

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

|   |   |           |
|---|---|-----------|
| IN THE MATTER OF:                       | ) |           |
|   | ) | R2026-017 |
| PROPOSED 35 ILL. ADM. CODE              | ) |           |
| SUBTITLE K: RECYCLABLE, RECLAIMABLE, OR | ) |           |
| REUSABLE WASTES, CHAPTER I POLLUTION    | ) |           |
| CONTROL BOARD, PART 1220 MANAGEMENT     | ) |           |
| OF USED EV BATTERIES                    | ) |           |

**NOTICE**

|                                  |                                  |
|----------------------------------|----------------------------------|
| TO: Don A. Brown, Clerk          | Nerissa Moisan, Hearing Officer  |
| Illinois Pollution Control Board | Illinois Pollution Control Board |
| 60 E. Van Buren Street           | 60 E. Van Buren Street           |
| Suite 630                        | Suite 630                        |
| Chicago, Illinois 60605          | Chicago, Illinois 60605          |
| (VIA ELECTRONIC MAIL)            | (VIA ELECTRONIC MAIL)            |

See attached Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board Illinois Environmental Protection Agency's Supplemental Response to the March 19, 2026 Hearing and Amended Proposed Part 1220, a copy of which is herewith served upon you along with this notice.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Trevor D. Dell'Aquila  
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**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S  
SUPPLEMENTAL RESPONSES TO THE MARCH 19, 2026 HEARING**

**Illinois Environmental Protection Agency's ("Illinois EPA" ) Supplemental Responses to the Illinois Pollution Control Board's (the "Board") questions raised at its March 19, 2026 Hearing:**

The Illinois EPA submits this response to address the Board's questions raised regarding the proposed Part 1220 regulations on the management of used electric vehicle ("EV") batteries in its March 19, 2026, Hearing. The Illinois EPA has also filed an Amended Proposed Part 1220 which incorporates changes from the Board's Pre-Filed Questions and from the March 19, 2026 Hearing. As a note, any blue text represents changes from the Board's Pre-Filed Questions attachment.

1. MS. TIN: Are they just state rules because there's no overlying SIP, state implementation plan, requirement, or are they just state rules because they're outside of the SIP? What is the reason why? (March 19, 2026 Transcript, 22:1-5)

Response: Correct. These are strictly state regulations proposed pursuant to Section 22.3f of the Environmental Protection Act, 415 ILCS 5/22.23f, which was enacted into law via Public Acts 103-1006 and 104-417. These proposed rules are not being proposed in relation to any federal requirements or any State Implementation Plan.

2. MS. TIN: Question 4 said that the Illinois EPA views EV batteries as a separate category that should not be managed in the universal waste stream, but then on this question you said that the Illinois EPA considered regulating the storage of used EV batteries under the universal waste provisions. Can you differentiate the difference between the two? (March 19, 2026 Transcript, 39:19-24, 40:1)

Response: To clarify, lithium batteries generally are captured under the state and federal definitions of universal waste. However, as emphasized by the U.S. EPA's lithium battery recycling FAQ, while rechargeable lithium-ion batteries can be managed as universal waste, the battery regulations of universal waste were developed before lithium-ion batteries were a common technology. See [Lithium-Ion Battery Recycling Frequently Asked Questions | US](#)

[EPA](#). Used EV batteries pose a different set of challenges in terms of storage and a unique capability for reuse and recycling, which is why the Illinois EPA determined it would be best to regulate used EV batteries in a new subtitle to specifically address recyclable, reclaimable, or reusable wastes, rather than amending 35 Ill. Adm. Code 733.

3. MR. RAO: My question is shouldn't the rules address when the owner or operator of EV battery would become subject to hazardous waste rules? Should the rules address that issue? (March 19, 2026 Transcript, 42:9-13)

Response: Whether a used EV battery becomes subject to the hazardous waste rules would be dictated by the hazardous waste rules, which are separate from these proposed regulations. The Illinois EPA does not intend to establish or modify the hazardous waste rules applicability to used EV batteries with this rulemaking. A Board Note or specific cross-references to applicable hazardous waste rules could be added to Section 1220.110 to provide clarification.

4. MR. RAO: I have a follow-up. Would it be possible for the Agency to provide any drafts under the proposed parts prior to the second hearing? (March 19, 2026 Transcript, 45:13-16)

Response: The Illinois EPA is currently drafting updated financial assurance forms and other reporting and registration forms relevant to this rulemaking and can provide those to the Board prior to the second hearing.

5. MS. TIN: Yes. You know, you have the rulemaking affect any of the following: Question 1, and you've checked municipality, county, township, other unit of local government, but did you -- you did not check school district or community college district. The reason I'm asking is that schools and community districts are to have a lot of automotive classes and they may get into the point where they're replacing batteries, recycling batteries, studying batteries, EV batteries, and so I wondered if is there a possibility that these other, you know, educational facilities may be storing some batteries on the site? (March 19, 2026 Transcript, 52:14-24, 53:1-4)

Response: The Illinois EPA's research into any educational courses involving used EV batteries likely wouldn't fall under this Part as any used EV batteries in a classroom setting would likely be either disassembled, in the process of disassembly or recycle, or would be installed in an EV. However, there is the possibility that a school district or community college district could store a used EV battery. If such an entity is storing any amount of used EV batteries as defined in Part 1220.115, it would be required to store the used EV batteries in accordance with Part 1220.

6. MS. TIN: Question here. Again the universal waste rules are mentioned, but these you mentioned -- you stated that these are separate from the universal waste rules. So my

question is are they part of the universal waste rules or not? (March 19, 2026 Transcript, 56:23-24, 57:1-4)

Response: Please refer to Response 2. These regulations are separate from the requirements of the universal waste rules as proposed Part 1220 regulations are specific to the storage of used EV batteries, and do not apply to batteries, generally, or even lithium chemistry batteries that are not used EV batteries. Because of the unique nature of these batteries and its applicability to future regulations that include EV batteries, the Illinois EPA has determined a new Subtitle K for "recyclable, reclaimable, or reusable wastes" would be best suited for these initial regulations to manage used EV batteries.

7. MS. TIN: Okay. The next question I have is are there any requirements from the Illinois Department of Transportation especially in regards to the movement or the transfer between the operator and the recycler?

MR. SRINIVASARAGHAVAN: Yes, there are. There are. Given the characteristics of these EV batteries there are special considerations that will need to be followed and that will be taken into account when we are calculating financial assurance for these sites.

MS. TIPSORD: Can you give the citation to the cite? (March 19, 2026 Transcript, 57:13-24, 58:1)

Response: A person transporting used EV batteries must comply with all regulations applicable to transporters of lithium chemistry batteries, including 35 Ill. Adm. Code 733, Subpart D, on Standards for Universal Waste Transporters, which includes compliance with U.S. Department of Transportation regulations.

8. MS. TIN: So trucks and semi, you know, lightweight trucks and semi batteries would be included in this and, of course, they would reach the minimal threshold quicker?

MR. SRINIVASARAGHAVAN: No. No. If it's a -- if it's a semi or truck battery, I think we would, we would probably have to go back and review that to see if we have to revise that, but for a semi or truck battery, this would not apply.

HEARING OFFICER MOISAN: But it's not clarified that this does not apply -- it infers that all batteries are included in this program.

MR. SRINIVASARAGHAVAN: Yeah, we acknowledge that. So we're going to take that back and review that.

MS. TIN: And then will you also clarify that it's the battery pack and not the cells? (March 19, 2026 Transcript, 62:12-24, 63:1-6)

Response: The Illinois EPA proposes the following change:

Section 1220.115

*"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. "Electric vehicle battery" encompasses the entire battery pack of an electric vehicle, but does not include the individual cells of an electric vehicle battery.*

Section 1220.125

- a) If the weight of an accumulation of used EV batteries is unknown, its weight ~~may~~must, for ~~the purposes of~~ this Part, be calculated by multiplying the volume of the accumulation, measured in cubic feet, by the following density factor for the type of used EV battery:
- 1) For passenger cars (i.e. sedans, hatchbacks, SUVs), 17 kilograms (38 pounds) per cubic foot;
  - 2) For light duty trucks, [new density factor is being finalized with experts]; and
  - 3) For semi-trucks or other heavy duty EVs, [new density factor is being finalized with experts]
9. MEMBER MANKOWSKI: Michael Mankowski again. Even though Tesla may be the most popular and most sold, are there any other EVs on the market that may have a larger density battery pack, you know, like a GM, Tesla, like a Hummer and things like that? Has the Agency looked into that to see if there could be depending on what the source is, if there could be batteries that, you know, would be more than that 17 kilograms per cubic foot?

MR. SRINIVASARAGHAVAN: We did a preliminary analysis, and we're willing to dive deeper into this to be able to fine tune this, yes. (March 19, 2026 Transcript, 62:11-24)

Response: The Illinois EPA is working with experts to determine the variability in used EV battery sizes and will factor those determinations into the language proposed in Response 8.

10. MR. RAO: Regarding your answer to the question as to financial assurance, has the Agency contacted any financial institutions to find out if there is readily available financial estimate instruments for these EV storage of batteries specifically?

MR. SRINIVASARAGHAVAN: The Agency has not reached out, but that is something we can take into consideration.

MR. RAO: You said take into consideration. Can you also find out how much it would cost to, you know, provide financial assurance for that 5,000 kilograms of used EV batteries? (March 19, 2026 Transcript, 64:23-24, 65:1-12)

Response: From the Illinois EPA's investigation, there is currently no readily available estimate instruments specifically for the purposes of this Part. However, such estimates would likely require facilities subject to this Part to acquire estimates from hazardous material transportation companies to estimate the cost of removal.

11. MS. TIN: So if you say for that calendar year, then is it possible that the second year they would be out?

MR. SRINIVASARAGHAVAN: Yes.

HEARING OFFICER MOISAN: And is that timeframe already in the rules as written? MR.

SRINIVASARAGHAVAN: No. No.

MS. TIN: Would it be that February 19 date? Would that be the calendar year? (March 19, 2026 Transcript, 67:11-19)

Response: The Illinois EPA proposes the following changes:

Section 1220.205(g)

A1) Register the site with the Agency by February 1st of each calendar year on forms and in a format prescribed by the Agency. For this Part:

A) A used EV battery storage site that stores 5,000 kilograms or more of used EV batteries at any time in the year must register within 10 days of storing 5,000 kilograms or more of used EV batteries; and

B) Any used EV battery storage site that at any point stores 5,000 kilograms or more of used EV batteries is deemed as having 5,000 kilograms or more of used EV batteries until the following February 1st.

12. MR. RAO: I have a follow-up here. In response to (c) you mentioned the NFPA 855 or OSHA standards, you know, whichever standards. Should the rules at least refer to NFPA 855 as some sort of guidance for conducting this analysis that you have on this section which is 205?

MR. SRINIVASARAGHAVAN: That's something we can, we can certainly use. There is a future standard coming so we can definitely take that into consideration. (March 19, 2026 Transcript, 70:3-13)

Response: As NFPA 855 is specifically directed to electric battery storage systems, the Illinois EPA does not recommend specifically incorporating it due to the differences between an actively charging/discharging system and used EV batteries that are not being actively used. However, as noted in OSFM's Public Comment, the NFPA is working on a new standard for batteries, NFPA 800, which will likely be more applicable to specifically reference. See OSFM's Public Comment #1, pg. 1. This standard is not published at the time of this rulemaking.

13. MS. VAN WIE: Okay. Yeah, someone who's qualified. By that do you mean someone who is part of the storage facility, and how did you define whether or not they're qualified to make the analysis I guess is my question.

MR. SRINIVASARAGHAVAN: We can, we can definitely take this back to review and just, you know, really hash this out, but essentially this analysis requires knowledge of chemistry and, you know, battery chemistry specifically and its reactions. So we're looking for someone who can make that analysis with confidence. (March 19, 2026 Transcript, 71:21-24, 72:1-8)

Response: The following suggested language proposed incorporates suggestions from OSFM's Public Comment, See OSFM's Public Comment #1, pg. 3:

Section 1220.205(i)

- 1) Any deflagration analysis must be completed by a Fire Protection Engineer or registered design professional with expertise in fire protection engineering, or a similarly qualified individual.

14. MR. RAO: Would it be possible for the Agency to provide some examples of how this analysis is done into the record so we get an idea what specifics are involved?

MR. SRINIVASARAGHAVAN: We can certainly look at that and try to get back. (March 19, 2026 Transcript, 72:16-21)

Response: The Illinois EPA is currently working with experts to provide examples of a deflagration analysis.

15. MS. TIN: My question here is all with using two negatives. No battery shall be stored within the building unless the building is not a single-family home. So no battery is stored unless a building is not. So that's where the question came up to the Board is, you know, is there another way to say this instead of using two negatives?

MR. SRINIVASARAGHAVAN: We, we appreciate you bringing that up, and hearing you read it out loud we definitely see that. So we can -- we'll take that into consideration to revise that to make it more clear. (March 19, 2026 Transcript, 74:10-22)

Response: The Illinois EPA proposes the following changes:

Section 1220.210

- b) ~~Used EV batteries must not be stored within a building unless~~Any building used for the storage of used EV batteries must:
- 1) ~~Maintain a~~All of the building's windows and doors in working order and ~~are~~ be secured to prevent unauthorized access;
  - 2) ~~The building Be is fully enclosed and has~~ve a roof and sides that are impermeable to precipitation; and
  - 3) ~~The building is a~~Not be a single-family home or other residential building.

16. MS. TIN: Can you also specify the difference between a fire suppression system that an owner/operator may use as opposed to the fire control system that the fire protection district may use? I think we kind of touched on both sides of it, you know, because the blankets and stuff would be used by a fire department, while the sprinkler may be used by the owner/operator. (March 19, 2026 Transcript, 79:2-11)

Response: The Illinois EPA proposes the following changes:

Section 1220.100

- d) Any local fire department or other emergency response entity responding to a used EV battery fire

17. MS. TIN: Question here is are there other rules that require limitations based upon ceiling height rather than storage of the units themselves? That's my first question.

MR. SRINIVASARAGHAVAN: We, we certainly can look into that a bit more and 23 see if there's other references, yeah.

MS. TIN: Could you not achieve the same thing by requiring a pallet height and also requiring the clearance while operation of the fire suppression rather than just saying that you could build it as high as you want as long as it doesn't hit the ceiling?

MR. SRINIVASARAGHAVAN: I guess I'm not fully following exactly.

MS. TIN: The ceiling height would vary -- you know, there's different rooms. You mention 20-foot ceiling.

MS. TIN: Some have 10-foot ceiling.

MS. TIN: Smaller facilities and so your limitation is based upon the ceiling height and the operation of the fire suppressants. Couldn't you just mandate that the fire suppressants be operable at the same time maintain a pallet height somewhat according to what the fire marshal asked for? I did not like the arbitrary ceiling height.

MR. SRINIVASARAGHAVAN: And I see your point. That's something we can look into. The only caveat that I would say with that methodology would be that if we're limiting the height especially to one pallet, then depending on, you know, how many batteries a potential site could store, that's going to be a larger footprint laterally, which, you know, a lot of times with a taller warehouse being able to stack them gives you more economy of scales in terms of bringing more batteries in there, and there's also other technology such as open rack space or open rack systems that have fire suppression systems built into each shelf of the rack, which once again if an operator were to propose this is the way they're going to stack their batteries, that would most likely be acceptable.

MS. TIN: What about the scenario where the ceiling height is incredibly high, and then you're stacking them and there's a possibility of, you know, falling over or anything like that?

MR. SRINIVASARAGHAVAN: And that's something we would have to look at on a case-by-case basis. The OSFM comments also commented on batteries being stacked too high because that's going to be difficult for firefighters to actually go and try to put out potential fires or thermal runaway events. And so our preliminary analysis based on those comments and what we've seen so far in the industry would be most likely if you're going to try to go higher, we would need some sort of system that has a rack mounted, you know, fire suppressant system or something along that to be able to delay any fires from spreading.

MS. TIN: Perhaps your limitations could be this or this or this, more of a tiered approach as opposed to, to just based on ceiling height. (March 19, 2026 Transcript, 81:17-24, 82:1-24, 83:1-24, 84:1-13)

Response: The Illinois EPA is currently working with experts to determine what height limits would best accomplish the goals of this Part. The Illinois EPA proposes the following changes, subject to the updated height requirements suggested by experts:

Section 1220.210(c)

- 7) Used EV batteries must ~~not be placed or accumulated within 2 feet of the room ceiling~~ be stored according to one of the following height

requirements:

A) For used EV batteries stored with a whole room sprinkler system:

- (i) Used EV batteries may be stored up to [foot height requirement] in height

B) For used EV batteries stored on racks with a per rack fire suppression system:

- (i) Used EV batteries may be stored up to [foot height requirement] high.

18. MR. RAO: In your response to Member Tin's question you had mentioned that you would look on a case-by-case basis. The question is does the rule allow the Agency to do a case-by-case analysis? Under what provision of the rule will the Agency do that kind of case-by-case evaluation?

MR. SRINIVASARAGHAVAN: From a fire safety perspective we think it does, but it is something that if we have to, you know, go back and look at the rules to be able to allow that, we can certainly do that. (March 19, 2026 Transcript, 84:20-24, 85:1-7)

Response: The Illinois EPA proposes the following changes:

Section 1220.205

- j) Used EV battery storage sites must make the facility available for inspection by the Agency or local fire departments, either upon the request of the facility or by request of the Agency or local fire department.
- 1) Upon inspection by a local fire department, it may determine if a facility is storing used EV batteries in a manner that allows emergency responders to safely respond to a fire or explosion incident. If a local fire department determines that the used EV battery storage site's storage methods would not allow the local fire department to address a fire or explosion, the used EV battery storage site shall modify its storage methods to comply with the local fire department's needs for fire or explosion response.

19. HEARING OFFICER MOISAN: And based on some of the follow-up questioning, is the Agency then going to consider maybe incorporating some more proactive and assistive

language in this area and other parts of the proposed rule? (March 19, 2026 Transcript, 88: 17-21)

Response: Please see the proposed addition to Section 1200.205 in Response 18. The Illinois EPA's intention with this language is to allow local fire departments, who would be the responding emergency service in the event of a fire or explosion, to have input on whether a used EV battery storage site is operating in a way that would allow the fire department to safely address a fire or explosion event.

20. MR. RAO: Would it be possible from the Agency to provide names and addresses of some of these big recyclers who you reached out to so we can put them on the notice list? (March 19, 2026 Transcript, 90:8-11)

Response: The Illinois EPA reached out to the following parties' representatives to provide notice of the rulemaking:

John Dunn - LKQ Corporation, Headquarters – 5846 Crossings Blvd, Antioch, TN 37013

James Morphew, [jmmorphew@sorlinglaw.com](mailto:jmmorphew@sorlinglaw.com), Lisa Disbrow, Lisa Disbrow, [ldisbrow@wm.com](mailto:ldisbrow@wm.com), and Neil Flynn, [nflynn@neilflynnlaw.com](mailto:nflynn@neilflynnlaw.com) – Waste Management & Recycling Services and NWRA

Kelly Thompson, [kthompson@ierg.org](mailto:kthompson@ierg.org) – IERG

Donovan Griffith, [dgriffith@ima-net.org](mailto:dgriffith@ima-net.org) – IMA

Jen Walling, [jwalling@ilenviro.org](mailto:jwalling@ilenviro.org) – IEC

Clair Ryan – Illinois Recycling Foundation

Peter Adrian – ILCSWMA

OSFM and IEMA via legislative liaisons

Chip Humes - Illinois Fire Chiefs Association

Radius Steele

Christina Seibert, [christina@swancc.org](mailto:christina@swancc.org) – Solid Waste Agency of Northern Cook County

21. MS. TIN: Do you have any objection with the local planning committees being involved if it's part of the owner/ operator's plan? (March 19, 2026 Transcript, 94:16-18)

Response: The Illinois EPA suggests the following changes:

Section 1220.220

- a) Develop, in consultation with the local fire department, and if subject to

EPCRA, a local emergency planning committee, a contingency plan that:

22. MS. VAN WIE: Is there any specific provision -- is there a proposed rule that states that or could one be added to make clear that EPCRA and -- is -- the requirements to EPCRA are not superseded? (March 19, 2026 Transcript, 94:2-6)

Response: The Illinois EPA suggests the following changes:

Section 1220.110

- c) The requirements of this Part do not supersede or otherwise override any requirements under the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. §§ 11001-11050, and the Illinois Emergency Planning and Community Right-to-Know Act ("IEPCRA"), 430 ILCS 100.

23. MR. RAO: If the Agency does not object to the suggested amendment, could it be possible for the Agency to provide NFPA 101 if we're going to incorporate that document by reference?

MR. SRINIVASARAGHAVAN: We would have to review that. That is going to depend on licensing and our purchase of it.

MR. RAO: Thank you.

MS. TIN: Would it be NFPA 101, or would it be the IBC?

MR. SRINIVASARAGHAVAN: We would have to review to see which one. We would also consult with fire marshal to see which one they feel is the most appropriate. (March 19, 2026 Transcript, 95:11-24, 96:1)

Response: The Illinois EPA is currently working with experts to determine which building code standard would be best to incorporate into this Part. The Illinois EPA will also contact OSFM prior to determining which standard to incorporate.

24. MEMBER MANKOWSKI: Member Mankowski. I just have one follow-up. I just want to make sure the -- let's say they contact IEMA, is IEPA contacted at the same time?

MR. SRINIVASARAGHAVAN: They should be. We can probably make that -- we can review that and make that more clear.

MEMBER MANKOWSKI: Another question. You suggested using IEMA, related to the rules they have to contact the Agency, which would be EPA, right?

MR. SRINIVASARAGHAVAN: Uh-huh, yes.

MEMBER MANKOWSKI: Okay.

MS. TIN: And that's handled through a programatic thing where IEMA is told, you know, if this occurs with the battery to notify, you know, a particular person at the Illinois EPA whether it's a field department or an emergency response?

MR. SRINIVASARAGHAVAN: Right. We would have to coordinate with them and we would try to follow the procedures we have in other programs that have similar notification requirements.

MS. TIN: And then as a follow-up, these clarifications that you answered, will they be included in the rulemaking in the proposed rules?

MR. SRINIVASARAGHAVAN: Yeah. Yeah.

MS. VAN WIE: Can I clarify? Have you discussed this with IEMA because you just said that you would coordinate with them but it doesn't sound like you'd already asked them about including them in the rule. Have you discussed that with them yet? (March 19, 2026 Transcript, 98:21-24, 99:1-8)

Response: For the purpose of regulatory consistency, the Illinois EPA intends to utilize the same incident reporting mechanism as utilized in 35 Ill. Adm. Code 848: Management of Used and Waste Tires. For this reason, the Illinois EPA intends to maintain the language used in proposed Section 1220.220(e) and (f), which utilizes the same language as 35 Ill. Adm. Code 848.203(g) and (h).

25. MR. MANKOWSKI: Follow-up from Member Mankowski. Are any of the chemistries like proprietary information? Have you looked at that at all to see how available any of that information actually is?

MR. SRINIVASARAGHAVAN: That's part of our review. Some of it we imagine is going to be proprietary, but, you know, we're going to be looking for the general chemical characteristics of the battery that would allow us to evaluate risk.

MS. TIN: Are there SIP classification requirements on these batteries?

MR. SRINIVASARAGHAVAN: We would have to look back at that, yeah. (March 19, 2026 Transcript, 101:1-15)

Response: The Illinois EPA is working with experts to determine what level of information is accessible regarding the different types of battery chemistries currently on the market in EVs. However, the Illinois EPA anticipates that it may be difficult to obtain on some used EV batteries that do not have markings. There is currently no federal standard for EV battery labeling, although a federal voluntary battery labeling guideline exists, and the only state that currently regulates labeling for EV batteries is California. See 13 Cal. Code of Regs. 1962.6.

26. MS. TIN: Question on this. It's not regarding this number 35 but the use of the word Agency. In your definitions you have Agency is the Environmental Protection Agency established by the Act. Do you not mean the Agency should be the Illinois Environmental Protection Agency? That's in the definitions under –' (March 19, 2026 Transcript, 101:24, 102:1-6)

Response: The Illinois EPA proposes the following changes:

Section 1220.115

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

27. MS. TIN: Question here is so you have this -- you have this fire incident and then the batteries are removed, the cleanup proceeds, and you said that an enforcement action would commence regarding remediation. Where is the link between requirements to meet TACO and this fire? That's the first question. (March 19, 2026 Transcript, 103:18-24)

Response: Currently, the only financial assurance considered in this proposed Part is for the cost of removal of used EV batteries at a storage facility. In the event of a fire, explosion, caused by a damaged used EV battery and the subsequent release of contaminants into the environment, the storage facility owner or operator would potentially be in violation of other provisions of the Act and corresponding rules or regulations adopted under the Act. At this stage, and as a result of investigation and enforcement actions by the Agency pursuant to Title VIII of the Act, the storage facility owner or operator could hypothetically be required to remediate the site pursuant to remediation objectives established pursuant to 35 Ill. Adm. Code Part 742. As part of that process, the owner or operator could be required to demonstrate that adequate financial resources are available to complete the required cleanup work. *See generally* 415 ILCS 5/30-31.

28. MS. TIN: So wouldn't you have to write these rules based upon the worst case scenario that there would be a cleanup?

MR. SRINIVASARAGHAVAN: That's something we can take into consideration especially when we're looking at financial assurance to protect the Agency.

MS. TIN: And that's where I was thinking --

MS. TIN: -- in this section, this new modification, you would add the link to TACO if appropriate. Thank you. (March 19, 2026 Transcript, 110:5-17)

Response: The current approach to financial assurance in Part 1220 is limited to removal costs. Please see the Agency's response to the previous question.

29. HEARING OFFICER MOISAN: In your proposed language, is the timing of getting Agency approval clear enough to the owner/operator because it has the deadline of February 1 each year to provide the written estimate, but then it says the Agency must

HEARING OFFICER MOISAN: -- just about the wording that they proposed. I just want to make sure that that the timing of things are clear for owner/operators. (March 19, 2026 Transcript, 110:20-24, 111:1-10)

Response: The February 1st deadline in the proposed regulations is a requirement upon the owner/operator. If an owner/operator has provided a written estimate by the February 1st deadline, they are in compliance regardless of the approval. However, to clarify the timing should a written estimate be rejected, the Illinois EPA proposes the following language:

Section 1220.620(a)

- 1) If the Agency rejects a written estimate, the owner or operate must submit a corrected written estimate within 30 days of the rejection notice.

30. HEARING OFFICER MOISAN: Subsection (b) has the second question that says: Has IEPA established or made publicly available any guidance? I'm not sure we answered that in the written response. So would you mind elaborating on that?

MR. SRINIVASARAGHAVAN: Not at this time. We'll have to go back and yeah, put on further guidance, yeah. (March 19, 2026 Transcript, 112:7-16)

Response: The Illinois EPA is currently working to provide guidance on financial assurance reporting, which will be made available alongside the associated forms when they are ready.

31. HEARING OFFICER MOISAN: Does IEPA have an expectation on when the forms may be completed on the portal as well?

MR. SRINIVASARAGHAVAN: The portal we will have to really get back to you on a deadline, but we are hoping to have some forms by next hearing. We're going to do our best. (March 19, 2026 Transcript, 114:21-24, 115:1-3)

Response: The Illinois EPA is currently working to create a portal for electronic submissions pursuant to this rule.

32. MS. TIN: Okay. Section 1220.510 Battery Tracking Receipts. In subsection (a) it says that upon receiving any used batteries at the EV battery storage site, the owner or operator of the used EV battery storage site must provide a receipt to the transporter and keep a copy of the receipt. The receipt must include all of the following: the signature of the owner/operator, the name and special weight hauler permit number of the transporter, the signature of the transporter, etc. Okay. My question here is is this a transporter under RCRA, or is this just a physical transporter? There's a definition of a transporter under RCRA.

MR. SRINIVASARAGHAVAN: We will have to review this, but we did -- I believe yeah, we'll have to review this to -- just to see which -- I believe we went towards the RCRA definition, but I want to review it before giving you a definitive answer. (March 19, 2026 Transcript, 117:8-24, 118:1-4)

Response: The regulation only calls for a physical transporter that must comply with all applicable Department of Transportation regulations. The Universal Waste Regulations for batteries by U.S. EPA do not mandate use of a uniform hazardous waste manifest or shipment using a hazardous waste transporter. [U.S. EPA Lithium-Ion Battery Recycling FAQ](#).

33. MS. TIN: And then also there's no definition of special waste hauler under your definition, and this looks like the manifest system, you know, the five-part manifest itself, and if you're building in that five-part manifest system, then it should be clearly aligned in the rules.

MR. SRINIVASARAGHAVAN: We will take that into consideration. Appreciate that. (March 19, 2026 Transcript, 118:5-13)

Response: The Illinois EPA does not seek to regulate transportation as a part of this rulemaking. Rather, the only requirements are for used EV battery sites to maintain a record of when and who is transporting the batteries they receive or remove from the site. For this purpose, the Illinois EPA suggests the following changes:

Section 1220.510

- 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 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; and the battery chemistry, or if unavailable, the make, model, and year of the vehicle the used EV battery was removed from.
- 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; the battery chemistry, or if unavailable, the make, model, and year of the vehicle the used EV battery was removed from; and the destinations of the used EV batteries.

34. MS. TIN: And then I have Section, 1220.615, Application Of Proceeds and Appeal. Under subsection (c) it says: The following Agency actions may be appealed to the Board as a

permit denial. So you're referencing a permit denial although this is not a permit denial, but I understand what you're referencing. It should be probably as a final action.

MR. SRINIVASARAGHAVAN: Yes. Yes.

MS. TIN: But these instances -- these five instances have to do with financial. Do you envision any other areas where they could appeal any of these decisions to the Board?

MR. SRINIVASARAGHAVAN: You mean other -- other situations that could appeal to the Board outside of these financial situations?

MS. TIN: Yes. For example, let's say they have a discrepancy as to whether they meet the threshold or not. You say they meet the threshold. Can they appeal that decision?

(March 19, 2026 Transcript, 118:14-24, 119:1-10)

Response:

The Illinois EPA proposes the following changes:

Section 1220.205(j)

- 1) If the Agency determines that a used EV battery storage site contains 5,000 kilograms or more of used EV batteries, the used EV battery storage site may appeal to the Board as an Agency Final Decision under 35 Ill. Adm. Code 105.

Section 1220.615

- c) The following Agency actions may be appealed to the Board as an Agency Final Decision pursuant to ~~under~~ 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;
  - 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.
  - 6) A refusal to approve a written estimate of removal costs.

35. MS. TIN: And how would that change if you regulate light truck and semis batteries?

MR. SRINIVASARAGHAVAN: We would -- we would have to go back based on our response to the previous question that you had regarding this. I think we will have to look at a tiered approach where we're classifying batteries differently, if it's coming from, you know, light-duty truck or semis or where the -- where these weight characteristics will not be fully representative. (March 19, 2026 Transcript, 121:14-24)

Response: It is unlikely there would be any change regarding appeals based on used EV batteries being light truck or semi-truck batteries. The only instance where such an appeal might be relevant is the Illinois EPA determines in an inspection that certain unweighted batteries fall under a higher tier established in Response 8 and causes a facility to cross the 5,000 kilogram threshold. As this would trigger additional requirements under Part 1220, a facility could dispute which tier certain batteries fall under.

36. MS. TIN: Is this clarification going to be made in the rules? (March 19, 2026 Transcript, 123:15-16)

Response: The Illinois EPA proposes the following changes:

Section 1220.210(d)(1)

- 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);

Section 1220.215(c)(1)

- 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);

37. MR. RAO: Do you think the proposed rules under 1220.210(c)(1) reflects your response clearly? (March 19, 2026 Transcript, 125:20-22)

Response: The Illinois EPA proposes the following changes:

Section 1220.210(c)

- 1) Used EV batteries stored indoors must be stored in piles within a room 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-compliance with the local building code.

38. MS. TIN: Do you anticipate outdoor storage -- do you have any knowledge that outdoor storage would be used at all if they have to containerize them anyway?

MR. SRINIVASARAGHAVAN: We, we do not know that right now, but we are hoping when we reach out to some of these recyclers we will learn some of that information. (March 19, 2026 Transcript, 128:3-10)

Response: The Illinois EPA does not have any specific knowledge of sites that would engage in outdoor storage. However, the Illinois EPA anticipates that some facilities would utilize outdoor storage if the facility has the outdoor space to do so.

39. MR. RAO: So should the rules include a requirement or a specification that runoff capture under these rules must be disposed of in compliance with the code regulations

—

MR. RAO: -- under Part 309? (March 19, 2026 Transcript, 129:16-21)

Response: The Illinois EPA proposes the following changes:

Section 1220.205

f) Any runoff due to a used EV battery fire, explosion, or other damage to stored used EV batteries must be disposed of in compliance with all applicable Illinois administrative rules.

40. MS. TIN: Okay. And if you consulted with the fire safety experts, can you give us, you know, citations and conversations and names of the people that you consulted with?

MR. SRINIVASARAGHAVAN: I can. I just need to get their permission. (March 19, 2026 Transcript, 132:2-7)

Response: The Illinois EPA has consulted with the following experts: Tracy Steffes, Morris Fire Chief; Ben Wrightsman, Founder and Lead-Advisor of XC Technology.

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

|   |   |           |
|---|---|-----------|
| IN THE MATTER OF:                       | ) |           |
|   | ) | R2026-017 |
| PROPOSED 35 ILL. ADM. CODE              | ) |           |
| SUBTITLE K: RECYCLABLE, RECLAIMABLE, OR | ) |           |
| REUSABLE WASTES, CHAPTER I POLLUTION    | ) |           |
| CONTROL BOARD, PART 1220 MANAGEMENT     | ) |           |
| OF USED EV BATTERIES                    | ) |           |

**CERTIFICATE OF SERVICE**

I, the undersigned, an attorney, state the following:

I have served the attached Illinois Environmental Protection Agency's Supplemental Responses to the March 19, 2026 Hearing and Amended Proposed Part 1220 upon the following:

See attached Service List

I affirm that my e-mail address is [trevor.dellaquila@illinois.gov](mailto:trevor.dellaquila@illinois.gov); the number of pages in the e-mail transmission is 21 for the Supplemental Responses and 27 for the Amended Proposed Part 1220; and the e-mail transmission took place before 5:00 p.m. on May 6, 2026.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Trevor D. Dell'Aquila  
Trevor D. Dell'Aquila  
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**SERVICE LIST**

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

PART 1220  
MANAGEMENT OF USED [Electric Vehicle \(EV\)](#) BATTERIES

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|          |   |
|----------|---|
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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

This Part applies to used EV battery storage sites regulated under Section 22.23f of the Environmental Protection Act [415 ILCS 5/22.23f]. Section 22.23f sets forth specifies 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~~ EV batteries at used EV battery storage sites. ~~Notwithstanding~~ Despite 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; ~~and~~
- e)d) Any local fire department or other emergency response entity responding to a used EV battery fire.

### Section 1220.105 Severability

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

b)c) The requirements of this Part do not supersede or otherwise override any requirements under the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. §§ 11001-11050, and the Illinois Emergency Planning and Community Right-to-Know Act ("IEPCRA"), 430 ILCS 100.

### 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 specified in the Act and 35 Ill. Adm. Code 101.

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

*"Agency" is the [Illinois] 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. "Electric vehicle battery" encompasses the entire battery pack of an electric vehicle, but does not include the individual cells of an electric vehicle battery. [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,~~ uninstalled EV 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) ~~\_\_\_\_\_~~ If the weight of an accumulation of used EV batteries is unknown, its weight ~~may~~must, for ~~the purposes of~~ this Part, be calculated by multiplying the volume of the accumulation, measured in cubic feet, by the following density factor for the type of used EV battery:
  - 1) For passenger cars (i.e. sedans, hatchbacks, SUVs), 17 kilograms (38 pounds) per cubic foot;
  - 2) For light duty trucks, [new density factor needed]; and
  - 3) For semi-trucks or other heavy duty EVs, [new density factor needed];
- 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**

### **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 of any battery storage site who store used EV batteries must comply with the following requirements:

- 1a) Used EV batteries must not be placed or accumulated outside of a building, except as provided in Section 1220.215.
- 2b) Used EV batteries must not be placed or accumulated inside a building, except as provided in Section 1220.210:
- 3c) Used EV batteries must not be placed or accumulated in any area where the grade of the ground surface exceeds two percent slope.
- d) Battery terminals must be protected either through battery design methods or a protective packaging method to prevent short-circuit of each used EV battery.
- 5e) All activities at the used EV battery storage site that present a risk of fire must be conducted in accordance-compliance with the NFPA 51B standard for fire prevention, including ~~but not limited to~~ welding, cutting, and other hot work, and either:
  - A1) Outside of any room where used EV batteries are placed or accumulated; or
  - B2) If outdoors, separated by at least 250 feet from all containers where used EV batteries are placed or accumulated.
- 6f) Any runoff due to a used EV battery fire, explosion, or other damage to stored used EV batteries must be disposed of in compliance with all applicable Illinois administrative rules administrative rules.
- g) 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:
  - A1) Register the site with the Agency by February 1st of each calendar year on forms and in a format prescribed by the Agency. For this Part:
    - A) A used EV battery storage site that stores 5,000 kilograms or more of used EV batteries at any time in the year must register within 10 days of storing 5,000 kilograms or more of used EV batteries; and
    - A)B) Any used EV battery storage site that at any point stores 5,000 kilograms or more of used EV batteries is deemed as having 5,000 kilograms or more of used EV batteries until the following February 1st.
  - B2) Comply with the contingency planning and emergency response requirements of Section 1220.220.
  - €3) Comply with the recordkeeping and reporting requirements of Subpart E.

- 79g) 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.
- 8h) Combustible materials in used EV battery storage sites must comply with all of the following:
- A1) 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.
  - B2) Combustible materials must not be stored within 3 feet from the exterior of rooms, containers, cabinets, or enclosures containing used EV batteries.
- 9i) Explosion Protection. The potential for a deflagration involving the off-gassing of flammable gases during a thermal runaway must be analyzed and explosion protection ~~and gas ventilation to prevent the build up of dangerous gasses meeting industry standards~~ must be installed to meet industry standards if the potential for a deflagration exists. If any explosion protection or gas ventilation is installed, the used EV battery storage site must maintain records on-site of the analysis of deflagration and make the records available for inspection and photocopying by the Agency during normal business hours.
- ~~1) — Any deflagration analysis must be completed by a Fire Protection Engineer or registered design professional with expertise in fire protection engineering, or a similarly qualified individual.~~
- j) Used EV battery storage sites must make the used EV battery storage site available for inspection by the Agency or local fire departments, either upon the request of the facility or by request of the Agency or local fire department.
- 1) Upon inspection by a local fire department, it may determine if a facility is storing used EV batteries in a manner that allows emergency responders to safely respond to a fire or explosion incident. If a local fire department determines that the used EV battery storage site's storage methods would not allow the local fire department to address a fire or explosion, the used EV battery storage site shall modify its storage method's to comply with the local fire departments needs for fire or explosion response.
  - 2) If the Agency determines that a used EV battery storage site contains 5,000 kilograms or more of used EV batteries, the used EV battery storage site may appeal to the Board as an Agency Final Decision under 35 Ill. Adm. Code 105.

### **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~~ Any building used for the storage of used EV batteries must:
- 1) ~~Maintain a~~ All of the building's windows and doors ~~are~~ in working order and ~~are~~ be secured to prevent unauthorized access;
  - 2) ~~The building~~ Be is fully enclosed and ~~has~~ es a roof and sides that are impermeable to precipitation; and
  - 3) ~~The building is~~ Not be a single-family home or other residential building.
- 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~~ within a room 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~~ compliance with the local building code.
  - 2) Each used EV battery pile must be contained in a room either:
    - 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) 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.
  - 2) Each used EV battery pile must be separated from all exits from the room or building by at least 5 feet.
  - 3) 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.
  - 4) Rooms where used EV batteries are stored must contain an automatic sprinkler system and ventilation system to prevent the dangerous buildup of gasses.
  - 5) All rooms where used EV batteries are stored must ~~not~~ have ~~fewer than~~ at least 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) ~~Used EV batteries must not be placed or accumulated within 2 feet of the room ceiling.~~ be stored according to one of the following height requirements:
    - A) For used EV batteries stored with a whole room sprinkler system:

(i) Used EV batteries may be stored up to [foot height requirement] in height.

B) For used EV batteries stored on racks with a per rack fire suppression system:

~~(i)~~ Used EV batteries may be stored up to [foot height requirement] high.

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~~ stored 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
- 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 and allow for the venting to prevent the buildup of dangerous gasses 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 at least 10 feet.
  - 4) Individual containers must be separated by ~~a~~ minimum of at least 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.
  - 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."
- 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, and if subject to EPCRA, a local emergency planning committee, 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 site in the event that the primary emergency coordinator or another alternate emergency coordinator is unavailable; and
- 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 or explosion 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;

- e) Notify the Agency immediately if a used EV battery fire or explosion occurs at the used EV battery storage site and immediately begin managing, in accordance-compliance 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) The extent of injuries, if any;
  - 6) Remedial actions taken in response to the incident;
  - 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 Standard**

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 C: RESERVED FOR FUTURE AMENDMENTS

SUBPART D: RESERVED FOR FUTURE AMENDMENTS

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~~-stored 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~~-compliance with Section 1220.510;
  - 2) Weekly Battery Records, in ~~accordance~~-compliance with Section 1220.515; and
  - 3) Annual Battery Summaries, in ~~accordance~~-compliance 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 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; ~~and the battery chemistry, or if unavailable, the make, model, and year of the vehicle from which the used EV battery was removed from~~.
- 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; the battery chemistry, or if unavailable, the make, model, and year of the vehicle from which the used EV battery was removed~~from~~; 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.
- 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, and the chemistry, or if unavailable, the make, model, and year of the vehicle from which the battery was removed~~from~~;
  - 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) The weight, in kilograms, of used EV batteries removed from any vehicle on site and the chemistry, or if unavailable, the make, model, and year of the vehicle from which the battery was removed~~from~~;

- 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:
  - 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-February 31st~~ 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~~that person's 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**

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 operation~~ for inspection and photocopying by the Agency.

## **SUBPART F: FINANCIAL ASSURANCE**

### **Section 1220.600 Scope and Applicability**

- a) Except ~~to the extent as~~ 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 where the real estate is owned by the following is exempt from this Subpart:
  - 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 under~~ Section 1220.620 until the owner or operator is released from financial assurance requirements under Section 1220.610.
- 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 under~~ Section 1220.620:

- 1) The current removal cost estimate increases; or
- 2) The value of a trust fund established ~~pursuant to~~under 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 an Agency Final Decision ~~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;
  - 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.
  - 5)6) A refusal to approve a written estimate of removal costs.

### Section 1220.620 Removal Cost Estimate

- a) By February 1<sup>st</sup> 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(e) of the Act.~~ Any removal cost estimate must be submitted on forms prescribed by the Agency.
  - 1) If the Agency rejects a written estimate, the owner or operator must submit a corrected written estimate within 30 days of the rejection notice.
- 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~~must 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);
- b) A surety bond guaranteeing payment (Section 1220.645); or
- b) 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.
- 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.
  - 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 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~~under 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~~according to 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 the~~ amounts as the Agency specifies in writing as expenditures ~~in accordance with~~according to 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 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~~ with according to 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~~ under 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

- 1) The bond must guarantee that the owner or operator will either:
  - A) Perform removal ~~in accordance with~~according to 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~~accordance-compliance 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) Fails to initiate removal when ordered to do so by the Board ~~pursuant to~~under 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.

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~~ compliance 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.
- 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) 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 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~~under 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~~under 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~~according to 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~~under Title VIII of the Act, or when ordered to do so by a court of competent jurisdiction;
  - 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~~compliance 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;
    - 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.