

Comparing:
Agency Proposed vs. JCAR r01

~~ILLINOIS REGISTER~~

[JCAR351220-2602313r01](#)

~~POLLUTION CONTROL BOARD
NOTICE OF PROPOSED RULE~~

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE K: RECYCLABLE, RECLAIMABLE, OR REUSABLE WASTES
CHAPTER I: POLLUTION CONTROL BOARD

PART 1220
MANAGEMENT OF USED EV BATTERIES

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AUTHORITY: Implementing Section 22.23f and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/22.23f and 27].

SOURCE: Adopted in R26-17 at 50 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL

Section 1220.100 Applicability

Section 22.23f of the Environmental Protection Act [415 ILCS 5/22.23f], sets forth prohibitions relative to the receipt, handling, storage, and transfer of used electric vehicle ("EV") batteries. This Part establishes further requirements relative to the receipt, handling, storage, and transfer of used electric vehicle batteries at used EV battery storage sites. Notwithstanding any other provision of this Part, this Part does not apply to:

- a) New EV batteries being stored prior to installation in an electric vehicle;
- b) Batteries installed in an electric vehicle that have not yet been removed; and
- c) Used EV batteries that have been returned to reuse or returned to the economic mainstream in the form of raw materials or products.

Section 1220.105 Severability

If any section, subsection, sentence or clause of this Part shall be adjudged unconstitutional, invalid or otherwise not effective for any reason, such adjudication shall not affect the validity of

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this Part as a whole or of any section, subsection, sentence or clause thereof not adjudged unconstitutional, invalid or otherwise not effective for any reason.

Section 1220.110 Other Regulations

- a) The requirements of this Part are in addition to other requirements in the Act or Board regulations. In case of conflict, applicability will be determined on the basis of considerations such as the degree to which the statutory language in the Act or Board regulation is expressly stated or necessarily implied, United States Environmental Protection Agency program authorization requirements, and the comparative stringency of the regulations.
- b) The following are examples of other regulations which may be applicable to facilities subject to this Part: 35 Ill. Adm. Code: Subtitle B: Air Pollution; 35 Ill. Adm. Code: Subtitle C: Water Pollution; 35 Ill. Adm. Code: Subtitle H: Noise Pollution; and 35 Ill. Adm. Code: Subtitle G: Waste Disposal.

Section 1220.115 Definitions

For the purposes of this Part, except as the context otherwise clearly requires, the words and terms defined in this Section have the meanings given in this Section. Words and terms not defined in this Section have the meanings otherwise set forth in the Act and 35 Ill. Adm. Code 101.

"Act" means the Environmental Protection Act. [415 ILCS 5].

"Agency" is the Environmental Protection Agency established by the Act. [415 ILCS 5/3.105]

"Battery storage site" means a site where used EV batteries are stored. [415 ILCS 5/22.23f(a)]

"Electric vehicle" or "EV" has the same meaning as defined in Section 11-1308 of the Illinois Vehicle Code. [415 ILCS 5/22.23f(a)]

"Electric vehicle battery" or "EV battery" means a rechargeable battery that is used to power the electric motors that propel an electric vehicle. "Electric vehicle battery" includes, but is not limited to, lithium-ion batteries and nickel-metal hydride batteries.

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[415 ILCS 5/22.23f(a)]

"Fully enclosed container" means a portable, hard-walled, lockable receptacle that is impervious to precipitation and surface runoff. "Fully enclosed container" does not include any container that is overfilled or otherwise cannot be closed completely or is otherwise damaged and, as a result, is not impervious to precipitation or surface runoff.

"Operator" means the person responsible for the operation and maintenance of a used EV battery storage site.

"Owner" means a person who has an interest, directly or indirectly, in land, including a leasehold interest, on which a person operates and maintains a used EV battery storage site. The "owner" is the "operator" if there is no other person who is operating and maintaining a used EV battery storage site.

"Storage" means any accumulation of used EV batteries that does not constitute disposal. [415 ILCS 5/22.23f(a)]

"Used [EV] battery" means an EV battery that is sold, given, or otherwise conveyed to a battery storage site. [415 ILCS 5/22.23f(a)]. This term includes, but is not limited to, batteries that are sent by the manufacturer or another person for recycling rather than installed in an electric vehicle and EV batteries removed from an electric vehicle at the battery storage site.

Section 1220.120 Incorporation by Reference

- a) The Board incorporates the following documents by reference:

NFPA 51B, "Standard for Fire Prevention During Welding, Cutting, and Other Hot Work", 2014 Edition, National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169-7471.

- b) This Section incorporates no later amendments or editions.

Section 1220.125 Estimating the Weight of Used EV Battery Accumulations

- ~~a)~~a) If the weight of an accumulation of used EV batteries is unknown, its weight may, for the purposes of this Part, be calculated by multiplying the volume of the

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accumulation, measured in cubic feet, by 17 kilograms (38 pounds) per cubic foot.

- b) A used EV battery storage pile may be divided into more than one accumulation of used EV batteries for the purposes of making the calculation described in subsection (a).

SUBPART B: MANAGEMENT STANDARDS FOR STORAGE

Section 1220.200 Applicability

Owners and operators of any battery storage site that contains one or more used EV batteries are subject to this Subpart.

Section 1220.205 General Requirements

- a) Owners and operators must comply with the following requirements:
 - 1) Used EV batteries must not be placed or accumulated outside of a building, except as provided in Section 1220.215.
 - 2) Used EV batteries must not be placed or accumulated inside a building, except as provided in Section 1220.210:
 - 3) Used EV batteries must not be placed or accumulated in any area where the grade of the ground surface exceeds two percent slope.
 - 4) Battery terminals must be protected either through battery design methods or a protective packaging method to prevent short-circuit of each used EV battery.
 - 5) All activities at the used EV battery storage site that present a risk of fire must be conducted in accordance with the NFPA 51B standard for fire prevention, including but not limited to welding, cutting, and other hot work, and either:
 - A) Outside of any room where used EV batteries are placed or accumulated; or

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- B) If outdoors, separated by at least 250 feet from all containers where used EV batteries are placed or accumulated.
- 6) For any used EV battery storage site at which more than 5,000 kilograms (11,023 pounds) of used EV batteries are located at any one time, the owner or operator must:
- A) Register the site with the Agency on forms and in a format prescribed by the Agency.
 - B) Comply with the contingency planning and emergency response requirements of Section 1220.220.
 - C) Comply with the recordkeeping and reporting requirements of Subpart E.
- 7) Used EV battery storage sites must have one or more stabilized roadways to provide firefighting personnel and equipment access to all portions of the battery storage area.
- 8) Combustible materials in used EV battery storage sites must comply with all of the following:
- A) Combustible materials other than used EV batteries must not be stored in rooms, containers, cabinets, or enclosures containing used EV batteries, including but not limited to batteries other than used EV batteries.
 - B) Combustible materials must not be stored within 3 feet from the exterior of rooms, containers, cabinets, or enclosures containing used EV batteries.
- 9) Explosion Protection. The potential for a deflagration involving the off-gassing of flammable gases during a thermal runaway must be analyzed and explosion protection meeting industry standards must be installed if the potential for a deflagration exists. If any explosion protection is installed, the used EV battery storage site must maintain records on site of the analysis of deflagration and make the records for inspection and photocopying by the Agency during normal business hours.

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Section 1220.210 Storage of Used EV Batteries Within Buildings

- a) Owners and operators of any battery storage site who store used EV batteries within buildings must meet the requirements of this Section.
- b) Used EV batteries must not be stored within a building unless:
 - 1) All of the building's windows and doors are in working order and are secured to prevent unauthorized access;
 - 2) The building is fully enclosed and has a roof and sides that are impermeable to precipitation; and
 - 3) The building is not a single-family home or other residential building.
- ~~e)c)~~ All used EV batteries stored within a building must comply with the following:
 - 1) Used EV batteries stored indoors must be stored in piles of no greater than 900 square feet in area. Each pile must be separated from other piles and from the remainder of the building areas by walls as described in subsection (c)(2) and by a ceiling with a 2-hour fire resistance rating constructed in accordance with the local building code.
 - 2) Each used EV battery pile must be contained in a room either:
 - ~~A)A)~~ Enclosed by 2-hour fire resistance rated walls constructed according to the local building code and with a minimum of 10 feet of separation from all other rooms containing used EV battery pile; or
 - ~~B)B)~~ Enclosed by 3-hour fire resistance rated wall constructed according to the local building code and with a minimum of 3 feet of separation from all other rooms containing used EV battery piles.
 - 3) Each used EV battery pile must be separated from all exits from the room or building by at least 5 feet.
 - 4) Rooms where used EV batteries are stored must contain a fire alarm system activated by an air-aspirating smoke detector system or a radiant-energy detection system with occupant notification.

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- 5) Rooms where used EV batteries are stored must contain an automatic sprinkler system.
 - 6) All rooms where used EV batteries are stored must not have fewer than 2 points of access that are sufficiently separated from one another to provide 2 independent means of ingress and egress during a fire event.
 - 7) Used EV batteries must not be placed or accumulated within 2 feet of the room ceiling.
- d) In addition to the requirements in subsections (b) and (c), if more than 5,000 kilograms (11,023 pounds) of used EV batteries are located at any one time at the battery storage site, the owners and operators of the site must:
- 1) Develop, in consultation with the local fire department, a battery storage plan for all used EV batteries that are stored within any building. The battery storage plan must:
 - A) Take into consideration the type of building(s) used for battery storage (e.g., warehouse) and the type of used EV batteries being stored (e.g., whole or shredded, battery chemistry types);
 - B) Identify, at a minimum, the battery storage arrangement; aisle spacing; clearance distances between storage piles and room walls, room ceilings, unit heaters, furnaces, ducts, and sprinkler deflectors; and points of access for firefighting personnel and equipment;
 - C) Be maintained on site, adhered to at all times, made available for inspection and photocopying by the Agency during normal business hours, and a copy filed with the local fire department; and
 - D) Include the following certification signed by the owner or operator: "I certify that this battery storage plan has been developed in consultation with the local fire department and that a copy of this battery storage plan has been filed with the local fire department."
 - 2) Meet the contingency planning and emergency response requirements of Section 1220.220; and

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- 3) Meet the recordkeeping and reporting requirements of Subpart E.

Section 1220.215 Storage of Used EV Batteries Outdoors

- a) Owners and operators of any battery storage site who store used EV batteries outdoors must meet the requirements of this Section.
- b) Used EV batteries must not be placed or accumulated outside of a building unless the following requirements are met:
 - 1) All used EV batteries are placed or accumulated in fully enclosed containers that are non-combustible or designed for used EV battery collection use.
 - 2) Containers must be stored on a concrete or asphalt pad, and must be kept closed except while batteries are being placed in or removed from the container.
 - 3) Individual containers must be separated from all other containers by a minimum of 10 feet.
 - 4) Individual containers must be separated by a minimum of 20 feet from the following:
 - A) Lot property lines;
 - B) Public ways;
 - C) Buildings and other structures;
 - D) Other storage containers used for any materials that are not used EV batteries;
 - E) Hazardous materials;
 - F) Vegetation; and
 - G) Other exposure hazards that pose a risk of damaging or igniting used EV batteries.

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- 5) Any area where containers holding used EV batteries are placed must be:
 - A) Capable of containing all battery fire runoff; and
 - B) Crossed by a stabilized roadway at not fewer than 2 points of access that are sufficiently separated from one another to provide 2 independent means of ingress and egress during a fire event.
 - 6) Containers must not be placed or accumulated within 250 feet horizontally of the ground surface from any point directly beneath any electrical power line that (i) has a voltage in excess of 750 volts or (ii) that supplies power to a fire emergency system.
- c) In addition to the requirements in subsection (b), if more than 5,000 kilograms (11,023 pounds) of used EV batteries are located at any one time at the battery storage site, the owners and operators of the site must:
- 1) Develop, in consultation with the local fire department, a battery storage plan for all used EV batteries that are stored outdoors that:
 - A) Takes into consideration the area where the batteries are stored (e.g., natural and artificial risks for fire spread) and the type of used EV batteries being stored (e.g., whole or shredded, battery chemistry types);
 - B) Identifies, at a minimum, the battery storage arrangement; container spacing; clearance distances between containers and any building walls, lot-property lines, public ways, buildings and other structures, other storage not containing used EV batteries, hazardous materials, vegetation, other exposure hazards, and points of access for firefighting personnel and equipment; and
 - C) Is maintained on site, adhered to at all times, made available for inspection and photocopying by the Agency during normal business hours. The plan must include the following certification signed by the owner or operator: "I certify that this battery storage plan has been developed in consultation with the local fire department and that a copy of this battery storage plan has been filed with the local fire department."

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- 2) Meet the contingency planning and emergency response requirements of Section 1220.220; and
- 3) Meet the recordkeeping and reporting requirements of Subpart E.

Section 1220.220 Contingency Planning and Emergency Response

Owners and operators of any used EV battery storage site where more than 5,000 kilograms (11,023 pounds) of used EV batteries are located at any one time must:

- a) Develop, in consultation with the local fire department, a contingency plan that:
 - 1) Minimizes the hazards to human health and the environment from used EV battery fires and run-off of contaminants from used EV battery fires;
 - 2) Is carried out immediately whenever there is a used EV battery fire or evidence of run-off from a used EV battery fire;
 - 3) Describes the actions battery storage site personnel must take in response to used EV battery fires and run-off from used EV battery fires;
 - 4) Describes evacuation procedures, including, evacuation signals, primary evacuation routes, and alternate evacuation routes to be used when the primary routes could be blocked;
 - 5) Contains an up-to-date emergency equipment list that not only identifies all emergency equipment at the used EV battery storage site, such as fire-extinguishing systems, fire-suppression material, spill-control equipment, decontamination equipment, and communication and alarm systems (internal and external), but also describes the physical location and capabilities of each listed item;
 - 6) Provides the name, address, and telephone number of an employee designated as the primary emergency coordinator responsible for coordinating emergency response measures at the used EV battery storage site, as well as an up-to-date list of all alternate emergency coordinators, listed in the order in which they will assume responsibility for coordinating emergency response measures at the used EV battery storage

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site in the event that the primary emergency coordinator or another alternate emergency coordinator is unavailable; and

- ~~7-7)~~ Is maintained on site, adhered to at all times, made available for inspection and photocopying by the Agency during normal business hours. The plan must include the following certification signed by the owner or operator:

I certify that this contingency plan has been developed in consultation with the local fire department and that a copy of this contingency plan has been filed with the local fire department.

- b) Ensure that all emergency equipment at the used EV battery storage site is at all times clean and fit for its intended purpose;
- c) Review and amend the contingency plan within 30 days after:
 - 1) Any fire occurs at the used EV battery storage site;
 - 2) The used EV battery storage site changes in its design, construction, operation, maintenance, or other characteristics in a way that increases the potential for a fire at the site or the release of run-off from a fire at the site;
 - 3) The list of emergency coordinators for the used EV battery storage site changes; or
 - 4) The list of emergency equipment at the used EV battery storage site changes;
- d) Ensure that, at all times, the primary emergency coordinator or an alternate emergency coordinator is either on site or on call; that the primary emergency coordinator and alternate emergency coordinators are familiar with, and have immediate access to, all aspects of the contingency plan, all operations and activities at the used EV battery storage site, the location of all records within the site and the site layout; and that the primary emergency coordinator and all alternate emergency coordinators have the authority to commit the resources needed to carry out the contingency plan;

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- e) Notify the Agency immediately if a used EV battery fire occurs at the used EV battery storage site and immediately begin managing, in accordance with all applicable federal and State laws and regulations, all contaminated soils, contaminated waters, and other wastes and materials resulting from the used EV battery fire; and
- f) Within 15 days after each incident that requires implementation of the contingency plan, submit to the Agency in writing an incident report that includes, at a minimum:
 - 1) The name, address, and telephone number of the used EV battery storage site owners and operators;
 - 2) The name, address, and telephone number of the used EV battery storage site;
 - 3) The date, time, and type of incident (e.g., fire or explosion);
 - 4) The type and quantity of materials involved in the incident;
 - ~~5) 5)~~ The extent of injuries, if any;
 - ~~6) 6)~~ Remedial actions taken in response to the incident;
 - ~~7) 7)~~ A list of other agencies involved in the response to the incident;
 - 8) An assessment of actual or potential hazards to human health or the environment as a result of the incident;
 - 9) The estimated quantity and disposition of fire runoff and any released material that resulted from the incident; and
 - 10) A plan and schedule for completing all used EV battery storage site remediation required under all applicable federal and State laws and regulations.

Section 1220.225 Removal Performance Standards

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The owner or operator of a used EV battery storage site required to submit a battery removal cost estimate under Section 1220.620 must, when engaging in battery removal, remove used EV batteries from the site in a manner that:

- a) Minimizes the need for further maintenance or remediation with respect to the used EV batteries;
- b) Removes all used EV batteries and any residues therefrom;
- c) Safely transports all used EV batteries to a battery recycling facility, and all non-recyclable material to a disposal facility; and
- d) Protects human health during the removal and post removal periods.

SUBPART E: RECORDKEEPING AND REPORTING

Section 1220.500 Applicability

The owners and operators of any used EV battery storage site where 5,000 kilograms (11,023 pounds) or more of used EV batteries are located at any one time are subject to this Subpart.

Section 1220.505 Records

- a) The owner and operator of the used EV battery storage site must keep the following records:
 - 1) Battery Tracking Receipts, in accordance with Section 1220.510;
 - 2) Weekly Battery Records, in accordance with Section 1220.515; and
 - 3) Annual Battery Summaries, in accordance with Section 1220.520.
- b) All records listed in subpart (a) must be in a form and in a format as prescribed by the Agency. The records must be maintained on site and made available for inspection and photocopying by the Agency during normal business hours

Section 1220.510 Battery Tracking Receipts

- a) Upon receiving any used EV batteries at the used EV battery storage site, the owner or operator of the used EV battery storage site must provide a receipt to the

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transporter and keep a copy of the receipt. The receipt must include all of the following: the signature of the owner or operator; the name and special waste hauler permit number of the transporter; the signature of the transporter; the name, address, and telephone number of the site where used EV batteries were received; the date the used EV batteries were received at the site; and the number or weight, in kilograms, of used EV batteries received at the site.

- b) Upon transporting any used EV batteries from the used EV battery storage site, the transporter must provide a receipt to the owner or operator and keep a copy of the receipt. The receipt must include all of the following: the signature of the owner or operator; the name and registration number of the transporter; the signature of the transporter; the date the used EV batteries were transported from the site; the number or weight, in kilograms, of used EV batteries transported from the site; and the destinations of the used EV batteries.
- c) Owners and operators of used EV battery storage sites must maintain on site a record of the receipt and disposition of all used EV batteries, including, but not limited to:
 - 1) Receipts for any used EV batteries received at the used EV battery storage site; and
 - 2) Receipts for any used EV batteries that are transported from the site.
- d) Upon removal of any used EV batteries from a vehicle at the site, the owner or operator must retain a receipt of the battery removal. The receipt must include all of the following: the signature of the owner or operator; the VIN and model of the vehicle from which the used EV batteries were removed; the date the used EV batteries were removed; and the weight, in kilograms, of used EV batteries removed from the vehicle.

Section 1220.515 Weekly Battery Record

- a) The owner or operator of the used EV battery storage site must maintain a Weekly Battery Record at the used EV battery storage site. The Weekly Battery Record must include, at a minimum, the day of the week, the date, the Agency designated site number, the site name and address, and the additional information required under this Section.

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- b) Information relative to the weekly receipt and disposition of used EV batteries at the used EV battery storage site must be recorded in the Weekly Battery Record, including, but not limited to:
- 1) The name and registration number of each transporter who transported used EV batteries to the site during the operating day and the weight, in kilograms, of used EV batteries received at the site from each transporter during the operating day;
 - 2) The name and registration number of each transporter who transported used EV batteries from the site during the operating day, the weight, in kilograms, of used EV batteries transported from the site by each transporter during the operating day, and the name, address, and telephone number of the destination facility;
 - ~~3)~~ 3) The weight, in kilograms, of used EV batteries removed from any vehicle on site;
 - 4) The weight, in kilograms, of used EV batteries recycled at the site during the operating day; and
 - 5) The weight, in kilograms, of used EV batteries remaining at the site at the conclusion of the operating day.
- c) Entries on the Weekly Battery Record required to be made under this Section must be made by the end of each operating week.

Section 1220.520 Annual Battery Summary

- a) The owner or operator of the used EV battery storage site must submit an Annual Battery Summary to the Agency for each calendar year. The Annual Battery Summary must include the Agency designated site number, the used EV battery storage site name and address, and the calendar year for which the summary applies.
- b) Information relative to the annual receipt and disposition of used EV batteries at the used EV battery storage site must be reported in the Annual Battery Summary, including, but not limited to:

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- 1) The weight, in kilograms, of used EV batteries received at the site during the calendar year;
 - 2) The weight, in kilograms, of used EV batteries removed from vehicles at the site during the calendar year;
 - 3) The weight, in kilograms, of used EV batteries recycled on site during the calendar year;
 - 4) The weight, in kilograms, of used EV batteries stored at the site during the calendar year; and
 - 5) The weight, in kilograms, of used EV batteries remaining in storage at the site at the conclusion of the calendar year.
- c) The Annual Battery Summary must be received by the Agency on or before January 31 of each year and must cover the preceding calendar year.

Section 1220.525 Certification

- a) All records, summaries, and reports submitted to the Agency as required by this Subpart must be signed by a person designated by the owner or operator of the battery storage site as responsible for preparing and reviewing those documents as part of his or her duties in the regular course of business.
- b) Any person signing a document submitted under this Part must make the following certification:

I certify that I am responsible for preparing and reviewing this document and that this document and all attachments were prepared under my direction or supervision as part of my duties in the regular course of business. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties under Section 44 of the Environmental Protection Act, 415 ILCS 5/44, including the possibility of fine and imprisonment for knowingly submitting false information.

Section 1220.530 Retention of Records

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Copies of all records required to be kept under this Subpart must be retained by the owner and operator of the battery storage site for three years and must be made available at the battery storage site during the normal business hours of the operator for inspection and photocopying by the Agency.

SUBPART F: FINANCIAL ASSURANCE

Section 1220.600 Scope and Applicability

- a) Except to the extent exempted by subsection (b), owners and operators of any used EV battery storage site must comply with this Subpart prior to storing of any used EV batteries.
- b) Owners and operators of any used EV battery storage site meeting the qualifications below are exempt from this Subpart:
- c) Battery storage sites where the real estate of the site is owned by:
 - 1) The United States or one of its agencies;
 - 2) The State of Illinois or one of its agencies; or
 - 3) A unit of local government.

Section 1220.605 Maintaining Financial Assurance

- a) Except as otherwise provided in subsection (b), the owner or operator of the used EV battery storage site must at all times maintain financial assurance in an amount equal to or greater than the current approved removal cost estimate calculated pursuant to Section 1220.620.
- b) Within 60 days after the occurrence of any event listed in this subsection (b), the owner or operator of the battery storage site must increase the total amount of financial assurance to an amount that is equal to or greater than the current removal cost estimate calculated pursuant to Section 1220.620:
 - 1) The current removal cost estimate increases; or

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- 2) The value of a trust fund established pursuant to Section 1220.640 decreases.

Section 1220.610 Release of Financial Institution

The Agency must release a trustee, bank, surety or other financial institution as soon as practicable after the owner or operator of the used EV battery storage site makes a written request for release and demonstrates that either one of the following events has occurred:

- a) The owner or operator of the used EV battery storage site has substituted alternate financial assurance that meets the requirements of this Subpart such that the total financial assurance for the site is equal to or greater than the current removal cost estimate, without counting the amounts to be released; or
- b) The Agency has released the owner or operator of the battery storage site from the requirements of this Subpart following completion of removal.

Section 1220.615 Application of Proceeds and Appeal

- a) The Agency may sue in any court of competent jurisdiction to enforce its rights under financial instruments used to provide the financial assurance required under this Subpart. The filing of an enforcement action before the Board is not a condition precedent to such an Agency action, except when this Subpart or the terms of the instrument provide otherwise.
- b) As provided in Titles VIII and IX of the Act and 35 Ill. Adm. Code 103 and 104, the Board may order that an owner or operator of a used EV battery storage site modify a removal plan or order that proceeds from financial assurance be applied to the execution of a removal plan.
- c) The following Agency actions may be appealed to the Board as a permit denial pursuant to 35 Ill. Adm. Code 105:
 - 1) A refusal to accept financial assurance tendered by the owner or operator;
 - 2) A refusal to release the owner or operator from the requirement to maintain financial assurance;
 - 3) A refusal to release excess funds from a trust;

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- 4) A refusal to approve a reduction in the penal sum of a bond; or
- 5) A refusal to approve a reduction in the amount of a letter of credit.

Section 1220.620 Removal Cost Estimate

- a) By February 1 of each year, the owner or operator must submit to the Agency, a written estimate of the cost of removing the maximum number of used EV batteries that will be accumulated at the site at any time. This cost estimate must be submitted by the owner or operator along with the annual registration required under Section 22.23f(c) of the Act. Any removal cost estimate must be submitted on forms prescribed by the Agency.
- b) In addition, the owner or operator must revise the removal cost estimate and submit the revised estimate before making or having made at the site any change that would increase the removal cost estimate, including, but not limited to, an increase in the maximum accumulation of used EV batteries that will be accumulated at the site at any one time.
- c) The owner or operator must base the removal cost estimate on costs to the Agency under a contract to perform battery removal actions in the area in which the site is located.
- d) The removal cost estimate must, at a minimum, include all costs for all activities necessary to remove all used EV batteries complying with all requirements of this Part.
- e) Once the owner or operator has completed an activity described in subsection (c), the owner or operator may revise the removal cost estimate indicating that the activity has been completed and zeroing that element of the removal cost estimate.

Section 1220.625 Mechanisms for Financial Assurance

The owner or operator may use any one of the following mechanisms to provide financial assurance for removal of used EV batteries or may use a combination of these mechanisms to the extent authorized under Section 1220.640:

- a) A trust fund (Section 1220.640);

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- b) A surety bond guaranteeing payment (Section 1220.645); or
- c) A letter of credit (Section 1220.650).

Financial assurance mechanisms must be submitted on forms prescribed by the Agency.

Section 1220.630 Use of Multiple Financial Mechanisms

An owner or operator may satisfy the requirements of this Subpart by establishing more than one financial mechanism listed in Section 1220.625 per site. These mechanisms listed in Section 1220.625 include trust funds, surety bonds guaranteeing payment, and letters of credit. The mechanisms must be as specified in Sections 1220.640, 1220.645, and 1220.650 respectively, except that it is the combination of mechanisms, rather than any single mechanism, that must provide financial assurance for an amount at least equal to the current approved removal cost estimate. An owner or operator that uses a trust fund in combination with a surety bond or a letter of credit may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The owner or operator may use any or all of the mechanisms specified in Sections 1220.640, 1220.645, and 1220.650 to provide for removal.

Section 1220.635 Use of a Financial Mechanism for Multiple Sites

An owner or operator may use a financial assurance mechanism specified in this Subpart to meet the requirements of this Subpart for more than one site. Evidence of financial assurance submitted to the Agency must include a list showing, for each site, the name, address and the amount of funds assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each site. The amount of funds available to the Agency must be sufficient to remove used EV batteries from all of the owner or operator's sites.

Section 1220.640 Trust Fund

- a) An owner or operator may satisfy the requirements of this Subpart by establishing a trust fund that conforms to the requirements of this Section and submitting an originally signed duplicate of the trust agreement to the Agency.
- b) The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

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- c) The trust agreement must be irrevocable, must be on forms prescribed by the Agency, must be accompanied by a formal certification of acknowledgment on a form prescribed by the Agency, and must contain provisions addressing, at a minimum, the establishment, management, and termination of the trust and a schedule listing, at a minimum, the sites covered by the trust, the current approved removal cost for each of those sites, and prohibitions against third party access to the trust funds other than as provided in the trust agreement. The schedule required under this subsection (c) must be in the form prescribed by the Agency and must be updated within 60 days after a change in the amount of the current approved removal cost for any site covered by the trust.
- d) Payments into the Trust
- 1) The owner or operator must make a payment into the trust fund each year during the pay-in period. However, after expiration of the pay-in period, neither the owner nor the operator may use a pay-in period to fund the trust and must instead make a lump sum payment to further fund the trust.
 - 2) The pay-in period is three years and commences on the date any of the sites covered by the trust agreement first receives used EV batteries.
 - 3) Annual payments are determined by the following formula:
$$\text{Annual payment} = (CE - CV) / Y$$

where:

CE = Current total approved removal cost estimate for all sites covered by the trust agreement

CV = Current value of the trust fund

Y = Number of years remaining in the pay in period.
 - 4) The owner or operator must make the first annual payment before used EV batteries are received at a site covered by the trust agreement. Before receiving used EV batteries at a site covered by the trust agreement, the owner or operator must submit to the Agency a receipt from the trustee for the first annual payment.

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- 5) Subsequent annual payments must be made no later than 30 days after each anniversary of the first payment.
 - 6) The owner or operator may either accelerate payments into the trust fund or may deposit the full amount of the current approved removal cost estimate at the time the fund is established.
 - 7) The owner or operator must maintain the value of the fund at no less than the value the fund would have if annual payments were made as specified in subsection (d)(3).
 - 8) If the owner or operator establishes a trust fund after having used one or more alternative mechanisms, the first payment must be in at least the amount the fund would contain if the trust fund were established initially and payments made as provided in subsection (d)(3).
- e) The trustee must evaluate the trust fund annually as of the anniversary of the day the trust was created or on such other date as may be provided in the agreement. Within 30 days after the evaluation date each year, the trustee must furnish the owner or operator and the Agency with a statement confirming the value of the trust fund within 30 days after the evaluation date. The failure of the owner or operator to object in writing to the trustee within 90 days after the statement has been furnished to the owner or operator and the Agency constitutes a conclusively binding assent by the owner or operator, barring the owner or operator from asserting any claim or liability against the trustee with respect to matters disclosed in the statement.
- f) After the pay-in period is completed, whenever the removal cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator must, within 60 days after the change in the removal cost estimate, either deposit an amount into the fund so that its value after this deposit at least equals the amount of the removal cost estimate, or obtain other financial assurance as specified in this Subpart to cover the difference.
- g) Release of excess funds:
- 1) If the value of the trust fund is greater than the total amount of the current approved removal cost estimate, the owner or operator may submit a

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written request to the Agency for a release of the amount in excess of the current approved removal cost estimate.

- 2) If an owner or operator substitutes other financial assurance as specified in this Subpart for all or part of the trust fund, he or she may submit a written request to the Agency for release of the amount in excess of the current approved removal cost estimate covered by the trust fund.
 - 3) As soon as practicable after receiving a request from the owner or operator for a release of funds pursuant to this subsection (g) but not more than 120 days following the Agency's receipt of the request, the Agency must instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing to be in excess of the current approved removal cost estimate.
- h) Reimbursement for removal expenses:
- 1) After initiating removal, an owner or operator, or any other person authorized to perform removal, may request reimbursement for partial or final removal expenditures, by submitting itemized bills to the Agency. The owner or operator may request reimbursements for partial removal only if sufficient funds remain in the trust fund to cover the costs of removal.
 - 2) As soon as practicable after receiving the itemized bills for partial or final removal activities, but no more than 120 days following the Agency's receipt of the itemized bills, the Agency must determine whether the expenditures are in accordance with the removal plan. If the Agency determines, based on the information available to it, that the remaining cost of removal will be less than the value of the trust fund, the Agency must instruct the trustee to make reimbursement in such amounts as the Agency specifies in writing as expenditures in accordance with the removal plan.
 - 3) If the Agency determines, based on such information as is available to it, that the remaining cost of removal will be greater than the value of the trust fund, it must withhold reimbursement of such amounts as it determines are necessary to preserve the trust corpus in order to accomplish removal until it determines that the owner or operator is no longer required to maintain financial assurance for removal. In the event

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the fund is inadequate to pay all claims after removal is completed, the Agency must pay claims according to the following priorities:

- A) Persons with whom the Agency has contracted and authorized to perform removal activities (first priority);
- B) Persons who have completed removal activities authorized by the Agency (second priority);
- C) Persons who have completed work which furthered the removal (third priority);
- D) The owner or operator and related business entities (last priority).

Section 1220.645 Surety Bond Guaranteeing Payment

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining a surety bond that conforms to the requirements of this Section and submitting the bond to the Agency.
- b) The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.
- c) The surety bond must be on standardized forms prescribed by the Agency and must contain provisions concerning, at a minimum, the penal sum and term of the bond, conditions upon which the bond is payable and cancellable and payments into the standby trust fund.
- d) An owner or operator who uses a surety bond must also establish a standby trust fund. Under the terms of the bond, all payments made under the surety bond must be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. The standby trust fund must meet the requirements of a trust fund specified in Section 1220.640, except that:
 - 1) The owner or operator must submit an originally signed duplicate of the trust agreement to the Agency with the surety bond; and
 - 2) Until the standby trust is funded pursuant to the requirements of this Section, none of the following are required:

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- A) Payments into the trust fund as specified in Section 1220.640;
 - B) Updating the trust agreement schedule in Section 1220.640(c) to show the current approved removal cost estimates;
 - C) Annual valuations as required by the trust agreement; or
 - D) Notices of nonpayment as required by the trust agreement.
- e) Conditions
- 1) The bond must guarantee that the owner or operator will either:
 - A) Perform removal in accordance with the removal plan; or
 - B) Within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety, provide alternate financial assurance in accordance with this Subpart and obtain the Agency's written approval of the assurance provided.
 - 2) The surety will become liable on the bond obligation when, under the terms of the bond, the owner or operator fails to perform as guaranteed by the bond. The owner or operator fails to perform when the owner or operator does any one or more of the following:
 - A) Abandons the battery storage site;
 - B) Is adjudicated bankrupt;
 - ~~C)~~ C) Fails to initiate removal when ordered to do so by the Board pursuant to Title VIII of the Act, or when ordered to do so by a court of competent jurisdiction; or
 - D) Fails, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the surety bond, to provide alternate financial assurance and obtain the Agency's written approval of the assurance provided.

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- f) Penal Sum
- 1) The penal sum of the bond must be in an amount at least equal to the current approved removal cost estimate, except as provided in Section 1220.620.
 - 2) If the current removal cost estimate decreases, the penal sum may be reduced to the amount of the current approved removal cost estimate following written approval by the Agency.
 - 3) If the current removal cost estimate increases to an amount greater than the penal sum and if that increase is not due to an increase in the maximum accumulation of used EV batteries at the battery storage site, the owner or operator must, within 60 days after the increase in the removal cost estimate, either:
 - A) Cause the penal sum to be increased to an amount at least equal to the current removal cost estimate and submit evidence of the increase to the Agency; or
 - B) Obtain alternate financial assurance in accordance with this Subpart to cover the increase in the removal cost estimate and submit evidence of the alternate financial assurance to the Agency.
 - 4) If the current removal cost estimate increases to an amount greater than the penal sum and if that increase is due to an increase in the maximum accumulation of used EV batteries at the battery storage site, the owner or operator must, within 60 days after the increase in the removal cost estimate:
 - A) Remove the excess used EV batteries to meet the current approved removal cost estimate;
 - B) Cause the penal sum to be increased to an amount at least equal to the current removal cost estimate and submit evidence of the increase to the Agency; or
 - C) Obtain other financial assurance, as specified in this Subpart, to cover the increase in the removal cost estimate and submit evidence of the alternative financial assurance to the Agency.

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- g) Terms
- 1) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.
 - 2) The Agency must release the surety by providing the owner or operator and the surety with written authorization for termination of the bond as soon as practicable after any of the following occur:
 - A) An owner or operator substitutes alternate financial assurance that meets the requirements of this Subpart such that the total financial assurance for the site is equal to or greater than the current approved removal cost estimate, without counting the amounts to be released; or
 - ~~B)~~B) The Agency releases the owner or operator from the requirements of this Subpart following completion of removal.

Section 1220.650 Letter of Credit

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Section and submitting the letter of credit to the Agency.
- b) The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.
- c) Forms:
 - 1) The letter of credit must be on standardized forms prescribed by the Agency.
 - 2) The letter of credit must be accompanied by a letter from the owner or operator, referring to the letter of credit by number, issuing institution and date, and providing, at a minimum, the following information: the Agency

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designated site number, the name and address of the battery storage site, and the amount of funds assured for removal from the site by the letter of credit.

- d) An owner or operator who uses a letter of credit to satisfy the requirements of this Subpart must also establish a standby trust fund. Any amounts drawn by the Agency pursuant to the letter of credit must be deposited in the standby trust fund. The standby trust fund must meet the requirements of a trust fund specified in Section 1220.640, except that:
- 1) The owner or operator must submit an originally signed duplicate of the trust agreement to the Agency with the letter of credit; and
 - 2) Unless the standby trust is funded pursuant to the requirements of this Section, none of the following are required:
 - A) Payments into the trust fund as specified in Section 1220.640;
 - B) Updating the trust agreement schedule in Section 1220.640(c) to show the current approved removal cost estimates;
 - C) Annual valuations as required by the trust agreement; or
 - D) Notices of nonpayment as required by the trust agreement.
- e) Conditions on which the Agency may draw on the letter of credit:
- 1) The Agency may draw on the letter of credit if the owner or operator fails to perform removal in accordance with the removal plan.
 - 2) The Agency may draw on the letter of credit when the owner or operator does any one or more of the following:
 - A) Abandons the battery storage site;
 - B) Is adjudicated bankrupt;
 - C) Fails to initiate removal when ordered to do so by the Board pursuant to Title VIII of the Act, or when ordered to do so by a court of competent jurisdiction;

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- D) Within 90 days after receipt by both the owner or operator and the Agency of a notice from the issuing institution that the letter of credit will not be extended for another term, fails to provide additional or substitute financial assurance under this Subpart.
- f) Amount:
- 1) The letter of credit must be issued in an amount at least equal to the current approved removal cost estimate, except as provided in Section 1220.620.
 - 2) If the current removal cost estimate decreases, the penal sum may be reduced to the amount of the current approved removal cost estimate following written approval by the Agency.
 - 3) If the current removal cost estimate increases to an amount greater than the credit and if that increase is not due to an increase in the maximum accumulation of used EV batteries at the battery storage site, the owner or operator must, within 60 days after the increase in the removal cost estimate, either:
 - A) Cause the amount of the credit to be increased to an amount at least equal to the current removal cost estimate and submit evidence of the increase to the Agency; or
 - B) Obtain alternate financial assurance in accordance with this Subpart to cover the increase in the removal cost estimate and submit evidence of the alternate financial assurance to the Agency.
 - 4) If the current removal cost estimate increases to an amount greater than the credit and if that increase is due to an increase in the maximum accumulation of used EV batteries at the battery storage site, the owner or operator must, within 60 days after the increase in the removal cost estimate:
 - A) Remove the excess used EV batteries to meet the current approved removal cost estimate;

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- B) Cause the amount of the credit to be increased to an amount at least equal to the current removal cost estimate and submit evidence of the increase to the Agency; or
 - C) Obtain other financial assurance, as specified in this Subpart, to cover the increase in the removal cost estimate and submit evidence of the alternative financial assurance to the Agency.
- g) Term:
- 1) The letter of credit must be irrevocable and issued for a period of at least one year.
 - 2) The letter of credit must provide that, on its current expiration date and on each successive expiration date, the letter of credit will be automatically extended for a period of at least one year, unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner and operator and the Agency, by certified mail, of a decision not to extend the letter of credit for another term. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts.
 - 3) The Agency must return the letter of credit to the issuing institution for termination as soon as practicable after any of the following occur:
 - A) An owner or operator substitutes alternate financial assurance that meets the requirements of this Subpart such that the total financial assurance for the site is equal to or greater than the current approved removal cost estimate, without counting the amounts to be released; or
 - B) The Agency releases the owner or operator from the requirements of this Subpart following completion of removal.

Summary report:	
Litera Compare for Word 11.8.0.56 Document comparison done on 2/19/2026 9:32:21 AM	
Style name: Default Style	
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Changes:	
<u>Add</u>	14
Delete	20
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
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