

ILLINOIS POLLUTION CONTROL BOARD

May 4, 1995

RCRA SUBTITLE D UPDATE, DELAYED )  
EFFECTIVE DATE OF USEPA ) R95-13  
FINANCIAL ASSURANCE REGULATIONS ) (Identical in Substance Rules)  
(4-7-95) ) (Solid Waste--Landfill)

Proposal for Public Comment.

PROPOSED OPINION AND ORDER OF THE BOARD (by G. Tanner Girard):

Pursuant to Sections 7.2 and 22.40(a) of the Environmental Protection Act (Act) [415 ILCS 5/7.2 & 22.40(a) (1992)], the Board proposes amendments to the RCRA Subtitle D municipal solid waste landfill (RCRA Subtitle D) regulations.

Section 22.40(a) provides for quick adoption of regulations that are "identical in substance" to federal regulations adopted by U.S. EPA to implement Sections 4004 and 4010 of the Resource Conservation and Recovery Act of 1976 (RCRA, 42 U.S.C. §§ 6944 & 6949a) and that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) [5 ILCS 100/5-35 & 5-40 (1992)] shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal RCRA Subtitle D regulations are found at 40 CFR 258.

DISCUSSION

U.S. EPA amended its RCRA Subtitle D regulations on April 7, 1995. Those amendments delay the effective date of the federal financial assurance requirements until April 9, 1997. The former effective date was April 9, 1995 (or October 9, 1995 for remote, very small landfills, as defined by 40 CFR 258.1(f)(1)). U.S. EPA amended the dates at 40 CFR 258.70(b) and 258.74(a)(5), (b)(1), (c)(1), and (d)(1). The stated purpose for the delay was to allow U.S. EPA additional time to perfect financial tests for local government and corporate self-assurance.

Accordingly, the Board has revised the financial assurance compliance deadlines to April 9, 1997. This required amendment of Sections 811.700(f) and (g), 811.706(c)(1), 811.711(a), 811.712(a), and 811.713(a), which are all locations where a compliance deadline appears in the regulations. In addition to the federally-derived amendments in this rulemaking, the Board has made a number of corrective and general housekeeping amendments in this rulemaking. All citations to the Code of Federal Regulations were updated in the open Sections. All the former references to the Illinois Compiled Statutes are removed in favor of citations to the Illinois Revised Statutes. We removed the explanatory Board Note at the end of Section 811.700

because it is no longer necessary. The Board removed the parenthetical explanation that the April 9, 1995 date is the effective date in Section 811.706(c)(1), consistent with the change in the federal regulations. We further added an explanation to the Board Note at the end of Section 811.706 that the amendments were prompted by the federal amendments to 40 CFR.74(a)(5), which does not correlate to this provision; there is no date recited in the cited 40 CFR 258.74(1). Additionally, the Board made a handful of additional minor conforming changes in punctuation and style.

#### PUBLIC COMMENTS

The Board invites public comment on the amendments included in this docket. A Notice of Proposed Amendments will appear in the Illinois Register relating to this matter. The public comment period will end 45 days after that Notice appears in the Register. Interested persons should address their comments to the Clerk of the Board. Address questions to Michael J. McCambridge, at 312-814-6924; Anand Rao, at 312-814-3956; or Marie E. Tipsord, at 312-814-4925 or 618-498-9803.

#### ORDER

The complete text of the proposed amendments follows:

TITLE 35: ENVIRONMENTAL PROTECTION  
 SUBTITLE G: WASTE DISPOSAL  
 CHAPTER I: POLLUTION CONTROL BOARD  
 SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 811  
 STANDARDS FOR NEW SOLID WASTE LANDFILLS

SUBPART A: GENERAL STANDARDS FOR ALL LANDFILLS

Section	
811.101	Scope and Applicability
811.102	Location Standards
811.103	Surface Water Drainage
811.104	Survey Controls
811.105	Compaction
811.106	Daily Cover
811.107	Operating Standards
811.108	Salvaging
811.109	Boundary Control
811.110	Closure and Written Closure Plan
811.111	Postclosure Maintenance

SUBPART B: INERT WASTE LANDFILLS

Section

811.201	Scope and Applicability
811.202	Determination of Contaminated Leachate
811.203	Design Period
811.204	Final Cover
811.205	Final Slope and Stabilization
811.206	Leachate Sampling
811.207	Load Checking

#### SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS

Section	
811.301	Scope and Applicability
811.302	Facility Location
811.303	Design Period
811.304	Foundation and Mass Stability Analysis
811.305	Foundation Construction
811.306	Liner Systems
811.307	Leachate Drainage System
811.308	Leachate Collection System
811.309	Leachate Treatment and Disposal System
811.310	Landfill Gas Monitoring
811.311	Landfill Gas Management System
811.312	Landfill Gas Processing and Disposal System
811.313	Intermediate Cover
811.314	Final Cover System
811.315	Hydrogeological Site Investigations
811.316	Plugging and Sealing of Drill Holes
811.317	Groundwater Impact Assessment
811.318	Design, Construction, and Operation of Groundwater Monitoring Systems
811.319	Groundwater Monitoring Programs
811.320	Groundwater Quality Standards
811.321	Waste Placement
811.322	Final Slope and Stabilization
811.323	Load Checking Program
811.324	Corrective Action Measures for MSWLF Units
811.325	Selection of remedy for MSWLF Units
811.326	Implementation of the corrective action program at MSWLF Units

#### SUBPART D: MANAGEMENT OF SPECIAL WASTES AT LANDFILLS

Section	
811.401	Scope and Applicability
811.402	Notice to Generators and Transporters
811.403	Special Waste Manifests
811.404	Identification Record
811.405	Recordkeeping Requirements
811.406	Procedures for Excluding Regulated Hazardous Wastes

#### SUBPART E: CONSTRUCTION QUALITY ASSURANCE PROGRAMS

Section	
811.501	Scope and Applicability
811.502	Duties and Qualifications of Key Personnel

811.503 Inspection Activities  
 811.504 Sampling Requirements  
 811.505 Documentation  
 811.506 Foundations and Subbases  
 811.507 Compacted Earth Liners  
 811.508 Geomembranes  
 811.509 Leachate Collection Systems

#### SUBPART G: FINANCIAL ASSURANCE

##### Section

811.700 Scope, Applicability and Definitions  
 811.701 Upgrading Financial Assurance  
 811.702 Release of Financial Institution  
 811.703 Application of Proceeds and Appeals  
 811.704 Closure and Postclosure Care Cost Estimates  
 811.705 Revision of Cost Estimate  
 811.706 Mechanisms for Financial Assurance  
 811.707 Use of Multiple Financial Mechanisms  
 811.708 Use of a Financial Mechanism for Multiple Sites  
 811.709 Trust Fund for Unrelated Sites  
 811.710 Trust Fund  
 811.711 Surety Bond Guaranteeing Payment  
 811.712 Surety Bond Guaranteeing Performance  
 811.713 Letter of Credit  
 811.714 Closure Insurance  
 811.715 Self-Insurance for Non-commercial Sites

##### 811.Appendix A Financial Assurance Forms

Illustration A Trust Agreement  
 Illustration B Certificate of Acknowledgment  
 Illustration C Forfeiture Bond  
 Illustration D Performance Bond  
 Illustration E Irrevocable Standby Letter of Credit  
 Illustration F Certificate of Insurance for Closure and/or  
 Postclosure Care  
 Illustration G Operator's Bond Without Surety  
 Illustration H Operator's Bond With Parent Surety  
 Illustration I Letter from Chief Financial Officer

##### 811.Appendix B Section-by-Section Correlation Between the Requirements of the Federal MSWLF Regulations at 40 CFR 258 (1992) and the Requirements of Parts 810 through 814.

**AUTHORITY:** Implementing Sections 5, 21, 21.1, 22, 22.17 and 28.1 and authorized by Section 27 of the Environmental Protection Act (~~Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1005, 1021, 1021.1, 1022, 1022.17, 1028.1 and 1027~~) [415 ILCS 5/5, 21, 21.1, 22, 22.17, 28.1 & 27].

**SOURCE:** Adopted in R88-7 at 14 Ill. Reg. 15861, effective September 18, 1990; amended in R92-19 at 17 Ill. Reg. 12413,

effective July 19, 1993; amended in R93-10 at 18 Ill. Reg. 1308, effective January 13, 1994; expedited correction at 18 Ill. Reg. 7504, effective July 19, 1993; amended in R90-26 at 18 Ill. Reg. 12481, effective August 1, 1994; amended in R95-xx at 19 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

NOTE: Capitalization indicates statutory language.

## SUBPART G: FINANCIAL ASSURANCE

### Section 811.700 Scope, Applicability and Definitions

- a) This Subpart provides procedures by which the owner or operator of a permitted waste disposal facility provides financial assurance satisfying the requirements of Section 21.1(a) of the Act.
- b) Financial assurance may be provided, as specified in Section 811.706, by a trust agreement, a bond guaranteeing payment, a bond guaranteeing payment or performance, a letter of credit, insurance or self-insurance. The owner or operator shall provide financial assurance to the Agency before the receipt of the waste.
- c) Except as provided in subsection (f), this Subpart does not apply to the State of Illinois, its agencies and institutions, or to any unit of local government; provided, however, that any other persons who conduct such a waste disposal operation on a site that is owned or operated by such a governmental entity shall provide financial assurance for closure and postclosure care of the site.
- d) The owner or operator is not required to provide financial assurance pursuant to this Subpart if the owner or operator demonstrates:
  - 1) That closure and postclosure care plans filed pursuant to 35 Ill. Adm. Code 724 or 725 will result in closure and postclosure care of the site in accordance with the requirements of this Part; and
  - 2) That the owner or operator has provided financial assurance adequate to provide for such closure and postclosure care pursuant to 35 Ill. Adm. Code 724 or 725.
- e) Definition: "Assumed closure date" means the date during the next permit term on which the costs of

premature final closure of the facility, in accordance with the standards of this Part, will be greatest.

- f) On or after April 9, 1995~~7~~, no person, other than the State of Illinois, its agencies and institutions, shall conduct any disposal operation at a MSWLF unit that requires a permit under subsection (d) of section 21.1 of the Act, unless that person complies with the financial assurance requirements of this Part.
- g) The standards adopted in this subpart that are identical in substance to the federal Subtitle D regulations that are individually indicated as applicable to MSWL units shall not apply to such units until April 9, 1995~~7~~.

BOARD NOTE: Subsection (f) clarifies the applicability of the financial assurance requirements to local governments, since the Subtitle D regulations exempt only federal and state governments from financial assurance requirements. (See 40 CFR 258.70 (1992~~4~~), as amended at 60 Fed. Reg. 17652 (Apr. 7, 1995)).

~~BOARD NOTE: The compliance dates specified in subsections (f) and (g) reflect the revised dates proposed by the USEPA in the Federal Register Notification published on July 28, 1993 (see 58 FR 40568). The Board notes that the revised dates are included in the regulations in order to be identical in substance with the federal Subtitle D program. The Board recognizes that the proposed revisions are not yet final. However, the Board anticipates that the USEPA's proposal will become effective before the end of the post-adoption comment period of the instant rulemaking. Thus, if there are any changes in the final version of the federal rules, the Board will make corresponding changes in the instant regulations.~~

(Source: Amended at 19 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 811.706 Mechanisms for Financial Assurance

- a) The owner or operator of a waste disposal site may utilize any of the mechanisms listed in subsections (a)(1) through (a)(6) to provide financial assurance for closure and postclosure care, and for corrective action at a MSWLF unit. An owner or operator of a MSWLF unit shall also meet the requirements of subsections (b), (c), and (d). The mechanisms are as follows:

- 1) A trust Fund (see Section 811.710);
  - 2) A surety Bond Guaranteeing Payment (see Section 811.711);
  - 3) A surety Bond Guaranteeing Performance (see Section 811.712);
  - 4) A letter of Credit (see Section 811.713);
  - 5) Closure Insurance (see Section 811.714); or
  - 6) Self-insurance (see Section 811.715).
- b) The owner or operator of a MSWLF unit shall ensure that the language of the mechanisms listed in subsection (a), when used for providing financial assurance for closure, postclosure, and corrective action, satisfies the following:
- 1) The amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action; and
  - 2) The funds will be available in a timely fashion when needed.
- c) The owner or operator of a MSWLF unit shall provide financial assurance utilizing one or more of the mechanisms listed in subsection (a) within the following dates:
- 1) By April 9, 1994~~7~~ (~~the effective date of these requirements~~) or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care; or
  - 2) No later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325, in the case of corrective action.
- d) The owner or operator shall provide continuous coverage until the owner or operator is released from the financial assurance requirements pursuant to 35 Ill. Adm. Code 813.403(b) or Section 811.326.

~~Board Note.~~ **BOARD NOTE:** Subsections (b) and (c) are derived from 40 CFR 258.74(1) (1992~~4~~). Amendments prompted by amendments to 40 CFR 258.74(a)(5) (1994), as amended at 60 Fed. Reg. 17652 (Apr. 7, 1995).

(Source: Amended at 19 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

\_\_\_\_\_)

Section 811.711 Surety Bond Guaranteeing Payment

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining a surety bond which conforms to the requirements of this Section and submitting the bond to the Agency. A surety bond obtained by an owner or operator of a MSWLF unit must be effective before the initial receipt of waste or before April 9, 1994<sup>7</sup> (the effective date of the financial assurance requirements under RCRA Subtitle D regulations), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.
- b) The surety company issuing the bond shall be licensed by the Illinois Department of Insurance pursuant to the Illinois Insurance Code (~~Ill. Rev. Stat. 1991, ch. 73, pars. 613 et seq.~~ [215 ILCS 5/1 et seq.]) and approved by the U.S. Department of the Treasury as an acceptable surety.

BOARD NOTE: The U.S. Department of the Treasury lists acceptable sureties in its Circular 570.

- c) The surety bond must be on the forms specified in Appendix A, Illustration C, D, or H.
- d) Any payments made under the bond will be placed in the landfill closure and postclosure fund within the State Treasury.
- e) Conditions:
  - 1) The bond must guarantee that the owner or operator will provide closure and postclosure care in accordance with the approved closure and postclosure care plans. If the facility is a MSWLF unit, then the corrective action bond must guarantee that the owner or operator will implement corrective action in accordance with Section 811.326.
  - 2) The surety will become liable on the bond obligation when, during the term 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:
    - A) Abandons the site;

- B) Is adjudicated bankrupt;
  - C) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board pursuant to Title VII of the Act, or when ordered to do so by a court of competent jurisdiction;
  - D) Notifies the Agency that it has initiated closure or corrective action, or initiates closure or corrective action, but fails to close the site or provide postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans; or
  - E) For a corrective action bond, fails to implement corrective action at a MSWLF unit in accordance with Section 811.326
- f) Penal sum:
- 1) The penal sum of the bond must be in an amount at least equal to the current cost estimate.
  - 2) The Agency shall approve a reduction in the penal sum whenever the current cost estimate decreases.
- g) Term:
- 1) The bond must be issued for a term of at least five years and must not be cancelable during that term.
  - 2) If the owner or operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond must be automatically extended for one twelve-month period starting with the date of expiration of the bond. During such extension the bond will cease to serve as financial assurance satisfying the requirements of this Part, and will not excuse the owner or operator from the duty to provide substitute financial assurance.
  - 3) The Agency shall release the surety if, after the surety becomes liable on the bond, the owner or operator or another person provides financial assurance for closure and postclosure care of the site or corrective action at a MSWLF unit, unless the Agency determines that the closure or postclosure care plan, corrective action program

at a MSWLF unit, or the amount of substituted financial assurance is inadequate to provide closure and postclosure care or implement corrective action in compliance with this Part.

h) Cure of default and refunds:

- 1) The Agency shall release the surety if, after the surety becomes liable on the bond, the owner or operator or another person provides financial assurance for closure and postclosure care of the site or corrective action at a MSWLF unit, unless the Agency determines that the closure or postclosure care plan, corrective action at a MSWLF unit or the amount of substituted financial assurance is inadequate to provide closure and postclosure care or implement corrective action in compliance with this Part.
- 2) After closure and postclosure care have been completed in accordance with the plans and requirements of this Part or after the completion of corrective action at a MSWLF unit in accordance Section 811.326, the Agency shall refund any unspent money which was paid into the "Landfill Closure and Postclosure Fund" by the surety.

~~Board Note.~~ BOARD NOTE: MSWLF corrective Aaction language at subsection (a) is derived from 40 CFR 258.74(b)(1) (19924), as amended at 60 Fed. Reg. 17652 (Apr. 7, 1995). The other clarifying changes reflect the inclusion of financial assurance requirements for implementing corrective action at MSWLF units under this Section.

(Source: Amended at 19 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 811.712 Surety Bond Guaranteeing Performance

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining a surety bond which conforms to the requirements of this Section and submitting the bond to the Agency. A surety bond obtained by an owner or operator of a MSWLF unit must be effective before the initial receipt of waste or before April 9, 19947 (the effective date of the financial assurance requirements under RCRA Subtitle D regulations), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.

- b) The surety company issuing the bond shall be licensed by the Illinois Department of Insurance pursuant to the Illinois Insurance Code (~~Ill. Rev. Stat. 1991, ch. 73, pars. 613 et seq.~~ [215 ILCS 5/1 et seq.]) and approved by the U.S. Department of the Treasury as an acceptable surety.

BOARD NOTE: The U.S. Department of the Treasury lists acceptable sureties in its Circular 570.

- c) The surety bond must be on the forms as specified in Appendix A, Illustration C, D, or H.
- d) Any payments made under the bond will be placed in the landfill closure and postclosure fund within the State Treasury.
- e) Conditions:
- 1) The bond must guarantee that the owner or operator will provide closure and postclosure care in accordance with the closure and postclosure care plans in the permit. If the facility is a MSWLF unit, then a corrective action bond must guarantee that the owner or operator will implement corrective action in accordance with Section 811.326. The surety shall have the option of providing closure and postclosure care or carrying out corrective action, or of paying the penal sum.
  - 2) The surety will become liable on the bond obligation when, during the term 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:
    - A) Abandons the site;
    - B) Is adjudicated bankrupt;
    - C) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board pursuant to Title VII of the Act, or when ordered to do so by a court of competent jurisdiction; or
    - D) Notifies the Agency that it has initiated closure or corrective action, or initiates closure or corrective action, but fails to close the site or provide postclosure care or corrective action in accordance with the

closure and postclosure care or corrective action plans.

- E) For a corrective action bond, fails to implement corrective action at a MSWLF unit in accordance with Section 811.326
- f) Penal sum:
  - 1) The penal sum of the bond must be in an amount at least equal to the current cost estimate.
  - 2) The Agency shall approve a reduction in the penal sum whenever the current cost estimate decreases.
- g) Term:
  - 1) The bond must be issued for a term of at least five years and must not be cancelable during that term.
  - 2) If the owner or operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond must be automatically extended for one twelve-month period starting with the date of expiration of the bond. During such extension, the bond will cease to serve as financial assurance satisfying the requirements of this Part, and will not excuse the owner or operator from the duty to provide substitute financial assurance.
- h) Cure of default and refunds:
  - 1) The Agency shall release the surety if, after the surety becomes liable on the bond, the owner or operator or another person provides financial assurance for closure and postclosure care of the site or corrective action at a MSWLF unit, unless the Agency determines that the closure or postclosure care plan, corrective action at a MSWLF unit, or the amount of substituted financial assurance is inadequate to provide closure and postclosure care or implement corrective action at a MSWLF unit in compliance with this Part.
  - 2) After closure and postclosure care have been completed in accordance with the closure and postclosure care plans and the requirements of this Part or after the completion of corrective action at a MSWLF unit in accordance with Section 811.326, the Agency shall refund any unspent money

which was paid into the "Landfill Closure and Postclosure Fund" by the surety.

- i) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the Agency releases the owner or operator from the requirements of this Subpart.

~~Board Note.~~ **BOARD NOTE:** MSWLF corrective action language at subsection (a) is derived from 40 CFR 258.74 (b) (1) (19924), as amended at 60 Fed. Reg. 17652 (Apr. 7, 1995). The other clarifying changes reflect the inclusion of financial assurance requirements for implementing corrective action at MSWLF units under this Section.

(Source: Amended at 19 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 811.713 Letter of Credit

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining an irrevocable standby letter of credit which conforms to the requirements of this Section and submitting the letter to the Agency. A letter of credit obtained by an owner or operator of a MSWLF unit must be effective before the initial receipt of waste or before April 9, 1994~~7~~ (the effective date of the financial assurance requirements under RCRA Subtitle D regulations), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.
- b) The issuing institution shall be an entity which has the authority to issue letters of credit and:
- 1) Whose letter-of-credit operations are regulated by the Illinois Commissioner of Banks and Trust Companies pursuant to the Illinois Banking Act (~~Ill. Rev. Stat. 1991, ch. 17, pars. 301 et seq. [205 ILCS 5/1 et seq.]~~); or,
  - 2) Whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- c) Forms:
- 1) The letter of credit must be on the forms specified in Appendix A, Illustration E.

- 2) The letter of credit must be accompanied by a letter from the owner or operator, referring to the letter of credit by number, the name and address of the issuing institution, and the effective date of the letter, and providing the following information: the name and address of the site and the amount of funds assured for closure and postclosure care of the site, or for corrective action at a MSWLF unit by the letter of credit.
- d) Any amounts drawn by the Agency pursuant to the letter of credit will be deposited in the landfill closure and postclosure fund within the State Treasury.
- e) Conditions on which the Agency may draw on the letter of credit:
  - 1) The Agency shall draw on the letter of credit if the owner or operator fails to perform closure or postclosure care in accordance with the closure and postclosure care plans, or fails to implement corrective action at a MSWLF unit in accordance with Section 811.326.
  - 2) The Agency shall draw on the letter of credit when the owner or operator:
    - A) Abandons the site;
    - B) Is adjudicated bankrupt;
    - C) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board pursuant to Title VII of the Act, or when ordered to do so by a court of competent jurisdiction; or
    - D) Notifies the Agency that it has initiated closure or corrective action, or initiates closure or corrective action, but fails to Provide closure and postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans.
    - E) For a corrective action bond, fails to implement corrective action at a MSWLF unit in accordance with Section 811.326
- f) Amount:

- 1) The letter of credit must be issued in an amount at least equal to the current cost estimate.
- 2) The Agency shall approve a reduction in the amount whenever the current cost estimate decreases.

g) Term:

- 1) The letter of credit must be issued for a term of at least five years and must be irrevocable during that term.
- 2) If the owner or operator fails to substitute alternative financial assurance prior to expiration of a letter of credit, the term of the letter of credit must be automatically extended for one twelve-month period starting with the date of expiration. During such extension, the letter of credit will cease to serve as financial assurance satisfying the requirements of this Part, and will not excuse the owner or operator from the duty to provide substitute financial assurance.

h) Cure of default and refunds:

- 1) The Agency shall release the financial institution if, after the Agency is allowed to draw on the letter of credit, the owner or operator or another person provides financial assurance for closure and postclosure care of the site or corrective action at a MSWLF unit, unless the Agency determines that a plan or the amount of substituted financial assurance is inadequate to provide closure and postclosure care, or implement corrective action at a MSWLF unit, as required by this Part.
- 2) After closure and postclosure care have been completed in accordance with the closure and postclosure care plans and the requirements of this Part or after the completion of corrective action at a MSWLF unit in accordance with Section 811.326, the Agency shall refund any unspent money which was paid into the "Landfill Closure and Postclosure Fund" by the financial institution.

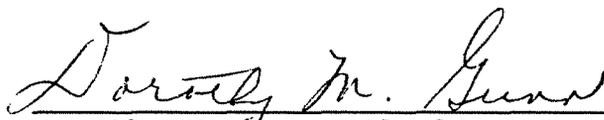
~~Board Note.~~ BOARD NOTE: MSWLF corrective action language at subsection (a) is derived from 40 CFR 258.74 (c)(1) (19924), as amended at 60 Fed. Reg. 17652 (Apr. 7, 1995). The other clarifying changes reflect the inclusion of financial

assurance requirements for implementing corrective action at MSWLF units under this Section.

(Source: Amended at 19 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ )

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above proposed opinion and order was adopted on the 4<sup>th</sup> day of May, 1995, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board