO BE USED FOR AN ALTERNATIVE PURPOSE. [510 ILCS 77/15(e)]

34) Upon completion of the lagoon closure activities as prescribed by the Department-approved closure plan, the owner or operator shall notify the Department to allow for post closure inspection. The Department shall conduct a site inspection and issue a written notification of closure completion or inform the owner or operator of any unresolved closure issues.

b) A lagoon is considered removed from service when:

- 1) The Department has ordered the lagoon removed from service under Section 506.620 of this Part;
- 2) A tribunal of competent jurisdiction has ordered the lagoon closed or ordered the owner or operator to cease operations;
- 3) The lagoon no longer receives livestock waste and the lagoon is not being serviced or maintained;
- 4) The owner fails to extend the term for which evidence of financial responsibility is shown as required in Section 506.602(b) of this Part;

- 5) The Department issues a final denial of a request to use a lagoon for an alternative purpose; or
- 6) The owner or operator informs the Department in accordance with subsection (a) of this Section that the lagoon has been removed from service.
- b)c) UPON A CHANGE IN THE OWNERSHIP OF A REGISTERED EARTHEN LIVESTOCK WASTE LAGOON, THE new OWNER SHALL NOTIFY, in writing, THE DEPARTMENT OF THE CHANGE WITHIN 30 WORKING DAYS OF THE CLOSING OF THE TRANSACTION. [510 ILCS 77/15(e)]

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

SUBPART F: FINANCIAL RESPONSIBILITY

Section 506.601 Scope, Applicability, and Definitions

- ~~a) OWNERS OF NEW OR MODIFIED LAGOONS REGISTERED UNDER THE PROVISIONS OF the Livestock Management Facilities Act [510 ILCS 77] SHALL ESTABLISH AND MAINTAIN EVIDENCE OF FINANCIAL RESPONSIBILITY TO PROVIDE FOR THE CLOSURE OF THE LAGOONS AND THE PROPER DISPOSAL OF THEIR CONTENTS WITHIN THE TIME PROVISIONS OUTLINED IN Section 17 of the Livestock Management Facilities Act. [510 ILCS 77/17]~~
- a) This Subpart provides procedures by which the owner of a new or modified livestock waste lagoon registered under the Livestock Management Facilities Act provides evidence of financial responsibility satisfying the requirements of Section 17 of the Livestock Management Facilities Act.
- b) Owners of lagoons must comply with the financial responsibility requirements of this Part either:
- 1) within 180 days after the date on which this provision becomes effective;
or
 - 2) before the lagoon is placed in service.
- c) Definitions:
- 1) “Financial institution” means:

- A) An insurer providing commercial or private insurance to evidence financial responsibility for lagoon closure in accordance with Section 506.610 of this Part;
- B) A guarantor providing a guarantee as evidence of financial responsibility for lagoon closure in accordance with Section 506.611 of this Part;
- C) The issuer of a surety bond as evidence of financial responsibility for lagoon closure in accordance with Section 506.612 of this Part;
- D) The issuer of a letter of credit as evidence of financial responsibility for lagoon closure in accordance with Section 506.613 of this Part; or
- E) The livestock waste lagoon closure fund managed by the Illinois Farm Development Authority which evidences financial responsibility for lagoon closure in accordance with Section 506.615 of this Part.
- 2) “Level of surety” means the level, calculated in accordance with Section 506.603 of this Part, at which evidence of financial responsibility must be provided.
- 3) “Surety instrument” means any of the devices listed in Section 506.602 of this Part by which a lagoon owner evidences financial responsibility for lagoon closure. Unless the context requires otherwise, “surety instrument” includes a combination of surety instruments.

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

Section 506.602 Evidence of Financial Responsibility

- a) FINANCIAL RESPONSIBILITY MAY BE EVIDENCED BY ANY COMBINATION OF THE FOLLOWING:
- 1) COMMERCIAL OR PRIVATE INSURANCE;
 - 2) GUARANTEE;
 - 3) SURETY BOND;
 - 4) LETTER OF CREDIT; ~~or~~

- 5) CERTIFICATE OF DEPOSIT OR DESIGNATED SAVINGS ACCOUNT; or-
- 6) PARTICIPATION IN A LIVESTOCK WASTE LAGOON CLOSURE FUND MANAGED BY THE ILLINOIS FARM DEVELOPMENT AUTHORITY. [510 ILCS 77/17]

- b) The lagoon owner must provide continuous coverage from the time the lagoon is placed in service until such time as the owner is released from the financial responsibility requirements pursuant to Section 506.605(a) of this Subpart. The initial term of any instrument (other than a certificate of deposit or designated savings account) utilized to fulfill the requirements of this Part must be at least three years. At least two years prior to the expiration date of such instrument, the owner must provide the Department with proof that the term of coverage has been extended for at least one additional year.
- cb) Upon a change in the ownership of a livestock management facility or livestock waste handling facility involving a lagoon which is subject to the financial responsibility requirements of this Subpart, the new owner must~~shall~~ establish and maintain evidence of financial responsibility at the same level of surety as the previous owner.
- d) The lagoon owner must ensure that the terms and conditions of the financial instrument(s) listed in subsection (a) of this Section upon which the owner relies are legally valid, binding, and enforceable under state and federal law.

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

Section 506.603 Level of Surety

~~THE LEVEL OF SURETY REQUIRED SHALL BE DETERMINED BY RULE AND BE BASED UPON THE VOLUMETRIC CAPACITY OF THE LAGOON. [510 ILCS 77/17]~~

- a) The level of surety is determined by the following formula:

$$\text{Level of Surety} = V \times CF$$

where:

V = Volume of the lagoon as constructed or modified in cubic feet, including the freeboard volume; and

CF = Cost factor determined pursuant to subsection (b) of this Section.

- b) The cost factor is obtained from the following:

- 1) From the effective date of this provision through December 31, 2002, the cost factor is ten cents (\$0.10) per cubic foot of lagoon volume.
- 2) From January 1, 2003 through December 31, 2007, the cost factor is twelve cents (\$0.12) per cubic foot of lagoon volume.
- 3) After January 1, 2008, the cost factor is fifteen cents (\$0.15) per cubic foot of lagoon volume.

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

Section 506.604 Upgrading Surety Instrument

- a) The owner of a lagoon must increase the total amount of surety in place so as to equal the level of surety as calculated within 90 days after:
 - 1) a modification resulting in an increase in the volume of the lagoon; or
 - 2) an increase in the cost factor under Section 506.603(b) of this Part.
- b) If modification of a lagoon result in a decrease in volumetric capacity, the owner or operator may provide the Department with documentation of the reduction in volumetric capacity and request a recalculation of the level of surety. Within 90 days after a request by the owner or operator under this subsection, the Department must either:
 - 1) release any surety amount above the level of surety as recalculated based upon the owner's documentation of reduction of volumetric capacity; or
 - 2) conduct an inspection and determine the amount by which volumetric capacity has been decreased.
- c) If the Department conducts an inspection under subsection (b), then the Department must release any surety amount above the level of surety as recalculated based upon the results of the inspection.

(Source: Added at ___ Ill. Reg. _____, effective _____)

Section 506.605 Release of Lagoon Owner and Financial Institution

- a) The Department must release a lagoon owner from the requirements of this Subpart when:

- 1) The lagoon has been properly closed and a notification of closure completion pursuant to Section 506.209 of this Part has been issued to the lagoon owner by the Department; or,
 - 2) A waiver has been granted by the Department to the lagoon owner allowing the lagoon to be used for an alternative purpose; or,
 - 3) Title of the property containing the lagoon has been transferred to a new owner and the new owner has posted financial assurance as required under Section 506.602(c) of this Part.
- b) The Department must release a financial institution when:
- 1) A lagoon owner offers an authorized alternative surety which meets the requirements of Section 506.607(c) of this Part; or,
 - 2) The Department releases the lagoon owner from the requirements of this Subpart under subsection (a).
- c) The Department must notify the lagoon owner and financial institution in writing within 60 days of a release under this Section . Where a release is based upon proper closure of a lagoon, notification under this subsection should occur at the same time as notice of proper closure under Section 506.209(a)(3).

(Source: Added at ___ Ill. Reg. _____, effective _____)

Section 506.606 Financial Responsibility Proceeds

- a) A financial institution issuing a surety instrument evidencing financial responsibility for closure of a livestock waste lagoon becomes liable on the surety instrument when a lagoon is removed from service and:
- 1) The owner fails to submit the lagoon closure plan required by Section 506.209 of this Part and
 - A) cannot be found; or
 - B) fails to cure such failure within 30 days of notice from the Department;
 - 2) The owner fails to obtain Department approval of a lagoon closure plan within one year of the date that the lagoon is removed from service, unless the lagoon is maintained or serviced; or
 - 3) The owner fails to comply with an approved lagoon closure plan and

- A) cannot be found; or
 - B) fails to cure such noncompliance within 30 days of notice from the Department.
- b) When one of the criteria under subsection (a) is met, the Department must provide notice of liability to the financial institution providing surety for the lagoon. Within 30 days of notice from the Department, the financial institution must either assume liability for closure of the lagoon and notify the Department of its election to assume liability, or deposit the amount for which it is liable in connection with the lagoon into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon.
- 1) If the financial institution assumes liability for closure of the lagoon, it must submit a lagoon closure plan which meets the requirements of Section 506.209 of this Part within 60 days of notifying the Department of its election. Notwithstanding the financial institution's assumption of liability for closure of the lagoon, the Department may require the financial institution to deposit funds up to the level of surety into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon if:
 - A) The financial institution does not submit the lagoon closure plan as required and fails to cure such omission within 30 days of notice from the Department;
 - B) The financial institution fails to obtain Department approval of a lagoon closure plan within one year of the date that it elects to assume liability for closure of the lagoon, unless the lagoon is maintained or serviced; or
 - C) The financial institution fails to comply with an approved lagoon closure plan and fails to cure such noncompliance within 30 days of notice from the Department.
 - 2) A financial institution which assumes liability for closure of a lagoon under this Section remains liable for the full amount of the level of surety until the Department issues written notification of closure completion in accordance with Section 506.209, notwithstanding the expiration of the instrument utilized to evidence financial responsibility by the owner.

- 3) Any amounts that a financial institution may expend for service or maintenance of the lagoon pending closure do not reduce the amount of the financial institution's obligation under this subsection.
- 4) If the financial institution elects to deposit the funds required by the Department into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon, then the Department shall close the lagoon within the time frame established Section 15(e) of the LMFA or as soon as practicable, to the extent possible utilizing the funds deposited by the financial institution. The Department must release any funds remaining in the account, and any interest which may be earned on funds in the account, to the financial institution upon completion of closure.
- c) The Department may sue in any court of competent jurisdiction to enforce its rights under any surety instrument.

(Source: Added at ___ Ill. Reg. _____, effective _____)

Section 506.607 Use of Multiple Surety Instruments

- a) The lagoon owner may use any combination of the surety instruments listed in Section 17 of the Livestock Management Facilities Act [510 ILCS 77/17] and this Subpart to evidence the required level of financial responsibility.
- b) A lagoon owner is not limited to maintaining financial responsibility with the original surety instrument or combination of instruments. The owner must notify the Department prior to any change in surety instruments.
- c) Any change in surety instruments must maintain the total financial responsibility for the lagoon at a level not less (without counting the amounts to be released) than the level of surety.
- d) A replacement financial instrument or instruments must provide evidence of financial responsibility for a period at least equal to the existing instrument or instruments. This provision does not relieve an owner of the obligation under Section 506.602(b) to provide proof at least two years prior to expiration of a surety instrument that the term for which financial responsibility has been demonstrated has been extended for at least an additional year.

(Source: Added at ___ Ill. Reg. _____, effective _____)

Section 506.608 Use of a Single Surety Instruments for Multiple Lagoons

- a) An owner may use a surety instrument specified in this Subpart to provide evidence of financial responsibility for more than one lagoon.
- b) Whenever a single surety instrument is used for multiple lagoons, the owner must submit an itemization to the Department identifying all lagoons covered by the surety instrument and the amount allocated to each lagoon.
- c) The amount of funds available through the surety instrument must be no less than the sum of funds that would be available if a separate surety instrument had been established and maintained for each lagoon.
- d) In directing funds available through a single surety instrument for the closure of any single lagoon covered by that surety instrument, the Department shall direct only the amount of funds designated for that lagoon, unless the owner agrees to the use of additional funds available under that surety instrument. Such use of funds does not affect the owner's obligation to provide evidence of financial responsibility up to the level of surety for all other lagoons.

(Source: Added at ___ Ill. Reg. _____, effective _____)

Section 506.610 Commercial or Private Insurance

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining closure insurance which conforms to the requirements of this Subpart and submitting an executed duplicate original of such insurance policy to the Department.
- b) The insurer shall be licensed to transact the business of insurance by the Illinois Department of Insurance pursuant to the Illinois Insurance Code (215 ILCS 5/1 et seq.).
- c) The policy must be on forms approved by the Illinois Department of Insurance pursuant to the Illinois Insurance Code.
- d) The closure insurance policy must be issued for a face amount at least equal to the current level of surety.
- e) The closure insurance policy must guarantee that funds will be available to close the lagoon. The policy must also guarantee that, upon a notice of liability from the Department, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, in accordance with Section 506.606 of this Part.
- f) The policy must provide that the insurer may not cancel or terminate the policy.

(Source: Added at ___ Ill. Reg. _____, effective _____)

Section 506.611 Guarantee

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining a guarantee which conforms to the requirements of this Subpart.
- b) A guarantor must submit a financial statement to the Department from the guarantor's most recent fiscal year.
- c) The Department shall review the financial statement, determine if adequate resources exist to guarantee the closure costs, and notify the lagoon owner of acceptance or denial within 30 days of receipt of the financial statement by the Department.
- d) The guarantor shall guarantee to pay the amount specified in the guarantee upon notice from the Department as provided in Section 506.606(b) of this Part.

(Source: Added at ___ Ill. Reg. _____, effective _____)

Section 506.612 Surety Bond

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining a surety bond which conforms to the requirements of this Subpart and submitting the bond to the Department.
- b) The surety company issuing the bond shall be licensed by the Illinois Department of Insurance pursuant to the Illinois Insurance Code [215 ILCS 5/1 et seq.] and approved by the U.S. Department of the Treasury as an acceptable surety. Acceptable sureties are listed in Circular 570 from the U.S. Department of the Treasury.
- c) Conditions:
 - 1) The bond must guarantee that the lagoon owner will provide lagoon closure and content removal in accordance with Section 506.209 of this Part.
 - 2) The penal sum of the bond must be in an amount at least equal to the current level of surety.
- d) The surety bond must be in substantially the form specified in Appendix A of this Part, Illustration A.

(Source: Added at ___ Ill. Reg. _____, effective _____)

Section 506.613 Letter of Credit

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining an irrevocable standby letter of credit which conforms to the requirements of this Subpart and submitting the letter to the Department.
- b) The issuing institution must be an entity which has the authority to issue letters of credit and:
 - 1) whose letter of credit operations are regulated by the Illinois Commissioner of Banks and Trust Companies; or,
 - 2) whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- c) The letter of credit made out to the Department must be accompanied by a letter from the lagoon owner referring to the letter of credit by number, issuing institution, and date and providing the following information: name and address of the lagoon site and the amount of funds assured for closure of the lagoon by the letter of credit.
- d) The amount of the letter of credit must be equal to or exceed the level of surety for the lagoon.
- e) The letter of credit must be substantially in the form specified in Appendix A of this Part, Illustration B.

(Source: Added at ___ Ill. Reg. _____, effective _____)

Section 506.614 Certificate of Deposit or Designated Savings Account

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by designating certificate(s) of deposit or savings account(s) for use as financial responsibility.
- b) The issuing or depository financial institution must be an entity whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- c) The Department may draw on the certificate(s) of deposit or savings account(s) to pay the costs of closing a lagoon in accordance with this paragraph. The Department shall close a lagoon when the lagoon is removed from service and:

- 1) The owner fails to submit the lagoon closure plan required by Section 506.209 of this Part and
 - A) cannot be found; or
 - B) fails to cure such failure within 30 days of notice from the Department;
- 2) The owner fails to obtain Department approval of a lagoon closure plan within one year of the date that the lagoon is removed from service, unless the lagoon is maintained or serviced; or
- 3) The owner fails to comply with an approved lagoon closure plan and
 - A) cannot be found; or
 - B) fails to cure such noncompliance within 30 days of notice from the Department.
- d) The Director of the Department shall be listed as trustee of the certificate(s) of deposit or savings account(s) for the lagoon owner.
- e) At maturity of any certificate of deposit designated as financial responsibility for lagoon closure, the certificate shall be renewed or the proceeds deposited into a designated savings account that meets the requirements of this Section.
- f) The Department shall relinquish trusteeship of the certificate(s) of deposit or savings account(s) when:
 - 1) The lagoon has been properly closed and a notification of closure completeness pursuant to Section 506.209 of this Part has been issued to the lagoon owner by the Department;
 - 2) A waiver has been granted by the Department to the lagoon owner allowing the lagoon to be used for an alternative purpose pursuant to Section 506.209 of this Part; or
 - 3) Title of the property containing the lagoon has been transferred to a new owner and the new owner has posted financial assurance as required under Section 506.602(c) of this Part.

(Source: Added at ___ Ill. Reg. _____, effective _____)

Section 506.615 Participation in a Livestock Waste Lagoon Closure Fund

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by participating in a livestock waste lagoon closure fund managed by the Illinois Farm Development Authority. An owner electing to provide evidence of financial responsibility under this Section must submit a certificate of participation in such a lagoon closure fund to the Department. The certificate must include a financial statement of the lagoon closure fund establishing the lagoon closure fund's compliance with the requirements of this Section.
- b) The lagoon closure fund must maintain minimum reserves equal to the greater of
- 1) the level of surety of the largest lagoon covered by the lagoon closure fund; or
 - 2) twice the average level of surety of lagoons covered by the fund.
- c) The lagoon closure fund must guarantee that funds will be available to close the lagoon. The lagoon closure fund must also guarantee that, upon a notice of liability from the Department, the lagoon closure fund will be responsible for paying out funds, up to the level of surety for a given participant's lagoon, in accordance with Section 506.606 of this Part.
- d) The lagoon closure fund must provide coverage for specified periods of time. The lagoon closure fund may not cancel or terminate coverage prior to expiration of the specified period.

(Source: Added at ___ Ill. Reg. _____, effective _____)

Section 506.620 Penalties

The Department may order a lagoon removed from service if the owner fails to provide evidence of financial responsibility to the Department or fails to maintain financial responsibility in the amount required pursuant to Section 506.603 of this Subpart.

(Source: Added at ___ Ill. Reg. _____, effective _____)

Section 506.Appendix A: Surety InstrumentsSection 506.Illustration A: Surety Bond

SURETY BOND

Date bond executed: _____

Effective date: _____

Principal: _____

Type of organization: _____

State of incorporation: _____

Surety: _____

Sites:

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

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

Total penal sum of bond: \$ _____

Surety's bond number: _____

The Principal and the Surety promise to pay the Illinois Department of Agriculture ("Department") the above penal sum unless the Principal provides closure for each site in accordance with 510 ILCS 77/15(e) and 35 Ill. Adm. Code 506.209. To the payment of this obligation the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

Whereas the Principal is required, under Section 15(b) of the Livestock Management Facilities Act ("LMFA") to register at least one livestock waste lagoon with the Department; and

Whereas the Principal is required, under Section 17 of the LMFA to evidence financial responsibility for closure of each registered lagoon; and

Whereas the Surety is licensed by the Illinois Department of Insurance;

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

The Surety shall pay the penal sum to the Department if, during the term of the bond, the Department issues a notice of liability to the Surety.

The Surety shall pay the penal sum of the bond to the Department within 30 days after the Department mails the notice of liability to the Surety unless the Surety assumes responsibility to provide closure and so notifies the Department. Payment shall be made by deposit of funds into a designated account upon which the Department is authorized to draw.

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

This bond shall expire on the _____ day of _____, _____.

The Principal may terminate this bond by sending written notice to the surety; provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond from the Department.

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

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

PRINCIPAL

Signature Name _____

Typed Name _____

Address _____

Title _____

State of Incorporation _____

Date _____

Corporate seal

CORPORATE SURETY

Signature _____

Typed Name _____

Title _____

Corporate seal

Bond premium: \$ _____

Section 506. Appendix A: Surety Instruments

Section 506. Illustration B: Irrevocable Standby Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

Director
Illinois Department of Agriculture
P.O. Box 19281
Springfield, IL 62794-19281

Dear Sir or Madam:

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

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

1. your sight draft, bearing reference to this letter of credit No. _____; and,

2. your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Livestock Management Facilities Act [510 ILCS 77/1 et seq.] and 35 Ill. Adm. Code 506.606(a).

This letter of credit is effective as of _____ and shall expire on _____.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of draft directly into a designated account accordance with your instructions.

This letter of credit is governed by the Uniform Commercial Code [810 ILCS 5/1-101 et seq.].

Signature_____

Typed Name_____

Title_____

Date_____

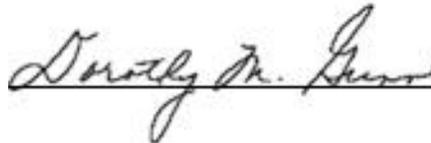
Name and address of issuing institution_____

This credit is subject to_____

(Source: Added at ___ Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 21st day of May 1998 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board