ILLINOIS POLLUTION CONTROL BOARD
April 25, 1991

IN THE MATTER OF:	)	
	)	R90-9 (Docket A)
USED AND WASTE TIRE REGULATION	)	(Docket B)
(35 ILL. ADM. CODE 848)	)	(Rulemaking)

ADOPTED RULE. FINAL ORDER.

OPINION AND ORDER OF THE BOARD (by J. C. Marlin)*:

On April 17, 1991 the the legislative Joint Committee on Administrative Rules (JCAR) took no action at their meeting on these regulations concerning used and waste tires as proposed at Second Notice. The 45 day time period for Second Notice review by JCAR expires May 9, 1991. JCAR will not meet again during the Second Notice period. The Board must file an adopted rule with the Secretary of State by May 14, 1991 or return to First Notice. The Board, therefore, decides to proceed with final adoption of these rules. The regulations will become effective January 1, 1992. Certain modifications and additions to this rule will be considered in subdocket B, which the Board created by its Order of March 14, 1991.

PROCEDURAL HISTORY

The Agency filed its initial proposal pursuant to Section 55.2(a) of the Illinois Environmental Protection Act ("Act"), Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1055.2, as amended by P.A. 86-452. Section 55.2 of the Act requires the Agency to submit such a proposal by July 1, 1990 and that the Board adopt such a proposal within one year. On April 12, 1990 the Board accepted the proposal for hearing, thereby beginning the calculation of time, pursuant to Section 28 of the Act, within which it must decide whether an Economic Impact Study ("EcIS")was necessary for the proposal. On April 26, 1990 the Board acted to send the Agency's proposal to First Notice, without ruling upon its merits. The proposal was published in the Illinois Register on May 25, 1990. 14 Ill. Reg. 7763 (May 25, 1990). The Agency's

* The Board wishes to acknowledge the contributions of Anand Rao of the Board's Scientific and Technical Section (STS) for his work on this proceeding. The Board also commends Marie Tipsord for her assistance in drafting the Board's Opinion and Order in this matter. A special thanks is reserved for Morton Dorothy of the STS for his work in drafting the financial assurance portion of the Opinion and Order. Lastly, the Board acknowledges the work of Mark P. Miller, who has served as Hearing Officer throughout these proceedings and who played a large part in the drafting of the Board's Opinion and Order in this matter.

filings of August 9 and October 26, 1990 (PC14), which submitted a substantially amended proposal for consideration, restarted the time frame in which the Board must act pursuant to Section 55.2 of the Act.

Economic Impact Statement Determination

On June 7, 1990, the Board decided the proposal did not require an EcIS citing the Illinois Department of Energy and Natural Resources' (DENR) comments (PC1) that "a formal economic impact study is not critical" to the proceeding. The DENR further stated that the body of economic information developed in the legislative process which led to the enactment of Section 55.2 of the Act is available for consideration by the Board. The Agency adopted a neutral position regarding the determination (PC2). The Board concurred with DENR's reasoning. The Board also notes that considerable economic information was developed in the prior dockets concerning this topic in R88-12, 12 Ill. Reg. 8485 (May 13, 1988) and R88-24, 13 Ill. Reg. 7949 (May 26, 1989).

Public Involvement

During the initial 45 day public comment ("PC") period following First Notice publication on May 25, 1990, the Board received, in addition to the comments above, comments from the Administrative Code Division of the Secretary of State's Office regarding format changes (PC3), remarks of the Illinois Coal Association (PC4), the comments of M.A. Associates (PC5) and comments of Metropolitan Tire Recycling and Recapping, Inc. (PC6).

The Board held its first hearing on the Agency's proposal on June 22, 1990 at the State of Illinois Center, Chicago, Illinois. At this hearing, Mr. Gary King of the Agency presented testimony in support of the Agency's regulatory proposal. Also testifying on the Agency's behalf was Mr. Paul Purseglove. The Board's Scientific and Technical Section provided testimony and comments regarding the financial assurance portion of the proposal. Mr. Ken Kirby of Oxford Tire Recycling of Illinois, Ms. Bonnie Eynon Meyer of IDENR, Mr. Robert Grammer and Mr. Phil Morlay of Lakin General, Mr. Lloyd Renfro of the Illinois State Tire Dealers and Retreaders Association and Mr. Jack Filler also participated.

The second hearing in this matter was held on for August 10, 1990 at the City Council chambers, Municipal building,

Springfield, Illinois.** On August 9, 1990 the Agency proposed revisions to its proposal in response to comments received at the hearing of June 22, 1990. The revisions focused upon two aspects: (a) changes to the financial assurance requirements for operators, and (b) removal of tire shreds with dimensions of three inches or less from the standards. The revised proposal also contained corrections of numerous typographical errors as well as clarification amendments. Despite late filing, the Hearing Officer received testimony and exhibits concerning the revised proposal at the next day's hearing. The August 10, 1990 hearing participants included Dr. Robert Novak of the Illinois Natural History Survey; Mr. Joseph Naro of Clarke Outdoor Spraying Company; and Mr. Billy Mitchell, Ms. Barbara Smith-Jones, Mr. Gilson White and Mr. Alvin McCoy of Pembroke Township. Mr. Ken Kirby also supplied testimony.

Following the hearing of August 10, 1990, the Hearing Officer ordered a period of post hearing public comment until September 7, 1990. This period was reopened until October 5, 1990 to receive further commentary.

The content of the majority of the public comments are addressed in the body of this Opinion. A few, not addressed elsewhere, are discussed here. The public comment of Metropolitan Tire Recycling and Recapping, Inc. (Metropolitan) focussed on a desire for the proposed regulations to cover "used and waste tire monofills." This monofill, as described, would receive and store slit or shredded tires in a manner which would allow ultimate retrieval over a period of decades. The regulations, designed for contemporaneous processing, do not address this alternative. The comment included proposed definition changes and additions as well as an exemption from management standards. The proposal was not supported by testimony at hearing. The Board, therefore, declines to take further action on it at this time. Metropolitan remains free to pursue these suggestions in Subdocket B.

The analytical report of the DENR (PC7) describes test results performed by DTC Laboratories, Inc. for EP toxicity and heavy metals from tire chips. The Agency's response to a letter received from Browning-Ferris Industries (PC8) stated that "storage" began at the end of the working day at a landfill.

The comment of M.A. Associates, Inc. (PC6) called for the permitting of "tire jockeys." The Board believes this concern is addressed by Subpart F: Tire Transportation Requirements. The comment of the Illinois Coal Association relating to statutory

** References to the transcript of the June 22, 1990 hearing are designated "1R.__."); those of the August 9, 1990 hearing ("2R _.").

exemptions for used tires generated and located at coal mining sites, (PC4) are addressed in the general management standards exemption (Section 848.201).

Metropolitan Tire Recycling and Recapping submitted comments on August 7, 1990 (PC6), followed by those of IDENR on August 8, 1990 (PC7). The Board also received comments from State Representative Larry Wennlund (PC9) filed August 10, 1990, and comments from the Chicago Department of Public Health filed August 22, 1990 and the Agency's response to comments (PC8), filed August 13, 1990.

On September 17, 1990, Lakin General Corporation submitted an analysis of the impact of the proposed rule upon its operations (PC11). The final comments of Oxford Tire Recycling of Illinois and of Lakin General Corporation were submitted on September 20, 1990 (PC12). Finally, the Agency's proposed exemption for tire retreaders appeared in public comments, (PC14) on October 26, 1990 and accompanied by a motion to file instanter.***

<u>Establishment of Docket (B)</u>

Several of those testifying and submitting comments urged the Board to consider the special situation in the tire management scheme posed by tire recyclers and retreaders. Lakin General Corporation and Oxford Tire Recycling, Inc. gave testimony in support of some type of an exemption from management standards and also raised the question whether these managed sites deserve relief from the financial assurance standards. The Board reviewed the testimony and exhibits and found merit in the ideas. In the end, however, questions remained concerning <u>which</u> management standards and <u>which</u> financial assurances provisions recyclers and retreaders needed to meet. The Agency filed an amendment covering these issues on October 26, 1990 (PC14). The Board believes it prudent, therefore, to open Docket (B) in this matter and to more fully consider the ramifications of these exemptions there. To that end, a full discussion of the comments, testimony and exhibits received regarding these topics is omitted from this Opinion. They will be fully addressed in Docket (B).

We also anticipate that Docket B may be utilized to perfect the rules in some other areas including those related to

***Comments received immediately prior to the August 10 hearing which were outside the comment period (PC6-9) were allowed by Hearing Officer Order of August 17, 1990. All others, including the Agency's filing of October 26, 1990, are hereby accepted in the record via Board Order today.

pesticide use and tire storage in buildings. Finally, we note that, since it was not proposed at First Notice, we have had to postpone until Docket B the repeal or modification of the existing Part 849 Tire Management Standards, which are largely superseded by Part 848; the Administrative Procedures Act does not allow at Second Notice a Part to be newly "opened up". An order on Docket B will issue at a later date.

DISCUSSION

In general, today's rules seek to satisfy the legislature's mandate by establishing standards for the storage, disposal, processing and transportation of used and waste tires. It was felt by the Agency that the Board's new landfill regulations, along with the prohibitions contained in the Act, adequately addressed the disposal requirements for this category of waste (1R.18) (these regulations, adopted in Docket R88-7 and filed and effective September 18, 1991 are contained in Parts 810-815). Therefore the Agency's primary focus was on storage, processing and transportation.

The Board notes that the Board's new landfill regulations were in second notice during the time the hearings in this matter, R90-9, were being held. The new landfill regulations became effective on September 18, 1990. The Board has in a few instances adapted the regulations set forth here to be compatible with the new landfill regulations, as noted later when discussing particular sections.

The rules establish a new Part 848. The new Part is divided into six subparts A, through F. Subpart A contains general rules. Subpart B is the heart of the rule and contains the management standards. Subpart C contains the recordkeeping and reporting requirements. The financial assurance requirements are in Subpart D. Tire removal agreement provisions are in Subpart E. The tire transportation requirements are in Subpart F. Finally, various financial assurance forms are appended in Appendix A.

Regulatory Scheme Under the Act

Prior to our discussion of individual subparts and sections, it would be useful to give a brief overview of the regulatory scheme envisioned by the Act. The legislature intended a comprehensive approach to remedy the used and waste tire problem. (See Section 55 of the Act.) The open dumping and open burning of used and waste tires is prohibited. Tire storage sites must operate in compliance with Board regulations, including those for recordkeeping and reporting. No person may abandon, dump or dispose of a used or waste tire on private or public property.

They must be processed or disposed of in a permitted landfill.****
The storage of used tires is prohibited unless the tire is altered, reprocessed, converted, covered or otherwise prevented from accumulating water. (See Section 55(a) of the Act.)

Beginning January 1, 1992 no person shall cause or allow the operation of a tire storage site which contains more than 50 used tires unless the owner or operator: (1) registers the site with the Agency; (2) certifies to the Agency that the site complies with Board regulations [Part 848]; (3) reports to the Agency the number of tires accumulated, the status of vector controls, and the actions taken to handle or process the tires; and, (4) pays the applicable fee. (Section 55(d)(1)). Until that time, tire storage sites are subject to present Board regulations under Part 849. (See Section 55(a)(4)).

Beginning January 1, 1992, no person shall cause or allow the operation of a tire disposal site unless the owner or operator has: (1) received approval from the Agency after filing a tire removal agreement, or (2) has entered into a written agreement to participate in a consensual agreement under Section 55.3 of the Act. (Section 55(d)(2)). This latter provision is limited to accumulations of fewer than 500 used or waste tires at a location and may be performed at no cost to the owner (subject to availability of funds).

Various exemptions from management standards are given in Section 55.1. Part 848 was required by Section 55.2. The Agency is authorized to undertake preventive or corrective action with regard to used or waste tire accumulations under Section 55.3 of the Act. The contents of tire removal agreements are specified in Section 55.4 of the Act. Section 55.5 of the Act requires the Agency to investigate alleged violations of the Act or Board regulations.

No person is allowed to transport tires except in compliance with Board regulations (Section 55(g)). The use of pesticides to treat tires is also prohibited except as prescribed by Board regulations (Section 55(i)).

**** We note that we have deleted the term "sanitary" wherever it is used in conjunction with landfill permitted by the Agency. The word is not necessary and, additionally, the Board's new landfill regulations do not use the word "sanitary". We also construe the language limiting landfill disposal only to permitted landfills to mean that, regarding on-site landfills exempt from the permitting requirements pursuant to Section 21(d) of the Act, disposal is not allowed unless those landfills have "voluntarily" sought and received permits.

As a general comment, the proposed regulations have been edited to the active voice, e.g. "the owner or operator shall."

SUBPART A: GENERAL

848.101 Applicability

As discussed above, the rules establish requirements for the storage, processing, disposal and transportation of used and waste tires. One of the criticisms of the rules voiced at the June 20, 1990 hearing was that the Part should not apply to converted or reprocessed tires. Once the tires are chopped or shredded, it was argued, they are no longer used or waste tires and should not be treated as such (1R.115-117). These tire materials do not easily fall under the rationale for stacking and spacing requirements (1R.115, 121).

When the Agency revised its proposal, the Agency made it clear that converted or reprocessed tires are not covered by this Part. Likewise the Agency proposed that "altered tires" which have been processed such that the maximum dimension of the chopped or shredded portion is 3 inches or less not be regulated by this revised Part. The Agency felt that 3 inches represented tires in "product type form" (2R.31). The Agency also maintained that 6 inch shreds should be subject to financial assurance as they were not in product form even though they eliminated the threat of mosquito breeding. The Agency also pointed out that many shreds have little or no value. The Agency believes, however, that shreds and chips would require less onerous financial assurance than whole tires (2R.31-33).

The Board is not persuaded that an exemption for small chips or shreds has been justified by the record. Chipped or shredded tires could be abandoned and constitute a potential solid waste and fire problem. Today's rules do not exempt altered tires from regulation unless they are stored at the site where they are to be consumed as fuel. Chopped and shredded tires will, therefore, remain covered by the regulations, including financial assurance. The Board believes the exemption for on site fuel use is justified in that there is a little chance that this fuel will be abandoned once transported to the facility where it will be used. The exemption has been moved to the Management Standards section (848.201). If the Agency or any other person wishes to revisit this issue in Docket B, they are free to present testimony supporting alternate language.

Finally, though not appearing in its original proposal, the Agency's revised proposal pointed out that the rules are in addition to, and do not supplant, those prohibitions and standards in Section 55 of the Act. The Board has removed this

language and moved similar language to Sections 848.103 and 848.201 under the Management Standards section.

848.103 Other Regulations

The Board has reworded the language in this section. The new language in subsection a) more clearly sets out potential considerations in case of conflict. In subsection b) we have simply stated the examples of other Subtitles that may be applicable, although the list is not exhaustive. The Board believes the reference to these regulations satisfies the mandate to promulgate regulations governing the "processing" of used and waste tires.

848.104 Definitions

Today's rules submit just three new definitions for consideration: "aisle", "tire storage unit" and "tire transporter". The Agency proposed two others, "tire retreader" and "retread or retreading" when it submitted revisions in its post-hearing comments. These are retained. All others are taken directly from the Act without change except as follows for clarification of the intended meaning:

The Board has made several editing additions to clarify two definitions. The Board has added to the definition of "Tire Disposal Site" an "at" between "than" and "a" to correct a drafting error. We have deleted "sanitary" before "landfill". The term "sanitary" has been dropped from the new landfill regulations which were adopted after the legislation passed. We have also added after "Agency" a comma and "and operated in accordance with Section 55(d) of the Act," so as to distinguish between these sites and open dumps.

In the definition of "tire storage site", utilize the paragraph format as used in the Act and delete the numbers "(1)" "(2)" and "(3)" for clarification, as is discussed below.

Section 848.105 Incorporations by Reference

The management standards are largely based upon one document, NFPA 231D "Storage of Rubber Tires". The financial assurance rules (Subpart D) reference two documents: Accounting Standards and Auditing Standards. Although the Agency did not propose to formally incorporate them, the Board believes incorporation is warranted. These are now incorporated by reference in a new section, Section 848.105.

SUBPART B: MANAGEMENT STANDARDS

848.201 Applicability

Unless exempted, tire disposal sites and tire storage sites must meet the rules management standards by January 1, 1992. Tire storage sites where fewer than 50 used or waste tires are stored are exempted from regulation under the rule. If tires are disposed in permitted areas of landfills they are regulated by the landfill regulations, not by this Part; if they are stored there, however, they do have to meet management standards of this Part. The Board believes this distinction [848.201(d)] satisfies its statutory mandate to develop criteria which distinguish storage from disposal.

Exemptions from the applicability of management standards exist in the Act. The Act states that "No person shall: Except at a tire storage site which contains more than 50 used tires, cause or allow the storage of any used tire unless the tire is altered, reprocessed, converted, covered, or otherwise prevented from accumulating water" (Section 55(a)(3) of the Act). Read simply, tire storage sites where more than 50 tires are kept are excluded from the provisions of 55(a)(3). In defining the term "tire storage site" as in that exemption, the scope of the population exempted from the Part 848 management standards (although subject to the minimal Section 55(a)(3) standards), can change dramatically.

This last point was discussed at length because of the apparent "conflict" between the Act's definition of "tire storage site" and the applicability section of the proposed rule (1R.71-84). Because of the way "tire storage site" was defined in the proposal it appeared that certain sites where tires are removed from the rim, such as auto graveyards, and tire dealerships could go unregulated by the proposed Part.

Reading from the Act:

> "'Tire storage site' means a site where used tires are stored or processed, other than (1) the site at which the tires were separated from the vehicle wheel rim, (2) the site where the used tires were accepted in trade as part of the sale of new tires, or (3) a site at which both new and used tires are sold at retail in the regular course of business, and at which not more than 250 used tires are kept at any time." Ill. Rev. Stat. 1989, ch. 111 1/2, par 1054.12

The Agency, at hearing, maintained the position that all sites at which tires were removed from the rim, sites where used tires were accepted in trade for new tires or sites where both used and new tires were sold at retail (but not more than 250

were kept at any point in time), were exempt from the management standards of the new Part. The Board requested the Agency to brief this point (1R.265). The Agency's brief asserted that these sites, while not regulated by this Part, are covered by the general management standards contained in Section 55(a)(3) of the Act (PC13).

In comments filed October 26, 1990 (PC14) the Agency revised its position on the matter. Apparently in its meetings with the Illinois State Tire Dealers and Retreaders Association, the Agency was persuaded its interpretation was incorrect. Now, the Agency asserts, all three conditions must be met before a site is excepted from the definition of tire storage site:

> Thus, a site where used tires are separated from the vehicle wheel rim and at which more than 250 new and used tires are kept and sold at retail in the regular course of business does not meet the exceptions . . ." (PC14,p.6)*****

The Board decided it could not accept the Agency's "new" interpretation. The Board interpreted this exemption from the definition of tire storage site and thus from the Part 848 management standards to apply only to one of the three conditions at a time; the "or" cannot be ignored. The result that the Agency obviously was trying to avoid was that the 250 used tire cutoff language could be construed to apply only to the third condition. The Board does not believe the language says that or that was the legislative intent; we believe that the comma after "..regular course of business," expresses the legislative intent to have the 250 cutoff apply to each of the three conditions. If the 250 cutoff were intended to apply only to the third condition, the comma would not be necessary; it would be surplusage. We attribute the use of the numbers to a not unheard of, but ill-advised, tendency to "number" or "letter" things in definitions in a paragraphed format solely for emphasis, rather than relying on the symbols of grammar, such as commas, periods, semicolons, etc. While most of the time no harm is done, there are occasions where such numbering and lettering thoroughly confuses and threatens to distort the intended meaning. We also conclude that to construe the 250 cutoff as applying only to the third condition would allow such facilities as junkyards to be exempt, an irrational result that the legislature surely did not intend. Consistent with this Board determination, the Board deleted the three numbers in the regulations in order to clarify

***** The Agency comment omitted exception number two: "the site where the used tires were accepted in trade as part of a sale of new tires."

what otherwise creates unnecessary confusion in the definition, as this record has amply demonstrated.

The Board notes that if a site is determined to not be a tire storage site, or if it is a tire storage site where less than 50 used or waste tires are kept, that site must meet the management standards contained in Section 55(a)(3) of the Act. Used tires at such sites must be altered, reprocessed, converted, covered or otherwise prevented from accumulating water. As shown in our discussion of the regulatory scheme under the Act, the prohibitions of Section 55(d)(1) apply to tire storage sites having more than 50 used or waste tires after January 1, 1992. Until January 1, 1992, the management standards of Part 849 apply to tire storage sites with more than 50 used or waste tires. See Section 55(a)(4) of the Act.

848.202 Requirements

The Agency testified that it drew most of the management standards from those contained in the National Fire Protection Association's (NFPA) document "Storage of Rubber Tires", Standard 231D (Exh.1) (1R.16).

The management standards for used and waste tires escalate based upon the number of tires located at a site. These are summarized as follows:

50 - 500 TIRES

1. Aisle space of 25 feet (ft) between a tire pile and buildings or other tires piles.
2. Separation distance of 250 ft from all ignition sources unless such activities are carried out within a building.
3. Used or waste tires must be drained upon receipt.
4. Within 14 days after the receipt of used or waste tires, such tires must be altered, reprocessed, converted, covered or otherwise prevented from accumulating water.
5. Used or waste tires shall not be abandoned, dumped or disposed on private or public property except in a permitted landfill.
6. Used or waste tires shall be accepted at a site only from vehicles meeting the Subpart F requirements.
7. Tires shall not be accumulated if the grade of the area exceeds 2 percent slope.

501 - 10,000 TIRES

8. The owner or operator of the site shall meet the requirements of Subpart C (recordkeeping

and reporting) and Subpart D (financial assurance).

9. The owner or operator shall maintain a contingency plan.
10. Used or waste tire piles shall be separated from grass, weeds, brush, over-hanging tree limbs and similar vegetation by at least 50 ft.
11. The dimensions of a tire storage unit (TSU) must not exceed 250 ft (L) x 250 ft (W) x 20 ft (H).
12. A TSU must be separated from other TSUs and buildings either by the specified separation distance or by an earthen berm that is at least 1.5 times the height of the pile.

<u>10,001 OR MORE TIRES</u>

13. The area where tires are stored must be surrounded by a fence which is at least 6 ft in height.
14. Entrance to the area to be controlled at all times.
15. The area of the site where the tires are stored must be surrounded by an earthen berm not less than 2 ft in height.

The Agency testified the grade requirement (#7) was to contain runoff (1R.23-24). The Agency testified that the purpose of requirement #12 is to restrict the impact of any fire to the tire storage unit where the fire first originates. The Agency also proposes berm heights and separation distances based on NFPA guidelines (Exh.1, p.1). The Agency testified that requirements #13 and #14 are important to reduce the potential for tire fires resulting from outside intruders. The latter requirement would restrict tire fire runoff (1R.26-7). The Agency proposal recommended 2,500 tires as the cut off for those three additional standards. The Board, however, selected 10,000 as a more appropriate number. Given the conversion factors in Part 848.302, a pile of 2,500 tires would measure 25'x25'x15' while 10,000 would measure 45'x45'x20'. The larger number will lessen the burden on storage facilities at little additional risk.

The management standards set forth in Section 848.202 were envisioned to prevent mosquito breeding and reduce fire hazard. However, at the August 10, 1990 hearing, concerns were raised regarding the adequacy of the proposed standards to deal with the issue of mosquito breeding. As stated above, the Agency required used or waste tires to be altered within 14 days of receipt.

The Agency had designed the standards after concluding that Section 55 of the Act did not intend any pesticide application in the management of used and waste tires. The Agency derived its interpretation from its reading of Section 55.2(b) of the Act which, in addition to calling for certain management standards to be promulgated, states:

> In addition, such regulations shall prohibit the use of pesticides as an ongoing means of demonstrating compliance with this Title. Ill. Rev. Stat. 1989 ch. 111 1/2, par. 1055.2(b)

The Agency interpreted this section to mean that <u>all</u> pesticide use is prohibited as part of the control strategy for mosquito breeding (1R.137-8).

The testimony of Dr. Robert Novak, Illinois Natural History Survey, revealed that this standard may be insufficient to prevent mosquito breeding without pesticide application. Either the time period for alteration must be reduced from 14 to 7 days or pesticide use should be included as part of the general management standards, he testified (2R.64,66). Dr. Novak testified that, in his opinion, pesticide application was not eliminated as a means of compliance in the legislation (2R.63). In his view, total elimination of pesticides as a treatment method is unrealistic (2R.64).

Dr. Novak testified that if tires were altered within 7 days of receipt at the facility no mosquito problem would exist (2R.66). He faulted the Agency's proposal for not requiring alteration prior to 14 days, while not allowing pesticide application (2R.65). In his opinion, selective pesticide treatment does not violate the strictures of the statute. It would serve to prevent mosquito production in treated tires (2R.82). The goal, he believed, was to work toward alteration of the tire as soon as possible, perhaps within a 7 day period but that, biologically, it made sense to retain pesticide application as a treatment method (2R.81-3). Once management standards had been in place for some time, the need to treat with pesticides would diminish (2R.88). The representatives of Oxford Tire Recycling of Illinois (2R.100) and Lakin General Corporation echoed the utility of retaining pesticide application as a mosquito management tool (2R.102,109;PC12). No more than two or three treatments per season result from Lakin General's weekly mosquito inspection and treatment program (2R.113). The application program is performed after notifying the Chicago Department of Public Health. The representative from Clarke Outdoor Spraying testified that the cost for treating a stack of 15,000 tires 8 feet tall is approximately $600. In its comments (PC10) the Chicago Department of Public Health found the Agency's approach "unrealistic", "totally inadequate" and urged retention of the present rules regulating pesticide use on tires.

Following these hearings and comments, the Agency retreated from its prior position that no pesticide use was intended by the Act. The Agency stated:

> From a careful reading of the proposed regulations . . . it is clear that total elimination of pesticide use is not intended, or required, by the regulation.
>
> The language of [the pesticide use Section] does not become effective until January 1, 1994; only applies to tire storage or tire disposal sites that contain more than 500 tires; and expressly allows the use of pesticides in response to evidence of mosquito production . . . The language . . . is intended to reduce the routine application of pesticides and is derived from an explicit statutory prohibition on the use of pesticides.
>
> PC13, pp.2-3

The Board agreed that the Agency's original interpretation of this subsection was incorrect. The quoted language clearly states that pesticide application shall be prohibited as "an ongoing means of demonstrating compliance... ." (emphasis added) The use of the term "ongoing" is intended and specific. If the legislature had meant to say all applications were prohibited it could easily have omitted the word "ongoing" and said exactly that. The language clearly signifies that not all pesticide applications were prohibited, just those representing repeated uses as the means to comply with the management standards. In addition, Section 55(i) of the Act prohibits pesticide use except "... as prescribed except by Board regulations." This expressly recognizes the Board's ability to regulate the use of pesticides on tires as a pest management tool. Finally, the reporting mechanisms mandated by Section 55 of the Act call for a report as to the status of vector controls. See Section 55(d)(1)(iii).

The Board concluded that a 14 day period in which to alter or convert used tires was fully supported by the record in this proceeding as well as the exhaustive discussion of this topic contained in the Board's Opinion and Order which adopted the used and waste tire management standards of Part 849 (R88-24, 98 PCB 381; April 27, 1989). In addition, participants testified to the efficacy of periodic inspections of tires that are stored on-site for mosquito pupae and mosquito larvae and the application of pesticides upon detection of mosquito infestation (2R.113). The Board finds that such an operation would be consistent with the intent of Section 55.2(b) of the Act regarding the prohibition

against ongoing use of pesticides without foreclosing on limited "as needed" applications for the prevention of mosquito breeding (1R.57-58; 109-117). Inspection and subsequent treatment may be used as part of the contingency plan. This approach is also consistent with the record developed in R88-24. (98 PCB 393-4, 401-404) and the need for flexibility in the formulation of the management plan expressed therein.

The two week maximum timeframe will, under certain conditions allow mosquitoes to fully develop (1R.82) . The tires generally covered by this provision will be newly generated or recently moved to a processing site. They are likely to be fairly clean and are required to be drained or treated initially. In order for mosquitoes to develop, tires must contain eggs, receive rain, contain organic matter and be subjected to favorable conditions (1R.78). Within two weeks they are required to be processed. The rule allows use of pesticides in accordance with the contingency plan developed pursuant to Section 848.203. The adequacy of the pesticide provisions of this rule may be further addressed in Docket B.

In R88-24, the Board concluded that the most effective method of controlling mosquitoes in scrap tires is to destroy or alter tires so they are incapable of holding water. The present rule is intended to continue these methods.

848.203 Contingency Plan

Under Section 848.202(c) sites storing more than 500 tires must prepare a contingency plan which meets the requirements of Section 848.203. The Agency testified that it considers the existence of a contingency plan to be a critical factor in coordinating an expeditious and effective response to environmental or public health hazards such as tire fires or insect infestations (1R.27). The Agency's language attempted to mirror board RCRA regulations at 35 Ill. Adm. Code 725. The plan must be immediately implemented if a tire fire produces a human health or environmental threat or if there is evidence of mosquito infestation. The plan must describe the action that site personnel will take as a response and include an evacuation plan and a pesticide application plan.

The provisions of the contingency plan are meant to cover operations that vary greatly in size. While each site requires an evacuation and fire response plan, the complexity and length of the plan at a 2,000 tire site will be considerably less than that at a 1,000,000 tire site.

In Docket A, the Board has dropped the Agency provision that after July 1, 1994 pesticides may only be used in response to insect production. This appears to be in conflict with the provision that tires be altered or covered within 14 days of

receipt. The entire matter of preventative use of pesticides may be reconsidered in Docket B.

848.204 Storage of Tires Within Buildings

A provision which drew a lot of attention at hearing was storage of tires in buildings. Section 848.202 is centered around outdoor management of used and waste tires. The Agency's original proposal set out to exempt used tires from the management standards if stored in a building which had a working roof, windows and doors [Section 848.201(d)]. The Agency testified that some operators will rent abandoned buildings to fill them up with tires. This provision attempted to bring these buildings within the regulatory framework unless they were part of a "legitimate and continuous method of operation" (1R.22). At hearing the suggestion was made that the exemption should only apply to warehouses or similar facilities. The concern was that houses have low ceilings and numerous walls which posed a fire-fighting danger (1R.90-91). In response to concerns raised by the Board's Scientific and Technical Section (STS), the Agency proposed new language to require the tires to be drained beforehand. The Agency also modified its original proposal to exclude single family homes and residential buildings in response to these comments.

The Board concluded that accumulation of tires within buildings constituted a threat of fire and should be managed in a way that reduces fire hazard and provides adequate access for fire fighting in an event of a tire fire. The Board notes that NFPA standard No. 231D (Exh.1) prescribes standards for large-scale (greater than 10,000 tires) storage of tires within buildings. Although the NFPA standard is drawn to apply to new buildings, certain requirements relating to pile size, aisle space and clearances may be applied to reduce fire hazard at small scale (less than 10,000 tires) facilities as well. The Board, therefore, incorporated several management provisions in order to bring these facilities into the management scheme with the intention that these standards will reduce fire hazard at these facilities.

The standards incorporated by the Board are similar to those proposed by the Agency for outside storage in that the requirements for management escalate based upon the number of tires stored. At sites where fewer than 500 tires are stored within buildings, the requirements are the same as those proposed by the Agency: the tires must be drained of liquids, all windows and doors must be in working order and secured, the building must be roofed, the building must not be a single family home or residential dwelling.

If more than 500 tires are stored within a building, the additional requirements specified at subsection 848.204(c) will

also apply. This subsection basically requires the development and implementation of a storage plan that takes into account fire protection. The owner or operator subject to the requirements of this subsection will also have to meet the recordkeeping and financial assurance requirements of this Part. These are in addition to the requirements of subsection 848.204(b).

With the above considerations also in mind, the Board is extending the NFPA Standard 231D requirements to large-scale tire storage within buildings constructed after the effective date of this rule. These standards specify requirements relating to building arrangements, storage arrangements, fire protection, and building equipment, maintenance and operations. Compliance with the NFPA standard will afford adequate fire protection at large tire storage facilities.

Section 848.205 Pesticide Treatment

In developing its proposal, the Agency gave little consideration to pesticide application plans given its initial interpretation of Section 55.2(b) of the Act. The application plan developed as part of the contingency plan must include information such as the type of pesticide which is to be used, the method of application and that such use must be recorded (2R.58). The Agency is to be informed of pesticide use after the fact. The Board would appreciate comments in Docket B as to any concerns the Illinois Department of Public Health may have about this provision, as it differs markedly from existing Part 849.

SUBPART C: RECORDKEEPING AND REPORTING

Sections 848.301-306

The recordkeeping and reporting requirements of Subpart C apply to those sites which, generally, have more than 500 tires stored (848.301). Owners and operators are required, under the rules, to keep two types of records: a daily tire record and an annual tire summary (848.302). The daily tire record is used to supply information for the annual report. Part of the information is facility-specific, e.g. site name, number and address. Other information relates to operational activities (848.303). The Agency testified that the operational information required for the annual tire summary is merely a summation of the information required for the daily tire record (848.304)(1R.30-31). The records, summaries and reports generated under this Section must be retained for three years (848.305) and certified (848.306).

The Agency testified that the purpose of the recordkeeping requirement is to determine the applicable management standards of Subpart B, the complexity of which escalates with the number

of tires on site, and also to acquire information for developing a data base (1R.150-151). This assures that the Agency can enforce the differing requirements. The Agency's final justification is to create a database in order to begin the process of using tires as a resource. Daily reports, the Agency testified, mirrored the actual operations of the site better than weekly or monthly reporting would (1R.152-3).

The information that is required to be maintained by the rules includes weight or volume of tires: received at the site; transported from the site; and burned or combusted at the site, and the total number of tires remaining on site on a daily and annual basis. The Agency's intent in proposing this rule was to eliminate the difficulty of counting tires and instead use weight or volume based measures (1R.16-17, 39). Although the Agency requires an estimate of the count to determine if it falls within the specified range (Section 848.303(b)(3)), the Agency did not specify any relationship between the weight or volume of tires and the number of tires, nor did it require the owner or operator of tire storage sites to develop such relationships. It is therefore not very clear how, in the Agency proposal, the owner or operator will estimate the number of tires received, transported or combusted.

During ongoing operation at a site, one way of estimating the number of tires remaining on site is to use relationships between weight or volume and the number of tires. The Agency believed that due to differences in size and weight among the different types of tires, there will be more than one relationship and therefore, this option would not be feasible (1R.153). This problem, however, may be avoided by considering a single equivalent weight/volume measure for estimating the number of tires based on either weight or volume. This concept may be viewed in the same way as the use of "population equivalent" in other Board regulations (Eg. 35 Ill. Adm. Code 301.345).

The Board has concluded that an appropriate measure for estimating the number of tires based on weight or volume would be the "passenger tire equivalent" (PTE), which has been defined by the NFPA (Exh.1) as one average size passenger tire [H78-14] weighing approximately 25 lb. (11 kg) and occupying a volume of 3 ft^3 (0.085 m^3) [note that the volume is based on the tire dimensions: 27.3 inches outer diameter by 225 mm width]. If the weight of a load or pile of tires is known, then the number of tires in terms of the PTE may be estimated by dividing the weight of the tires by the PTE weight of 25 lb. (11 kg). On the other hand, if the volume of a load or pile of tires is known, the number of tires in terms of the PTE may be estimated by dividing the volume of the tires by the PTE volume of 3 ft^3 (0.085 m^3). It must be noted that the PTE based on occupied volume is dependent on the method of stacking (random or hand stacking) and also on the type of tire (whole or shredded).

The information provided in the record (R88-24, Exh.26) and the data included in the DENR's Illinois Scrap Tire Management Study (Exh.14) indicate that the volume occupied by a tire in a randomly stacked pile ranges from 3.75 to 4.5 ft^3 per tire, which is higher than the volume occupied by an average sized passenger tire (3 ft^3). When tires are stacked randomly, the space occupied by the tires will normally be greater than their actual volume. The information in the record is also based on tire piles which include tires of different sizes. In view of these considerations, it is reasonable to assume that the volume occupied by a whole PTE is 4 ft^3, considering the additional volume occupied by tires when they are stacked randomly. In the case of shredded tires, the data indicate that the volume occupied by an average sized shredded passenger tire ranges from 1 to 1.5 ft^3 per tire. For the purposes of estimating the number of tires, the volume occupied by a PTE of shredded tires is chosen to be 1.25 ft^3. The Board considers both estimations reasonably based given all available evidence. Therefore the Board has provided a method for estimating weight and volume of tires using the "tire equivalent" method. Provisions for using an alternate calculation based on the tires actually received at a site are also provided. The Board would appreciate further commentary on this provision in Docket B.

SUBPART D: FINANCIAL ASSURANCE

General Discussion of Financial Assurance

The financial assurance provisions of Part 848, Subpart D are designed to ensure financial responsibility and accountability for the ultimate removal and proper disposal of used and waste tires at tire storage and disposal sites. They are to protect the public by providing for the removal of tires if the owner or operator abandons the site or is otherwise unable to properly terminate operations. The regulations are necessarily complex and technical. They require an owner or operator of a tire disposal site to choose among a specified number of options to ensure removal. These options involve a number of financial instruments, agreements and forms, all of which are discussed in the rules. The provisions of this section are summarized below.

The Agency's revised proposal was based on the financial assurance rules for RCRA hazardous waste facilities, which are found in 40 CFR 265 and 35 Ill. Adm. Code 725. At the June 22, 1990 hearing, the issue was raised that a more appropriate model would be the solid waste financial assurance rules found in 35 Ill. Adm. Code 811, which were subject to multiple public hearings and extensive commentary and adopted by the Board in its R88-7 proceedings, 114 PCB 483 (8/17/90) (1R.197). R88-7 was in

turn based on the R84-22(C) proceeding, 66 PCB 463 (11/21/85). The Agency agreed that the model developed in the R88-7 proceeding was more appropriate and proposed the necessary change prior to the second hearing on August 10, 1990. These changes were then discussed at the next day's hearing. The public did not object to the use of the R88-7 financial assurance model for this proceeding. The Board has therefore substituted the R88-7 model language for the Agency's original language with two distinctions (2R.18-20).

Problems with the Agency Proposal

Absence of a Removal Plan

The RCRA and solid waste financial assurance rules are based on a "closure plan". The operator develops a "cost estimate", which is based on the plan. The operator must provide financial assurance in the amount of the cost estimate. Pursuant to the financial assurance document, a financial institution promises to pay the cost estimate, unless the operator provides closure in accordance with the plan.

The Agency's proposal was fundamentally different from the RCRA and R88-7 model, in that the operator does not have to prepare a plan in advance of the decision to remove tires. Rather, the operator prepares a "tire removal agreement" within 30 days after the decision to close (Section 848.403). This has two major consequences. First, there is no "removal plan" on which to base the cost estimate (1R.162). Second, there is no "removal plan" against which to compare the operator's performance in removing tires, so as to determine whether a default occurred on the financial instruments (1R.165).

This aspect of the Agency's proposal may actually be an editorial error, since it appears to be inconsistent with Section 848.501 et seq., which appears to require approval of the tire removal agreement in advance.

The Board has conditioned financial assurance on compliance with a "removal plan". This will be the approved removal agreement, if one exists. Otherwise, it will be the proposed agreement. The operator will have 30 days after approval to substitute or amend financial assurance to reflect the approved plan.

Conditions of Default

The conditions of default in the Agency proposal were found in Sections 848.404(b)(9) and (10). These are as follows:

> Following a failure by the owner or operator to perform removal in accordance with the approved tire removal

agreement when required to do so, the Agency may draw on the letter of credit.

The Agency may draw on the letter of credit when the operator fails to provide additional or substitute financial assurance when required to do so under this Subpart.

These conditions omit two important conditions specified under the model developed in R88-7: abandonment and bankruptcy (1R.211). If either occurred, the Agency may find itself disputing the financial institution about when removal was required. It might be necessary for the Agency to file an enforcement action, and obtain a Board order requiring removal, before the letter of credit expired, in order to collect (1R.213). On the other hand, the R88-7 language, makes abandonment and bankruptcy default conditions, in and of themselves.

The Agency's proposed language is also vague in conditioning default on removal "when required". The R88-7 language triggers liability if: 1) the operator fails to initiate removal when ordered to do so by the Board or a court; or, 2) notifies the Agency that it has initiated removal, or initiates removal, but fails to provide removal in accordance with the plan. The Board found that inclusion of this language clarified the default conditions.

The Agency's second condition, triggering a default automatically on failure to provide additional or substitute financial assurance when required to do so, is discussed below.

Release for Work in Progress

The Agency's revised proposal, at Section 848.401(c)(5) provided an exemption from the financial assurance requirement for operators of sites where tires "are being removed" pursuant to an approved agreement. This would require the Agency to release financial assurance as soon as the operator initiates removal. The Board found that this could lead to an unfunded removal if the operator initiated removal, obtained a release and then abandoned the site.

In the R88-7 rules this situation is addressed under Section 811.704(j), which authorizes the operator to revise the cost estimate to show completed activities. Under Section 811.702(a), the Agency would release financial institutions to the extent appropriate. The Board has followed the R88-7 formulation (Section 848.404(i)).

Current Dollars

Section 848.402 of the Agency's revised Proposal provided that the cost estimate is equal to the cost "in current dollars" of removing all tires. As the Board understands this terminology, this means that the cost is to be reduced to current dollars. To do this, one would need to know the expected year in which removal is to be required. The rule should also specify a discount rate, or set limitations on assumptions about future inflation and earnings. In R88-7, the Board has adopted a similar rule in connection with the post-closure care cost estimate for landfills. However, the Board does not believe that reduction to present value is appropriate in the context of tire removal, which does not contemplate long-term maintenance of a site. Accordingly, the phrase "in current dollars" has been deleted.

Lack of Control Over Financial Institutions

The Agency proposal allowed trust funds and letters of credit, each of which requires the participation of a bank or other financial institution. The Agency proposal, following the RCRA model, allowed financial institutions regulated in any state. This posed two related problems. First, did "regulation in any state" give adequate assurance to Illinois that these institutions were sound, so that Illinois could collect on the financial assurance if necessary? Second, the Agency proposal appeared to authorize out-of-state financial institutions to participate in activities which, at least arguably, required that they be licensed by Illinois agencies. As is discussed below, the Board has limited financial institutions to those in regulated by or in compliance with appropriate Illinois laws, and to banks insured by FDIC.

Parent Corporations

The RCRA financial assurance rules allow a "parent corporation" which meets the financial test to guarantee the closure costs of a subsidiary. This was reflected in the Agency revised proposal at Section 848.404(c)(10) (1R.229, 231, 238). However, subsection (h) allows the operator to meet the financial responsibility requirement by demonstrating that a corporation which "owns an interest" in the operator meets the financial test. This conflicting provision appears to be drawn from R84-22, in which the Board determined that, under Illinois law, there is no reason to limit guarantees to parent corporations: any ownership interest in the operator would support a valid guarantee. The Board has chosen use only the language from R84-22 and R88-7 and not limit guarantees to only parent corporations (Section 848.415).

Gross Revenue Test

In R84-22 the Board added a "gross revenue test" to the financial test. Section 848.404(c)(1) of the Agency proposal includes the definition of "gross revenue", and subsections (g) and (h) make reference to the test. However, the test itself appears to be missing from the proposal.

In R84-22 and R88-7, the gross revenue test limits the financial test to operators who derive less than half their gross revenues from waste disposal operations. This was added to recognize that the RCRA financial test was derived from a USEPA study of failure rates of diversified manufacturing operations, and hence could not predict failure rates for the general waste disposal business. The Board therefore excluded firms which were primarily waste disposal from the test (1R.252).

It is clear that the gross revenue test itself cannot be used in the waste tire rules since its terms do not reflect the nature of the used tire business. Arguably, it should be adapted so as to exclude persons who are primarily involved in tire disposal. However, it is not clear whether tire disposal qualifies as an industry in and of itself. Rather, it appears to be an activity which is primarily ancillary to the manufacture, sale and remanufacture of tires, and to the waste disposal industry. Since it seems unlikely that many of these people are primarily deriving their revenue from used tires, there appears to be no need to insert the gross revenue test. The Board has therefore omitted it.

Operator's Bond Without Surety

The RCRA rules allow the operator to meet the financial assurance requirement if either the operator or a parent meet a financial test. A weakness in this approach is that at no point in the RCRA rules does either the operator or the parent ever promise to pay the amount of the cost estimate if the operator fails to close. To collect under the RCRA rules, the Agency would have to argue some sort of implied obligation in the rules. The Board closed this loophole in R84-22 and R88-7 (1R.220). The Board required that the operator or "parent" using the financial test file a bond without surety promising to pay.

The Agency's proposal, in Section 848.404(h), required the parent bond, but omitted it with respect to the operator using the financial test himself (1R.229). The rule adopted to require both bonds.

<u>Differences Between the Board Proposal and R88-7</u>

As noted above, the Board has mainly followed the R88-7 proposal. However, the Board has departed from R88-7 and instead

followed the Agency proposal and RCRA financial assurance rules on two points, and departed from R88-7 on an unrelated third point. The Board proposes to modify the R88-7 language by (1) using the R88-7 language concerning extensions of letters of credit with automatic default on failure to extend (1R.218), and (2) using the RCRA model language concerning standby trust funds (1R.201). In addition, the Board has dropped FSLIC insurance as an indicator of solvency of a financial institution.

Automatic Defaults

The RCRA rules (and Agency Proposal) have a provision in which a financial institution must pay on a letter of credit if the operator is unable to renew the letter of credit or obtain alternative financial assurance on expiration of the letter. (See 40 CFR 265.143(c)(5) and (9)) Thus the financial institution is guaranteeing not only the operator's performance, but its ability to obtain financial assurance in the future.

In R84-22 the Board received testimony from experts to the effect that financial institutions would not issue letters of credit or other instruments with "automatic defaults." The Board substituted alternative language intended to make letters of credit more available. However, the Agency's experience has been that the R84-22 and R88-7 default provision is in practice no more acceptable to the financial institutions. And, since 1984, financial institutions have become accustomed to the RCRA "automatic default." Therefore, the R84-22 and R88-7 language has failed in its basic goal of making letters of credit more available. Now the RCRA language appears to be acceptable to the financial institutions, and easier for the agency to administer. Therefore, the Board has returned to the RCRA language.

Standby Trust Funds

The RCRA rules (and Agency Proposal) require that the operator establish a "standby trust fund" which receives the proceeds of the financial assurance in the event of default. The trustee pays out the funds at the direction of the Agency to perform corrective action. The alternative to a standby trust is to have the proceeds paid directly to the State Treasury.

The problem with paying into the State Treasury is that, first, there needs to be a special fund to receive the money, and second, any monies received are potentially subject to the appropriation process before they are spent. The standby trust avoids these complications. However, the operator must pay a premium to the trustee each year.

In R84-22 and R88-7, there was a special fund in the Treasury to receive the proceeds of financial assurance. The

Board was able to require the proceeds to be payable to that fund. There is no appropriate fund for used tires.

FSLIC Insurance

In R84-22, which implemented Section 21.1 of the Act, the Board limited financial institutions to those which are properly qualified to do business in Illinois (1R.198) The Board addressed the question of the qualifications of a financial institution to issue letters of credit. In Illinois the Commissioner of Banks and Trusts regulates these banking activities. However, federally regulated and out-of-State banks may be able to lawfully issue letters of credit, without being regulated by the Commissioner. At hearings it was suggested that FDIC or FSLIC insurance was a sufficient indicator of solvency (R84-22(C), 66 PCB 463,501; November 21, 1985). The Board therefore added this as a qualification.

Upon further review in this proceeding, the Board has concluded that FSLIC insurance should be deleted as an indicator of solvency. If the institution which issues a letter of credit becomes insolvent, the State will not be able to collect the proceeds to pay for removal. It is important to emphasize that neither FDIC nor FSLIC insure letters of credit as such. Rather, the insurance is taken as an indicator of solvency. If a financial institution became insolvent, the letter of credit would be a liability, which would be abandoned, unless a purchasing institution specifically wanted to pick it up to retain the operator as a customer. This would be unlikely if the operator was in financial trouble. Since 1984, many institutions with FSLIC insurance have become insolvent. The Board therefore has not chosen to use FSLIC insurance as an indicator of solvency (§848.413(b)(2)).

Section by Section Discussion of Financial Assurance

Section 848.400 Purpose and Scope

This Section has been largely taken from the introductory Section to the Agency's revised proposal (1R.243).

Section 848.401 Upgrading Financial Assurance

This Section is similar to Section 811.701, except that references to the gross revenue test have been dropped.

Section 848.402 Release of Financial Institution

This is the same as Section 811.702, except that references to insurers have been dropped. The reference to "sureties"

remains, because the Section would apply to a parent corporation guarantee, which would include a bond, as discussed below.

Section 848.403 Application of Proceeds and Appeal

This is the same as Section 811.703, except that references to insurance policies and bonds have been dropped.

Section 848.404 Removal Cost Estimate

This is largely taken from Section 848.402 in the Agency's revised proposal. However, subsections (f) and (j) are taken from Section 811.704. The latter is an important provision which allows the operator to zero elements of the cost estimate after completion of activities. This could be used to base a request for a release of part of the financial assurance. As is discussed in general above, this corresponds with Section 848.400(c)(5) in the Agency's revised proposal.

The removal cost estimate must be revised annually. The operator has to provide additional financial assurance to cover any increase, and can request a release of any excess resulting from a reduction of the cost estimate. Pursuant to the Board's STS suggestions, the Agency has provided that the cost estimate must be based on the higher of the current inventory or the greatest anticipated inventory (1R.172, 187, 192).

Section 848.406 Mechanisms

This is the same as Section 811.706, except that mechanisms which are not to be used have been removed from the list.

Sections 848.407 and 848.408 Multiple Mechanisms and Sites

These Sections correspond with Sections 811.707 and 811.708. Note that there is no equivalent for Section 811.709, which concerns trust funds for unrelated sites.

Section 848.410 Trust Fund

This Section is largely taken from Section 811.710, with some adaptations taken from Section 848.404(a) of the Agency's revised proposal. The pay-in period is a fixed five-year period, commencing with the first receipt of tires, or January 1, 1992, whichever is later. If the operator establishes the trust after the beginning of the pay-in period, he has to fund it up to the level which would have been required had the trust been established initially (1R.170, 174, 176, 179, 182, 190).

The Agency recommended changes to the provisions governing release of funds from the trust. These were along the lines suggested by the Board's STS (1R.197). These changes are present below, but closer to the R88-7 format.

There are no Sections corresponding with Sections 811.711 and 811.712, which deal with bonds, which will not be used for used tires since they appear to be unavailable.

Section 848.413 Letter of Credit

This Section is largely drawn from Section 811.713. As is discussed in general above, FSLIC insurance has been dropped as an indicator of solvency of the financial institution.

Section 811.713 requires payments pursuant to a letter of credit to be made directly to the State. Consistent with the Agency's proposal, Section 811.413(d) requires such payments to go into a standby trust fund. The operator has to establish a trust under Section 811.410 to serve as a standby trust (1R.202)

As is also discussed above, the Board is following the RCRA extension and automatic default provisions, as suggested by the Agency. Section 848.413(g) is the extension, and Section 848.413(e)(2)(E) is the automatic default. This provides for a one year letter of credit, which is automatically extended for another year, unless the bank gives a 120 day notice of intent not to renew. If the operator failed to renew, the Agency could draw on the letter of credit (R.218). This is referred to as an "automatic default". This differs from R88-7, which provides a five year letter of credit, with a single one-year extension. Under R84-22 and R88-7, failure to renew is not an automatic default, but the Agency could obtain a closure order during the year, triggering a default.

Section 848.415 Self-Insurance

This Section is largely drawn from Section 811.715, except that provisions concerning the gross revenue test have been removed for the reasons discussed in general above.

Section 848.415(a) includes definitions of both generally accepted auditing and accounting principles (1R.227). Although both terms are used in the rules, the latter was omitted in R88-7.

Section 848.415(c) and (h) require a bond without surety or parent corporation bond, depending on whether it is the operator or parent which must meet the financial test. As is discussed in general above, these allow the Agency to collect the cost estimate directly in a civil action, reverse the burden of proof and provide a liquidated amount of damages (1R.220). Under the RCRA-type system, the Agency would have to file an enforcement action, prove a violation and establish an appropriate penalty (R.222, 231).

There is a possibility that an operator using the financial test should be required to establish a standby trust fund, and that these bonds should be payable into that trust. However, this would impose an annual maintenance fee on the operator for the trust, in a situation in which it is unlikely that the trust would ever be funded. The Board has instead required that these mechanisms would be payable to the State. One consequence of this is that any proceeds would be general revenue, which would require an appropriation to spend, since there is no separate fund established for them.

SUBPART E: TIRE REMOVAL AGREEMENTS

The majority of the provisions relating to tire removal agreements are taken directly from the Act. As the Agency testified, a number of changes were necessary to achieve a consistent use of terminology and to clarify potentially ambiguous terms (1R.37). Language taken from the Act has been capitalized by the Board.

Section 848.502

Beginning January 1, 1992 no person may operate a tire disposal site, other than a landfill, without having an Agency approved tire removal agreement or having entered into a written agreement to participate in a consensual removal action under Section 55.3 of the Act. (Section 55(d)). This Section largely restates the language used in Section 55.4 (a) of the Act.

Section 848.503

Subparagraph (a) of this Section recites the informational requirements contained in Section 55.4(b) of the Act. Subparagraph (b) provides for amendments to the tire removal agreement. Subparagraph (c) allows removal to begin once a removal agreement has been approved notwithstanding completion of certification.

Section 848.504

This section largely restates the time limitations for tire removal set forth at Section 55.4(d) of the Act.

Section 848.505 Removal Plan

As is discussed in general above, the financial assurance documents are conditioned on compliance with a "removal plan". This means the approved tire removal agreement, if there is one. Otherwise, it means the proposed agreement. The operator is given 90 days to upgrade financial assurance following approval

of an agreement. This is related to Section 848.401, which would come into play if the approved agreement resulted in a change to the cost estimate. The operator may substitute new financial assurance, or may simply file a letter from the financial institutions acknowledging receipt of the approved plan, and indicating no objections.

Section 848.506 Initiation of Tire Removal

This has been moved from Section 848.403 in the Agency's revised proposal. It belongs with the removal rules, rather than the financial assurance rules (1R.214).

Section 848.507

This section reiterates the certification of removal completion provision of Section 55.4(c) of the Act.

Section 848.508

This section restates the provisions of Section 55.4 (e) of the Act.

Section 848.509

This section restates the provisions for Board review found at Section 55.4(f) of the Act.

SUBPART F: TIRE TRANSPORTATION REQUIREMENTS

Sections 848.601 - 848.606

Section 848.601

The Agency testified that the tire transportation registration program drew its language from analogous provisions in Part 809 relating to special waste haulers (1R.40,41). If a vehicle transports more than 20 tires, the proposal mandates a current and valid registration with the Agency and the display of a placard issued by the Agency. The Agency originally proposed that the tires must be covered. The revised proposal withdrew this requirement.

The management standards (848.202(b)(6)) prohibit sites from receiving tires unless the transportation requirements are met. Similarly, persons are prohibited from delivering tires to a site unless these standards are met (848.601(b)).

Sections 848.602 - 606

Sections 848.602 through 848.606 provide procedures for submission and approval of registration, applications and placarding. The Board slightly altered the language contained in these Sections to add references to the Act where specific statutory authority existed. The Board also made minor clarifying amendments to these subsections.

Section 848.Appendix A

The Board has changed in this proposed rule the financial assurance forms adopted in R88-7, consistent with the discussion in Subpart D of this Opinion.

ORDER

The following rule is hereby adopted. The Clerk of the Board is directed to submit this rule to the Secretary of State for Final Notice publication in the Illinois Register.

In addition, the Board directs that Subdocket B be opened to deal with differing standards for tire retreaders, to deal with issues concerning pesticide application, to propose modifications to Docket A and to repeal Part 849.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER m: USED AND WASTE TIRES

PART 848
MANAGEMENT OF USED AND WASTE TIRES

SUBPART A: GENERAL

Section
848.101 Applicability
848.102 Severability
848.103 Other Regulations
848.104 Definitions
848.105 Incorporation by Reference

SUBPART B: MANAGEMENT STANDARDS

Section
848.201 Applicability
848.202 Requirements
848.203 Contingency Plan
848.204 Storage of Used and Waste Tires Within Buildings
848.205 Pesticide Treatment

SUBPART C: RECORDKEEPING AND REPORTING

Section
848.301 Applicability
848.302 Records
848.303 Daily Tire Record
848.304 Annual Tire Summary
848.305 Retention of Records
848.306 Certification

SUBPART D: FINANCIAL ASSURANCE

Section
848.400 Scope and Applicability
848.401 Upgrading Financial Assurance
848.402 Release of Financial Institution
848.403 Application of Proceeds and Appeal
848.404 Removal Cost Estimate
848.406 Mechanisms for Financial Assurance
848.407 Use of Multiple Financial Mechanisms
848.408 Use of a Financial Mechanism for Multiple Sites
848.410 Trust Fund
848.413 Letter of Credit
848.415 Self-Insurance for Non-commercial Sites

SUBPART E: TIRE REMOVAL AGREEMENTS

Section
848.501 Applicability
848.502 Removal Performance Standard
848.503 Contents of Proposed Tire Removal Agreements
848.504 Time Allowed for Tire Removal
848.505 Removal Plan
848.506 Initiation of Tire Removal
848.507 Certification of Removal Completion
848.508 Agency Approval
848.509 Board Review

SUBPART F: TIRE TRANSPORTATION REQUIREMENTS

Section
848.601 Tire Transportation Prohibitions
848.602 Tire Transportation Registrations
848.603 Agency Approval of Registrations
848.604 Registration No Defense
848.605 Duration and Renewal
848.606 Vehicle Placarding

848.Appendix A FINANCIAL ASSURANCE FORMS

Illustration A "Trust Agreement"
Illustration B "Certification of Acknowledgement"
Illustration C "Irrevocable Standby Letter of Credit"
Illustration D "Owner or Operator's Bond Without Surety"
Illustration E "Owner or Operator's Bond With Parent Surety"
Illustration F "Letter from the Chief Financial Officer"

AUTHORITY: Implementing Section 55.2 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1055.2 and 1027).

SOURCE: Adopted in R90-9, at Ill. Reg. , effective

NOTE: Capitalization denotes statutory language.

SUBPART A: GENERAL

Section 848.101 Applicability

Section 55 of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1055) sets forth prohibitions relative to the storage, processing, disposal and transportation of used and waste tires. This Part sets forth rules establishing further requirements relative to the storage, processing, disposal and transportation of used and waste tires. This Part shall not apply to any site at which tires are retreaded if the owner or operator of such a site holds a valid registration as a tire retreader pursuant to 49 CFR 571.117 and 49 CFR 574 (incorporated by reference at Section 848.105) and complies with 35 Ill. Adm. Code 849.

Section 848.102 Severability

If any section, subsection, sentence or clause of this Part shall be adjudged unconstitutional, invalid or otherwise not effective for any reason, such adjudication shall not affect the validity of 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 848.103 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, but not limited to, 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 sites or facilities subject to this Part: 35 Ill. Adm. Code: Subtitle B: Air Pollution; 35 Ill. Adm. Code: Subtitle C: Water Pollution; 35 Ill. Adm. Code: Subtitle H: Noise Pollution; and 35 Ill. Adm. Code: Subtitle G: Waste Disposal.

Section 848.104 Definitions

For the purposes of this Part, except as the context otherwise clearly requires, the words and terms defined in this Section shall have the meanings given herein. Words and terms not defined shall have the meanings otherwise set forth in the Act and regulations adopted thereunder.

"Act" means the Illinois Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1001 et seq.).

"Aisle" means an accessible clear space between storage piles or groups of piles suitable for housekeeping operations, visual inspection of piling areas and initial fire fighting operations.

"ALTERED TIRE" MEANS A USED TIRE WHICH HAS BEEN ALTERED SO THAT IT IS NO LONGER CAPABLE OF HOLDING ACCUMULATIONS OF WATER, INCLUDING, BUT NOT LIMITED TO, USED TIRES THAT HAVE BEEN SHREDDED, CHOPPED, DRILLED WITH HOLES SUFFICIENT TO ASSURE DRAINAGE, SLIT LONGITUDINALLY AND STACKED SO AS NOT TO COLLECT WATER OR WHOLLY OR PARTIALLY FILLED WITH CEMENT OR OTHER MATERIAL TO PREVENT THE ACCUMULATION OF WATER. "ALTERATION" OR "ALTERING" MEANS ACTION WHICH PRODUCES AN ALTERED TIRE. (Section 54.01 of the Act)

"CONVERTED TIRE" MEANS A USED TIRE WHICH HAS BEEN MANUFACTURED INTO A USABLE COMMODITY OTHER THAN A TIRE. "CONVERSION" OR "CONVERTING" MEANS ACTION WHICH PRODUCES A CONVERTED TIRE. USABLE PRODUCTS MANUFACTURED FROM TIRES, WHICH PRODUCTS ARE THEMSELVES CAPABLE OF HOLDING ACCUMULATIONS OF WATER, SHALL BE DEEMED TO BE "CONVERTED" IF THEY ARE STACKED, PACKAGED, BOXED, CONTAINERIZED OR ENCLOSED IN SUCH A MANNER AS TO PRECLUDE EXPOSURE TO PRECIPITATION PRIOR TO SALE OR CONVEYANCE. (Section 54.02 of the Act)

"COVERED TIRE" MEANS A USED TIRE LOCATED IN A BUILDING, VEHICLE OR FACILITY WITH A ROOF EXTENDING OVER THE TIRE, OR SECURELY LOCATED UNDER A MATERIAL SO AS TO PRECLUDE EXPOSURE TO PRECIPITATION. (Section 54.03 of the Act)

"DISPOSAL" MEANS THE PLACEMENT OF USED TIRES INTO OR ON ANY LAND OR WATER EXCEPT AS AN INTEGRAL PART OF SYSTEMATIC REUSE OR CONVERSION IN THE REGULAR COURSE OF BUSINESS. (Section 54.04 of the Act)

"NEW TIRE" MEANS A TIRE WHICH HAS NEVER BEEN PLACED ON A VEHICLE WHEEL RIM. (Section 54.05 of the Act)

"PROCESSING" MEANS THE ALTERING, CONVERTING OR REPROCESSING OF USED OR WASTE TIRES. (Section 54.06 of the Act)

"REPROCESSED TIRE" MEANS A USED TIRE WHICH HAS BEEN RECAPPED, RETREADED OR REGROOVED AND WHICH HAS NOT BEEN PLACED ON A VEHICLE WHEEL RIM. (Section 54.07 of the Act)

"Retread" or "Retreading" means the process of attaching tread to the casing of used tires.

"REUSED TIRE" MEANS A USED TIRE THAT IS USED AGAIN, IN PART OR AS A WHOLE, BY BEING EMPLOYED IN A PARTICULAR FUNCTION OR APPLICATION AS AN EFFECTIVE SUBSTITUTE FOR A COMMERCIAL PRODUCT OR FUEL WITHOUT HAVING BEEN CONVERTED. (Section 54.08 of the Act)

"STORAGE" MEANS ANY ACCUMULATION OF USED TIRES THAT DOES NOT CONSTITUTE DISPOSAL. AT A MINIMUM, SUCH AN ACCUMULATION MUST BE AN INTEGRAL PART OF THE SYSTEMATIC ALTERATION, REUSE, REPROCESSING OR CONVERSION OF THE TIRE IN THE REGULAR COURSE OF BUSINESS. (Section 54.09 of the Act)

"TIRE" MEANS A HOLLOW RING, MADE OF RUBBER OR SIMILAR MATERIALS, WHICH WAS MANUFACTURED FOR THE PURPOSE OF BEING PLACED ON THE WHEEL RIM OF A VEHICLE. (Section 54.10 of the Act)

"TIRE DISPOSAL SITE" MEANS A SITE WHERE USED TIRES HAVE BEEN DISPOSED OF OTHER THAN at A LANDFILL PERMITTED BY THE AGENCY, or operated in accordance with Section 55 (d) of the Act. (Section 54.11 of the Act)

"Tire retreader" means a person who retreads used tires.

"TIRE STORAGE SITE" MEANS A SITE WHERE USED TIRES ARE STORED OR PROCESSED, OTHER THAN THE SITE AT WHICH THE TIRES WERE SEPARATED FROM THE VEHICLE WHEEL RIM, THE SITE WHERE THE USED TIRES WERE ACCEPTED IN TRADE AS PART OF A SALE OF NEW TIRES, OR A SITE AT WHICH BOTH NEW AND USED TIRES ARE SOLD AT RETAIL IN THE REGULAR COURSE OF BUSINESS, AND AT WHICH NOT MORE THAN 250 USED TIRES ARE KEPT AT ANY TIME. (Section 54.12 of the Act)

"Tire Storage Unit" means a pile of tires or a group of piles of tires at a tire storage site.

"Tire Transporter" means a person who transports used or waste tires in a vehicle.

"USED TIRE" MEANS A WORN, DAMAGED OR DEFECTIVE TIRE WHICH IS NOT MOUNTED ON A VEHICLE WHEEL RIM. (Section 54.13 of the Act)

"VECTOR" MEANS ARTHROPODS, RATS, MICE, BIRDS OR OTHER ANIMALS CAPABLE OF CARRYING DISEASE-PRODUCING ORGANISMS TO A HUMAN OR ANIMAL HOST. "VECTOR" DOES NOT INCLUDE ANIMALS THAT TRANSMIT DISEASE TO HUMANS ONLY WHEN USED AS HUMAN FOOD. (Section 54.14 of the Act)

"VEHICLE" MEANS EVERY DEVICE IN, UPON OR BY WHICH ANY PERSON OR PROPERTY IS OR MAY BE TRANSPORTED OR DRAWN, EXCEPT DEVICES MOVED BY HUMAN POWER OR BY ANIMAL POWER, DEVICES USED EXCLUSIVELY UPON STATIONARY RAILS OR TRACKS, AND MOTORIZED WHEELCHAIRS. (Section 54.15 of the Act)

"WASTE TIRE" MEANS A USED TIRE THAT HAS BEEN DISPOSED OF. (Section 54.16 of the Act)

Section 848.105 Incorporation by Reference

a) The Board incorporates the following documents by reference:

1) National Consensus Standard, NFPA 231D (1989) by reference.

2) 49 CFR 571.117 (1989).

3) 49 CFR 574 (1989).

4) "Accounting Standards, General Standards", 1988/89 Edition, as of June 1, 1988, available from the Financial Accounting Standards Board, 401 Merrit 7, P.O. Box 5116, Norwalk, CT 06856-5116.

5) "Auditing Standards"--Current Text, August 1, 1990 Edition, available from the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, NY 10036.

b) This Section incorporates no later amendments or editions.

SUBPART B: MANAGEMENT STANDARDS

Section 848.201 Applicability

a) This Part does not apply to used and waste tires exempted pursuant to Section 55.1 of the Act.

b) Owners and operators of tire storage sites and tire disposal sites whose operations are not specifically exempted by subsections (c) through (f) shall:

1) Meet the requirements of this Part by January 1, 1992 if used or waste tires were disposed of or stored prior to January 1, 1992; or

2) Meet the requirements of this Part prior to storing or disposing any used or waste tires at the site if the site first accepts tires for storage or disposal after January 1, 1992.

c) Tire storage sites and tire disposal sites where less than 50 used or waste tires are stored at the site are exempted from the requirements of this Part. However, the prohibitions of Section 55 of the Act do apply to such sites.

d) This Part does not apply to used or waste tires disposed in permitted areas of landfills permitted by the Agency pursuant to 35 Ill. Adm. Code: Subtitle G: Waste Disposal. Used or waste tires stored at a landfill permitted pursuant to 35 Ill. Adm. Code: Subtitle G: Waste Disposal are subject to the requirements of this Part.

e) Owners or Operators who comply with the requirements of this Part are not subject to the provisions of 35 Ill. Adm. Code 849.

f) Used or waste tires which have been altered by chopping, shredding or slicing, and stored at the site where such tires are burned as fuel, are exempted from the requirements of this Part.

Section 848.202 Requirements

a) Unless exempted by Section 848.201, owners and operators of tire storage sites and tire disposal sites shall meet the requirements of this Section. These requirements shall apply to all used or waste tires located at the site, including altered tires, converted tires and reprocessed tires.

b) At sites at which more than 50 used or waste tires are located the owner or operator shall comply with the following requirements:

1) Used or waste tires shall not be placed on or accumulated in any pile outside of any building unless the pile is separated from all other piles by no less than 25 feet and aisle space is maintained to allow the unobstructed movement of personnel and equipment.

2) Used or waste tires shall not be accumulated in any area located outside of any building unless the accumulation is separated from all buildings, whether on or off the site, by no less than 25 feet.

3) Used or waste tires shall not be placed on or accumulated in any pile unless the pile is separated from all potential ignition sources, including cutting and welding devices, and open fires, by not less than 250 feet or all such activities are carried out within a building.

4) Used or waste tires shall be drained of water on the day of generation or receipt.

5) Used or waste tires received at the site shall not be stored unless within 14 days after the receipt of any used tire the used tire is altered, reprocessed, converted, covered or otherwise prevented from accumulating water. All used and waste tires received at the site before June 1, 1989, shall be altered, reprocessed, converted, covered or otherwise prevented from accumulating water by January 1, 1992.

6) USED OR WASTE TIRES SHALL NOT BE ABANDONED, DUMPED OR DISPOSED ON PRIVATE OR PUBLIC PROPERTY IN ILLINOIS, EXCEPT IN A LANDFILL PERMITTED BY THE AGENCY PURSUANT TO 35 ILL. ADM. CODE PART 807. (Section 55(a)(5) of the Act)

7) Used or waste tires shall not be accepted from a vehicle in which more than 20 tires are loaded unless the vehicle displays a placard issued by the Agency under Section 848: Subpart F.

8) Tires shall not be accumulated in an area if the grade of the ground surface exceeds two percent slope unless the requirements of subsection (d)(3) of this Section are met.

c) In addition to the requirements set forth in subsection (b), the owner or operator shall comply with the following requirements at sites at which more than 500 used or waste tires are located.

1) A contingency plan which meets the requirements of Section 848.203 shall be maintained.

2) The recordkeeping and reporting requirements of Subpart C shall be met.

3) Used or waste tires shall not be placed on or accumulated in any pile unless the pile is separated from grass, weeds, brush, over-hanging tree limbs and similar vegetative growth by no less than 50 feet.

4) Used or waste tires shall not be placed on or accumulated in any tire storage unit unless the unit is no more than 20 feet high by 250 feet wide by 250 feet long. In determining the width or length of any tire storage unit the aisle space between any piles within the unit shall be included.

5) Used or waste tires shall not be placed or accumulated in any tire storage unit unless one of the following requirements is met:

A) The tire storage unit is separated from all buildings, whether located on or off the site, and all other tire storage units by an earthen berm that is no less than 1.5 times the maximum height of any tire pile within the storage unit; or

B) The tire storage unit is separated from all buildings, whether located on or off the site, and all other tire storage units by a separation distance that is not less than the distance identified by the following:

Required Separation Distances
From Tire Storage Units (in feet)

		Tire Storage Unit Height (in feet)			
		8	12	16	20
Unit Face Dimensions (feet)	25	56	67	77	85
	50	75	93	107	118
	100	100	128	146	164
	150	117	149	178	198
	200	130	167	198	226
	250	140	181	216	245

d) In addition to the requirements set forth in subsections (b) and (c) of this Section, the owner or operator shall comply with the following requirements at sites at which more than 10,000 used or waste tires are located.

1) The area of the site where used or waste tires are stored shall be completely surrounded by fencing in good repair which is not less than 6 feet in height.

2) Entrance to the area where used or waste tires are located shall be controlled at all times by an attendant, locked entrance, television monitors, controlled roadway access or other equivalent mechanisms.

3) The area of the site where used or waste tires are stored shall be completely surrounded by an earthen berm or other structure not less than 2 feet in height except that the owner or operator shall provide a means for access through or over the berm or other structure, capable of containing runoff resulting from tire fires, accessible by fire fighting equipment.

Section 848.203 Contingency Plan

a) If an owner or operator of a tire storage site or tire disposal site is required by Section 848.202 to have a contingency plan under this Section, the owner or operator must meet the contingency plan requirements of this Section.

b) The contingency plan must be designed to minimize the hazards to human health and the environment from fires and run-off of contaminants resulting from fires and from

disease-spreading mosquitoes and other nuisance organisms which may breed in water accumulations in used or waste tires.

c) The provisions of this plan must be carried out immediately whenever there is a fire or run-off resulting from tire fire, or evidence of mosquito production in used or waste tires.

d) The contingency plan must describe the actions site personnel must take in response to fires, run-off resulting from tire fires, and mosquito breeding in used or waste tires.

e) The contingency plan must include evacuation procedures for site personnel which describe signals to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by fire). The contingency plan must include provisions for pesticide application or other measures for control of mosquito breeding in used and waste tires.

f) A copy of the contingency plan and all revisions to the plan must be maintained at the site, and submitted to the local fire departments, police departments, the Agency, and state and local emergency response teams that may be called upon to provide emergency service.

g) The contingency plan must be reviewed and amended within 30 days, if the plan fails in an emergency or the list of emergency coordinators changes.

h) At all times, there must be at least one employee, either on the site premises or on call, with responsibility for coordinating all emergency response measures. This emergency coordinator must be familiar with all aspects of the contingency plan, all operations and activities at the site, the location of all records within the site and the site layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

Section 848.204 Storage of Used and Waste Tires Within Buildings

a) Owners or operators of tire storage sites or tire disposal sites who store used or waste tires within buildings shall meet the requirements of this Section.

b) Used or waste tires may be stored within a building if:

1) the tires are drained of all water prior to placement in the building;

2) all of the building's windows and doors are in working order and are secured to prevent unauthorized access;

3) the building is fully enclosed and has a roof and sides which are impermeable to precipitation; and

4) the building is not a single family home or a residential dwelling.

c) In addition to the requirements set forth in subsection (b), if 500 or more used or waste tires are stored within a building, then the owner or operator shall:

1) develop a tire storage plan in consultation with the local fire department or the state fire marshal meeting the following requirements:

A) the plan shall be developed by considering the type of building to be used for tire storage, i.e. warehouse or grain elevator, and the type of used or waste tires being stored, i.e. whole or shredded;

B) the plan shall include, but not be limited to: the tire storage arrangement; aisle space if necessary; clearance distances between tire piles and the building ceiling, unit heaters, duct furnaces and sprinkler deflectors; and access to fire fighting personnel and equipment; and

C) a copy of the tire storage plan shall be filed with the Agency within 60 days of the effective date of this Part and the plan requirements shall be implemented within 14 days of filing the tire storage plan with the Agency;

2) have and maintain a contingency plan which meets the requirements of Section 848.203; and

3) meet the recordkeeping and reporting requirements of Subpart C.

d) Buildings constructed after the effective date of these rules for the primary purpose of storing used or waste tires in excess of 10,000 shall comply with the NFPA 231D standard for storage of rubber tires incorporated by reference at Section 848.105.

Section 848.205 Pesticide Treatment

Owners or operators of tire storage sites or tire disposal sites treating used or waste tires with pesticides pursuant to Section 848.203 shall meet the following requirements:

a) Maintain a record of pesticide use at the site. Such a record shall include the following information for each application:

1) Date of pesticide application;

2) Number of used or waste tires treated;

3) Amount of pesticide applied; and

4) Type of pesticide used.

b) Notify the Agency of pesticide use within 10 days of each application. The notification shall include the information listed in subsection (a).

c) Persons applying pesticides to used and waste tires must comply with the requirements of the Illinois Pesticide Act (Ill. Rev. Stat. 1989, ch. 5, par. 801 et seq.). Information is available from:

Illinois Department of Agriculture
Bureau of Plant & Apiary Protection
State Fairgrounds
P.O. Box 19281
Springfield, IL 62794-9281

SUBPART C: RECORDKEEPING AND REPORTING

Section 848.301 Applicability

The requirements of this Subpart shall apply to an owner or operator of a tire storage site or a tire disposal site who is required by the management standards of Subpart B to maintain records in accordance with this Subpart.

Section 848.302 Records

a) The owner and operator shall keep a record of used and waste tires at the site. The owner and operator shall keep the following records:

1) Daily Tire Record
2) Annual Tire Summary

b) Each Annual Tire Summary submitted to the Agency shall be in a form as prescribed by the Agency.

Section 848.303 Daily Tire Record

a) The owner or operator shall maintain the Daily Tire Record at the site; such record shall include the day of the week, the date, the Agency designated site number and the site name and address.

b) The following information relative to used and waste tires shall be recorded in the Daily Tire Record:

1) The weight or volume of used or waste tires received at the site during the operating business day.

2) The weight or volume of used or waste tires transported from the site during the operating business day and the destination of the tires so transported.

3) The total number of used or waste tires remaining in storage at the conclusion of the operating business day determined in terms of the passenger tire equivalent (PTE) in accordance with subsection (c).

4) The weight or volume of used or waste tires burned or combusted during the operating business day.

c) The number of tires shall be determined in terms of the passenger tire equivalent (PTE) by weight or by volume as follows:

1) PTE based on weight:

PTE = W / PTE weight factor

where,

W = weight of whole or shredded tires (lb)
PTE weight factor = 25 lb/PTE

2) PTE based on volume:

PTE = V / PTE volume factor

where,

V = volume of whole or shredded tires (ft^3)
PTE volume factors:
for shredded tires, 1.25 ft^3/ PTE;

for whole tires, 4.00 ft^3/ PTE.

d) If both weight and volume of used or waste tires are monitored at a site, then the weight of the tires shall be used to estimate the PTE by weight in accordance with subsection (c)(1).

e) The owner or operator may establish procedures different from those specified in subsection (c) for the purposes of estimating the number of tires as long as the number of tires are estimated in terms of passenger tire equivalent. Such methods shall be established based on the different types of used or waste tires including, but not limited to, light truck tires, heavy duty truck tires, and shredded tires and method of stacking.

f) If the number of used or waste tires is estimated by employing a procedure established in accordance with subsection (e), then the owner or operator shall submit to the Agency such a procedure along with any supporting information such as tire weight and volume data, and method of stacking, within 30 days of the effective date of this Part for Agency approval.

g) For the purposes of this Part, "passenger tire equivalent" (PTE) means an average sized passenger tire weighing 25 lb, and occupying a volume of 4.0 ft^3 when whole or 1.25 ft^3 when shredded.

h) Entries on the Daily Tire Record as required by subsection (a) shall be made contemporaneously with the receipt or transport of each load, unless the owner or operator uses a different method of recording the required information which assures that required information can be entered on the Daily Tire Record by the end of each business day, in which case the information must be recorded in the Daily Tire Record by the end of each business day. Where an alternative method of contemporaneous recording is used, that record, in addition to the Daily Tire Record, must be maintained in accordance with the record retention provisions of Section 848.305.

Section 848.304 Annual Tire Summary

a) The owner or operator shall maintain an Annual Tire Summary at the site; such record shall include the Agency designated site number, the site name and address and the calendar year for which the summary applies.

b) The following information relative to used and waste tires shall be recorded in the Annual Tire Summary:

1) The weight or volume of used or waste tires received at the site during the calendar year.

2) The weight or volume of used or waste tires transported from the site during the calendar year.

3) The total number of used or waste tires determined in terms of the passenger tire equivalent (PTE) remaining in storage at the conclusion of the calendar year.

4) The weight or volume of used or waste tires combusted during the calendar year.

c) The Annual Tire Summary shall be received by the Agency on or before January 31 of each year and shall cover the preceding calendar year.

Section 848.305 Retention of Records

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

Section 848.306 Certification

a) All records, summaries or reports submitted to the Agency as required by this Subpart shall be signed by a person designated by the owner or operator as responsible for preparing and reviewing such documents as part of his or her duties in the regular course of business.

b) Any person signing a document submitted under this Part shall make the following certification:

> I certify that this document and all attachments were prepared under my direction or supervision. 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 including the possibility of fine and imprisonment for knowingly submitting false information.

SUBPART D: FINANCIAL ASSURANCE

Section 848.400 Scope and Applicability

a) This Subpart applies to owners and operators of tire storage sites and tire disposal sites, except as otherwise provided in this Section.

b) Unless exempted by subsection (c), owners and operators shall comply with this Subpart:

1) Prior to storing or disposing any used or waste tires, for sites where used or waste tires are first stored or disposed on or after January 1, 1992;

2) By January 1, 1992, for sites where used or waste tires are disposed or stored prior to January 1, 1992.

c) Owners and operators of tire storage sites and tire disposal sites are exempt from this Subpart with respect to the following types of sites:

1) Sites where the real estate of the site is owned by:

A) The United States or one of its agencies;

B) The State of Illinois or one of its agencies; or

C) A unit of local government.

2) Tire disposal sites with a waste disposal permit under Section 21 of the Act and 35 Ill. Adm. Code 807 or 811. If used or waste tires are stored at the site, then the storage activities, unless otherwise exempted, are subject to this Subpart.

3) Sites where less than 500 used or waste tires are stored at the site and less than 50 used or waste tires have been disposed at the site, as reported on the annual notice of activity under Section 55(d) of the Act.

4) Sites where, as reported in the annual notice of activity, less than 5000 used or waste tires are stored at the site and less than 50 used or waste tires have been disposed. Provided, however, that this exemption does not apply if the owner or operator has been issued, in any calendar year,

pursuant to Section 55.5 of the Act, more than one written notice of violation of Section 55(a), (b) or (c) of the Act.

Section 848.401 Upgrading Financial Assurance

a) The owner or operator shall maintain financial assurance equal to or greater than the current cost estimate calculated pursuant to Section 848.404 at all times, except as otherwise provided by subsection (b).

b) The owner or operator shall increase the total amount of financial assurance so as to equal the current cost estimate within 90 days after any of the following occurrences:

1) An increase in the current cost estimate;

2) A decrease in the value of a trust fund;

3) A determination by the Agency that an owner or operator no longer meets the financial test of Section 848.415(d); or,

4) Notification by the owner or operator that the owner or operator intends to substitute alternative financial assurance, as specified in Section 848.406, for self-insurance.

Section 848.402 Release of Financial Institution

The Agency shall release a trustee, bank, surety or other financial institution when:

a) An owner or operator substitutes alternative financial assurance such that the total financial assurance for the site is equal to or greater than the current 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 848.403 Application of Proceeds and Appeal

a) The Agency may sue in any court of competent jurisdiction to enforce its rights under financial instruments. 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 modify a removal plan or order that proceeds from financial assurance be applied to the execution of a removal plan.

c) The following Agency actions may be appealed to the Board as a permit denial pursuant to 35 Ill. Adm. Code 105:

1) A refusal to accept financial assurance tendered by the owner or operator;

2) A refusal to release the owner or operator from the requirement to maintain financial assurance;

3) A refusal to release excess funds from a trust;

5) A refusal to approve a reduction in the amount of a letter of credit;

7) A determination that an owner or operator no longer meets the financial test.

Section 848.404 Removal Cost Estimate

a) The owner or operator shall submit to the Agency a written estimate of the cost of removing all used and waste tires from the site.

1) The owner or operator shall submit the cost estimate with the annual notice of activity pursuant to Section 55(d) of the Act.

2) The cost estimate is due on January 1 of each year, commencing January 1, 1992.

b) The owner or operator shall revise the cost estimate whenever a change in the removal plan increases the cost estimate.

c) The cost estimate equals the larger of the following:

1) The cost of removing all used and waste tires accumulated at the site; or

2) The cost of removing the maximum number of used and waste tires which the owner or operator anticipates will be accumulated at the site at any time.

d) The owner or operator shall base the cost estimate on either:

1) Costs to the Agency under a contract to perform tire removal actions in the area in which the site is located; or

2) Projected costs, assuming that the Agency will contract with a third party to implement the removal plan. A third party is a person who is neither a parent nor a subsidiary of the owner or operator.

e) The cost estimate must, at a minimum, include all costs for all activities necessary to remove all used and waste tires in accordance with all requirements of this Part.

f) Once the owner or operator has completed an activity, the owner or operator may revise the cost estimate indicating that the activity has been completed, and zeroing that element of the cost estimate.

Section 848.406 Mechanisms for Financial Assurance

The owner or operator may utilize any of the following mechanisms to provide financial assurance for removal of used and waste tires:

a) A trust fund (Section 848.410);

b) A letter of credit (Section 848.413);

c) Self-insurance (Section 848.415).

Section 848.407 Use of Multiple Financial Mechanisms

An owner or operator may satisfy the requirements of this Subpart by establishing more than one financial mechanism per site. These mechanisms are limited to trust funds and letters of credit. The mechanisms must be as specified in 35 Ill. Adm. Code 848.410 and 848.413, respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate. The owner or operator may use any or all of the mechanisms to provide for removal.

Section 848.408 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 and waste tires from all of the owner or operator's sites. In directing funds available through a single mechanism for the removal of any single site covered by that mechanism, the Agency shall direct only that amount of funds designated for that site, unless the owner or operator agrees to the use of additional funds available under that mechanism.

Section 848.410 Trust Fund

a) An owner or operator may satisfy the requirements of this Subpart by establishing a trust fund which conforms to the requirements of this Section and submitting an original signed duplicate of the trust agreement to the Agency.

b) The trustee shall be an entity which has the authority to act as a trustee and:

1) Whose trust operations are examined by the Illinois Commissioner of Banks and Trust Companies pursuant to the Illinois Banking Act (Ill. Rev. Stat. 1989, ch. 17, pars. 301 et seq.); or

2) Who complies with the Corporate Fiduciary Act (Ill. Rev. Stat. 1989, ch. 17, pars. 1551-1 et seq.).

c) The trust agreement must be on the forms specified in Appendix A, Illustration A, and the trust agreement must be accompanied by a formal certification of acknowledgment, on the form specified in Appendix A, Illustration B.

d) Payments into the trust:

1) The owner or operator shall make a payment into the trust fund each year during the pay-in period.

2) The pay-in period is five years. The pay-in period commences at one of the following times, whichever is later:

A) On the date the site first receives used or waste tires; or

B) On January 1, 1992.

3) Annual payments are determined by the following formula:

Annual payment = (CE-CV)/Y

where:

CE = Current cost estimate
CV = Current value of the trust fund
Y = Number of years remaining in the pay in period.

4) The owner or operator shall make the first annual payment prior to beginning of the pay-in period. The owner or operator shall also, prior to the beginning of the pay-in period, 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 accelerate payments into the trust fund, or may deposit the full amount of the current cost estimate at the time the fund is established.

7) The owner or operator shall 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 shall evaluate the trust fund annually, as of the day the trust was created or on such earlier date as may be provided in the agreement. The trustee shall notify the owner or operator and the Agency of the value within 30 days after the evaluation date.

f) Release of excess funds:

1) If the value of the financial assurance is greater than the total amount of the current 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 cost estimate.

2) Within 60 days after receiving a request from the owner or operator for a release of funds, the Agency shall 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 cost estimate.

g) Reimbursement for removal expenses:

1) After initiating removal, an owner or operator, or any other person authorized to perform removal, may request reimbursement for removal expenditures, by submitting itemized bills to the Agency.

2) Within 60 days after receiving the itemized bills for removal activities, the Agency shall determine whether the expenditures are in accordance with the removal plan. The Agency shall instruct the trustee to make reimbursement in such amounts as the Agency specifies in writing as expenditures in accordance with the removal plan.

3) If the Agency determines, based on such information as is available to it, that the cost of removal will be greater than the value of the trust fund, it shall 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, the Agency shall pay claims according to the following priorities:

A) Persons with whom the Agency has contracted to perform removal activities (first priority);

B) Persons who have completed removal 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 848.413 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.

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; or,

2) Whose deposits are insured by the Federal Deposit Insurance Corporation.

c) Forms:

1) The letter of credit must be on the forms specified in Appendix A, Illustration C.

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 the following information: name and address of the 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 must also establish a standby trust fund. Any amounts drawn by the Agency pursuant to the letter of credit will be deposited in the standby trust fund. The standby trust fund must meet the requirements of a trust fund specified in Section 848.410, except that:

1) The owner or operator shall submit a signed, duplicate original of the trust agreement to the Agency with the letter of credit; and

2) Unless the standby trust is funded, the following are not required:

A) Payments into the trust fund.

B) Updating of Schedule A of the trust agreement to show the current cost estimates.

C) Annual valuations as required by the trust agreement.

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 shall draw on the letter of credit if the owner or operator fails to perform removal in accordance with the removal plan.

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 removal 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 removal, or initiates removal, but fails to provide removal in accordance with the removal plan; or

E) Fails to provide additional or substitute financial assurance when required to do so under this Subpart.

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 irrevocable and issued for a period of at least one year.

2) The letter of credit must provide that the expiration date 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 expiration date. 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.

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 removal from the site, unless the Agency determines that a removal plan or the amount of substituted financial assurance is inadequate to provide removal as required by this Part.

2) After removal has been completed in accordance with the removal plans and the requirements of this Part, the Agency shall refund any unspent money which was paid to the Agency by the financial institution.

Section 848.415 Self-Insurance for Non-commercial Sites

a) Definitions. The following definitions are intended to assist in the understanding of this Part and are not intended to limit the meanings of terms in any way that conflicts with generally accepted accounting principles:

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Generally accepted accounting principles" means "Accounting Standards", incorporated by reference in Section 848.105.

"Generally accepted auditing standards" means Auditing Standards--Current Text, incorporated by reference at 848.105.

"Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

"Tangible net worth" means tangible assets less liabilities; tangible assets do not include intangibles such as goodwill and rights to patents or royalties.

b) Information to be Filed

An owner or operator may satisfy the financial assurance requirements of this Part by providing the following:

1) Bond without surety promising to pay the cost estimate (subsection (c)).

2) Proof that the owner or operator meets the financial test (subsection (d)).

c) Bond Without Surety. An owner or operator utilizing self-insurance shall provide a bond without surety on the forms specified in Appendix A, Illustration D. The owner or operator shall promise to pay the current cost estimate to the Agency unless the owner or operator provides removal in accordance with the removal plan.

d) Financial Test

1) To pass the financial test, the owner or operator shall meet the criteria of either subsection (d)(1)(A) or (d)(1)(B):

A) The owner or operator shall have:

i) Two of the following three ratios: a ratio of total liabilities to net worth of less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities of greater than 0.1; or a ratio of current assets to current liabilities of greater than 1.5; and

ii) Net working capital and tangible net worth each at least six times the current cost estimate; and

iii) Tangible net worth of at least $10 million; and

iv) Assets in the United States amounting to at least 90 percent of the owner or operator's total assets and at least six times the current cost estimate.

B) The owner or operator shall have:

i) A current rating of AAA, AA, A or BBB for its most recent bond issuance as issued by Standard and Poor, or a rating of Aaa, Aa, A or Baa, as issued by Moody; and

ii) Tangible net worth at least six times the current cost estimate; and

iii) Tangible net worth of at least $10 million; and

iv) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the current cost estimate.

2) To demonstrate that it meets this test, the owner or operator shall submit the following items to the Agency:

A) A letter signed by the owner or operator's chief financial officer and worded as specified in Appendix A, Illustration F; and

B) A copy of the independent certified public accountant's report on examination of the owner or operator's financial statements for the latest completed fiscal year; and

C) A special report from the owner or operator's independent certified public accountant to the owner or operator stating that:

i) The accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal

year with the amounts in such financial statements; and

ii) In connection with that procedure, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.

e) Updated Information.

1) After the initial submission of items specified in subsection (d), the owner or operator shall send updated information to the Agency within 90 days after the close of each succeeding fiscal year.

2) If the owner or operator no longer meets the requirements of subsection (d), the owner or operator shall send notice to the Agency of intent to establish alternative financial assurance. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements.

f) Qualified Opinions. If the opinion required by subsections (d)(2)(B) and (d)(2)(C) includes an adverse opinion or a disclaimer of opinion, the Agency shall disallow the use of self-insurance. If the opinion includes other qualifications, the Agency shall disallow the use of self-insurance if:

1) The qualifications relate to the numbers which are used in the financial test; and,

2) In light of the qualifications, the owner or operator has failed to demonstrate that it meets the financial test.

g) Parent Corporation. An owner or operator may satisfy the financial assurance requirements of this Part by demonstrating that a corporation which owns an interest in the owner or operator meets the financial test. The owner or operator shall also provide a bond with the parent as surety (Appendix A, Illustration E).

SUBPART E: TIRE REMOVAL AGREEMENTS

Section 848.501 Applicability

a) By January 1, 1992, the owner or operator of a tire disposal site shall obtain written approval from the Agency of a tire removal agreement submitted pursuant to this Subpart unless:

1) THE OWNER OR OPERATOR HAS ENTERED INTO A WRITTEN AGREEMENT TO PARTICIPATE IN A CONSENSUAL REMOVAL ACTION UNDER SECTION 55.3(c) OF THE ACT (Section 55.4 of the Act); or

2) The owner or operator has received a permit from the Agency pursuant to the requirements of Subtitle G: Waste Disposal for the disposal of solid waste at landfills; or

3) The owner or operator has submitted a complete written proposal pursuant to Section 848.503 for a tire removal agreement to the Agency in accordance with this Subpart by July 1, 1991, the owner or operator has submitted all information required or necessary to process the submission, and the Agency has not made a determination with respect to the submittal.

b) The requirements of subsection (a) shall not apply if the owner or operator has removed all used and waste tires from the tire disposal site prior to January 1, 1992. An owner or operator may obtain approval of a tire removal agreement for a specific area within a facility; however, the remainder of the facility must be operated under a permit issued by the Agency under 35 Ill. Adm. Code: Subtitle G: Waste Disposal for the disposal of solid waste in landfills or be subject to a consensual removal action under Section 55.3(c) of the Act.

c) For tire disposal sites at which used or waste tires are first disposed after January 1, 1992, prior to disposing any used or waste tires the owner or operator shall obtain a permit from the Agency pursuant to the requirements of 35 Ill. Adm. Code: Subtitle G: Waste Disposal for the disposal of solid wastes at landfills.

Section 848.502 Removal Performance Standard

THE OWNER OR OPERATOR OF A TIRE DISPOSAL SITE REQUIRED TO FILE AND RECEIVE APPROVAL OF A TIRE REMOVAL AGREEMENT UNDER this Subpart E SHALL REMOVE USED OR WASTE TIRES FROM THE SITE IN A MANNER THAT:

a) MINIMIZES THE NEED FOR FURTHER MAINTENANCE;

b) REMOVES ALL USED AND WASTE TIRES AND ANY RESIDUES THEREFROM; AND

c) PROTECTS HUMAN HEALTH DURING THE REMOVAL AND POST REMOVAL PERIODS. (Section 55.4 of the Act)

Section 848.503 Contents of Proposed Tire Removal Agreements

a) A proposed TIRE REMOVAL AGREEMENT SUBMITTED TO THE AGENCY for approval under this Subpart E SHALL INCLUDE THE FOLLOWING:

1) A COMPLETE INVENTORY OF THE TIRES LOCATED ON THE SITE.

2) A DESCRIPTION OF HOW THE REMOVAL WILL BE CONDUCTED IN ACCORDANCE WITH Section 848.502.

3) A DESCRIPTION OF THE METHODS TO BE USED DURING REMOVAL INCLUDING, BUT NOT LIMITED TO, THE METHODS FOR REMOVING, TRANSPORTING, PROCESSING, STORING OR DISPOSING OF TIRES AND RESIDUES, AND THE OFFSITE FACILITIES TO BE USED.

4) A DETAILED DESCRIPTION OF OTHER ACTIVITIES NECESSARY DURING THE REMOVAL PERIOD TO ENSURE THAT THE REQUIREMENTS OF Section 848.502 ARE MET.

5) A SCHEDULE OF COMPLETING THE REMOVAL OF TIRES FROM THE SITE, AS REQUIRED IN Section 848.504. (Section 55.4 of the Act)

b) The owner or operator may propose amendment of the tire removal agreement at any time prior to notification of the completion of partial or final removal of tires from the facility. To request a change in an approved tire removal permit, an owner or operator shall submit a written request to the Agency. The written request must include a copy of the amended tire removal agreement for approval by the Agency.

c) Nothing in this Section shall preclude the owner or operator from removing used or waste tires in accordance with the approved partial or final tire removal agreement

before certification of completion of partial or final removal.

Section 848.504 Time Allowed for Tire Removal

a) EACH APPROVED tire removal AGREEMENT SHALL INCLUDE A SCHEDULE BY WHICH THE OWNER OR OPERATOR MUST COMPLETE THE REMOVAL ACTIVITIES. THE TOTAL TIME ALLOWED SHALL NOT EXCEED THE FOLLOWING:

1) ONE YEAR IF THE SITE CONTAINS 1,000 TIRES OR LESS;

2) TWO YEARS IF THE SITE CONTAINS MORE THAN 1,000 TIRES BUT LESS THAN 10,000 TIRES;

3) FIVE YEARS IF THE SITE CONTAINS 10,000 OR MORE TIRES.

b) THE OWNER OR OPERATOR MAY APPLY FOR AN EXTENSION OF TIME, NO LATER THAN 90 DAYS BEFORE THE END OF THE TIME PERIOD SPECIFIED IN THE AGREEMENT. THE AGENCY SHALL NOT GRANT SUCH AN EXTENSION UNLESS IT DETERMINES THAT THE OWNER OR OPERATOR HAS PROCEEDED TO CARRY OUT THE AGREEMENT WITH ALL DUE DILIGENCE. THE REQUESTED EXTENSION OF TIME MAY NOT EXCEED 3 YEARS, AND THE AGENCY MAY APPROVE THE REQUEST AS SUBMITTED OR MAY APPROVE A LESSER AMOUNT OF TIME if the removal activities can be completed within such lesser amount of time. (Section 55.4 of the Act)

Section 848.505 Removal Plan

a) The removal plan is the approved tire removal agreement for the site, if one has been approved. Otherwise, the removal plan is the proposed tire removal agreement.

b) An owner or operator who has provided financial assurance based on a proposed agreement shall provide substitute financial assurance based on the approved plan within 90 days after the Agency approves a tire removal agreement. This may consist of substitute financial assurance, or a letter from the financial institution acknowledging receipt of the approved plan and indicating no objection.

Section 848.506 Initiation of Tire Removal

a) Any owner or operator who is required to obtain financial assurance under this Subpart shall submit a proposed tire removal agreement to the Agency that satisfies Sections 848.502 - 848.505 within 30 days after the date on which any tire disposal site or tire storage site receives the known final volume of used or waste tires or, if there

is a reasonable possibility that the tire disposal site or tire storage site will receive additional used or waste tires, no later than one year after the date on which the site received the most recent volume of used or waste tires. If the owner or operator of a tire storage site or tire disposal site demonstrates to the Agency that the site has the capacity to receive additional used or waste tires and that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, the Agency shall approve an extension to this one-year limit.

b) The owner or operator shall begin removal of used and waste tires in accordance with the approved tire removal agreement within 30 days after written Agency approval of the tire removal agreement unless the tire removal agreement specifies otherwise.

c) The Agency shall have authority to approve a later date for initiation of tire removal in a tire removal agreement if:

1) the owner or operator demonstrates to the Agency that a binding contractual relationship exists under which the owner or operator will remove all used and waste tires from the site within two years; or

2) other factors relative to operation of the site necessitate a later date for initiating removal of used and waste tires.

Section 848.507 Certification of Removal Completion

WITHIN 60 DAYS AFTER THE COMPLETION OF REMOVAL ACTIVITIES UNDER AN APPROVED tire removal AGREEMENT under this Subpart E, THE OWNER OR OPERATOR SHALL SUBMIT TO THE AGENCY A CERTIFICATION THAT THE SITE OR THE AFFECTED PORTION OF THE SITE subject to a tire removal agreement HAS BEEN CLEARED OF TIRES IN ACCORDANCE WITH THE APPROVED tire removal AGREEMENT. (Section 55.4 of the Act)

Section 848.508 Agency Approval

FOR A SITE AT WHICH THE OWNER OR OPERATOR IS PROPOSING TO PROCEED WITH REMOVAL under a tire removal agreement, rather than obtaining a permit under 35 Ill. Adm. Code: Subtitle G: Waste Disposal for the disposal of solid waste in a landfill, THE AGENCY SHALL APPROVE, MODIFY OR DISAPPROVE A PROPOSED AGREEMENT WITHIN 90 DAYS OF RECEIVING IT. IF THE AGENCY DOES NOT APPROVE THE AGREEMENT, THE AGENCY SHALL PROVIDE THE OWNER OR OPERATOR WITH A WRITTEN STATEMENT OF REASONS FOR THE REFUSAL, AND THE OWNER OR OPERATOR SHALL MODIFY THE AGREEMENT OR SUBMIT A NEW AGREEMENT FOR APPROVAL

WITHIN 30 DAYS AFTER RECEIVING THE STATEMENT. THE AGENCY SHALL APPROVE OR MODIFY THE SECOND PROPOSED AGREEMENT WITHIN 60 DAYS. IF THE AGENCY MODIFIES THE SECOND PROPOSED AGREEMENT, THE AGREEMENT AS MODIFIED SHALL BECOME THE APPROVED AGREEMENT. (Section 55.4 of the Act)

Section 848.509 Board Review

MODIFICATION OF OR REFUSAL TO MODIFY A proposed tire removal AGREEMENT SUBMITTED BY AN OWNER OR OPERATOR PROPOSING TO PROCEED WITH REMOVAL under a tire removal agreement IS A PERMIT DENIAL FOR PURPOSES OF appeal pursuant to 35 Ill. Adm. Code 105. (Section 55.4 of the Act)

SUBPART F: TIRE TRANSPORTATION REQUIREMENTS

Section 848.601 Tire Transportation Prohibitions

a) Except as provided in subsection (c), no person shall transport more than 20 used or waste tires in a vehicle unless the following requirements are met.

1) The owner or operator has registered the vehicle with the Agency in accordance with this Subpart, received approval of such registration from the Agency, and such registration is current, valid and in effect.

2) The owner or operator displays a placard on the vehicle, issued by the Agency following registration, in accordance with the requirements of this Subpart.

b) No person shall provide, deliver or transport used or waste tires to a tire transporter for transport unless the transporter's vehicle displays a placard issued by the Agency under this Subpart identifying the transporter as a registered tire hauler.

Section 848.602 Tire Transportation Registrations

a) Tire transportation registrations shall be made on application forms prescribed by the Agency which as a minimum shall require the following information:

1) Name, address, telephone number and location of the vehicle owner(s) and operator(s).

2) A description of the number and types of vehicles to be used.

3) An agreement by the vehicle owner(s) and operator(s) that:

A) Tire loading, transportation and unloading will be conducted in compliance with all applicable state and federal laws and regulations.

B) No tires shall be transported with other wastes on one vehicle if such could result in a hazardous combination likely to cause explosion, fire, or release of a dangerous or toxic gas, or in violation of any applicable state or federal law and regulation.

C) The equipment and procedures to be used shall be proper for the tire transportation to be safe for the haulers, handlers, and others, and meet the requirements of all other applicable state and federal laws and regulations.

b) All tire transporter registrations shall be signed by the owner(s) and operator(s) of the vehicle; or, in the name of the owner and operator, by the owner's and operator's duly authorized agent when accompanied by evidence of authority to sign the application.

Section 848.603 Agency Approval of Registrations

a) Tire transporter registration applications shall be deemed to be filed on the date of initial receipt by the Agency of a properly completed application on the form prescribed.

b) If the Agency fails to take final action approving or denying approval of this registration within 90 days from the filing of the completed application, the applicant may deem the registration approval granted for a period of one calendar year commencing on the 91st day after the application was filed.

c) The Agency shall be deemed to have taken final action on the date that the notice of final action is mailed.

d) The Agency shall require the application to be complete and consistent with the provisions of the Act and Board regulations and may undertake such investigations and request the applicant to furnish such proof as it deems necessary to verify the information and statements made in the application. If the application is complete and the approval thereof will not cause a violation of the

Act or Board regulations, the Agency shall approve the registration.

e) In approving tire transporter registrations hereunder, the Agency may impose such conditions as may be necessary to accomplish the purposes of the Act and Board regulations.

f) The applicant may deem any conditions imposed by the Agency as a denial of approval of the registration for purposes of review pursuant to Section 40 of the Act.

g) A tire transporter registration approved hereunder is automatically modified to include any relevant change in the Act or Board regulations. The Agency shall revise any tire transporter registration issued by the Agency under this Part to make the registration compatible with any such relevant changes and so notify the registrant. Failure of the Agency to issue a revised registration shall not excuse the registrant from compliance with any such change.

h) No tire transporter registration is transferable from one person to another. A tire transporter registration is personal to the person(s) named in the tire transporter registration.

i) Violation of any conditions or failure to comply with any provisions of the Act or with any Board regulation shall be grounds for sanctions as provided in the Act, including revocation of the registration as herein provided and the denial of applications for renewal.

Section 848.604 Registration No Defense

The existence of an approved tire transporter registration under this Part shall not provide the transporter with a defense to a violation of the Act or Board regulations, except for hauling used or waste tires without an approved tire transporter registration.

Section 848.605 Duration and Renewal

a) All registrations approved hereunder shall be effective for a period of two years from the date of approval and are renewable, except as provided in Section 848.603(i).

b) Applications for registration renewal shall be made 90 days prior to the expiration date of the registration on the forms prescribed by the Agency.

Section 848.606 Vehicle Placarding

a) Upon approval of a registration as a tire transporter, the owner or operator of any vehicle registered to transport used or waste tires shall place a placard on opposite sides of the vehicles which displays a number issued by the Agency following the words "Registered Tire Transporter: (number)."

b) Registered tire transporter numbers and letters shall be removable only by destruction. Directly adjacent to the words and number, the vehicle owner and operator shall display a seal furnished by the Agency which shall designate the date on which the registration expires.

Section 848.Appendix A Financial Assurance Forms

Illustration A Trust Agreement

TRUST AGREEMENT

Trust Fund Number ________________

Trust Agreement, the "Agreement," entered into as of the ________ day of ______________, by and between ______________________________, a ______________________________ ______________________, the "Grantor," and ______________________________ ____, the "Trustee."

Whereas, the Illinois Pollution Control Board (IPCB) has established certain regulations applicable to the Grantor, requiring that an owner or operator of a used or waste tire storage or disposal site provide assurance that funds will be available when needed for removal of used and waste tires from the site.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the sites identified in this Agreement, and/or to serve as a standby trust fund.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee.

Whereas, Trustee is an entity which has authority to act as a trustee and whose trust operations are regulated by the Illinois Commissioner of Banks & Trust Companies or who complies with the Corporate Fiduciary Act (Ill. Rev. Stat. 1989, ch. 17, par. 1551-1 et seq.). (Line through any condition which does not apply.)

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the owner or operator.

b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Sites and Cost Estimates. This Agreement pertains to the sites and cost estimates identified on attached Schedule A (on Schedule A, list the name and address and initial cost estimate of each site for which financial assurance is demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the IEPA. The Grantor and the Trustee intend that no other third party have access to the Fund except as provided in this Agreement. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached to this Agreement. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits on the Fund, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in trust, as provided in this Agreement. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor.

Section 4. Payment for Removal. The Trustee shall make payments from the Fund as the IEPA shall direct, in writing, to provide for the payment of the costs of removal at the sites covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the IEPA from the Fund for removal expenditures in such amounts as the IEPA shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the IEPA specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trust Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

a) Securities or other obligations of the Grantor, or any other owner or operator of the site, or any of their affiliates as defined in Section 80a-2(a) of the Investment Company Act of 1940, as amended (15 U.S.C. 80a-2(a)) shall not be acquired or held, unless they are securities or other obligations of the Federal government or the State of Illinois;

b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by the Federal Deposit Insurance Corporation.

c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

b) To purchase shares in any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) including one which may be created, managed, underwritten or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers granted in this agreement;

c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States

Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund.

d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by the Federal Deposit Insurance Corporation; and

e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee, to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually furnish to the Grantor and to the IEPA a statement confirming the value of the Trust. The evaluation day shall be each year on the _______ day of __________________. Any securities in the Fund shall be valued at market value as of the evaluation day. The Trustee shall mail the evaluation statement to the Grantor and the IEPA within 30 days after the evaluation day. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the IEPA shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and the successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign,

transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the IEPA and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the IEPA to the Trustee shall be in writing, signed by the IEPA Director or his designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or IEPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or IEPA, except as provided in this agreement.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the IEPA, by certified mail within ten days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the IEPA Director, or by the Trustee and the IEPA Director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the IEPA Director, or by the Trustee and the IEPA, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the IEPA Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed and enforced according to the laws of the State of Illinois.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written.

Attest: Signature of
Grantor____

Typed
Name____

Title____

Seal

Attest: Signature of
Trustee____

Typed
Name____

Title____

Seal

Section 848.Appendix A Financial Assurance Forms
Illustration B Certificate of Acknowledgment

CERTIFICATE OF ACKNOWLEDGMENT

State of ______________________________)
)SS
County of _____________________________)

On this _______ day of ______________________, _________ before me personally came ______________________________ (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at____ (address), that she/he is ____ ____________________ (title) of ____________________________________ _____ (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

____ Notary Public

My Commission Expires _______________________________

Section 848.Appendix A Financial Assurance Forms
Illustration C Irrevocable Standby Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

Director
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

Dear Sir or Madam:

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

We hereby establish our Irrevocable Standby Letter of Credit No. __________________ in your favor, at the request and for the account of ____ up to the aggregate

amount of ______________________________ U. S. dollars ($ _____________), available upon presentation of

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

2. your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111½, par. 1001 et seq.) and 35 Ill. Adm. Code 848.413(e)."

This letter of credit is effective as of_________________________ __________________ and will expire on____________________________; but such expiration date will be automatically extended for a period of ___________________________ on ___________________________ __________ and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and ____ by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit will be available upon presentation of your sight draft for 120 days after the date of receipt by both you and ______________________________________ as shown on the signed return receipts.

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

This letter of credit is governed by the Uniform Commercial Code (Ill. Rev. Stat. 1989, ch. 26, pars. 1-101 et seq.).

Signature

____

Typed Name

____

Title

____

Date

____

Name and address of issuing institution

____

____

This credit is subject to ______________________________________
____
____

Section 848.Appendix A Financial Assurance Forms
Illustration D Owner or Operator's Bond Without Surety

OWNER OR OPERATOR'S BOND WITHOUT SURETY

Date bond executed:
____

Effective date:
____

Owner or operator:
____

Owner or operator's address:
____

____

Site:
____

Site address:
____

____

Penal sum:
$____

The owner or operator promises to pay the penal sum to the Illinois Environmental Protection Agency unless the Owner or operator provides removal in accordance with the removal plan for the site.

Owner or operator
____

Signature
____

Typed Name
____

Title
____

Date

____

Corporate seal

Section 848.Appendix A Financial Assurance Forms
Illustration E Owner or Operator's Bond With Parent Surety

OWNER OR OPERATOR'S BOND WITH PARENT SURETY

Date bond executed:

____

Effective Date:

____

Surety:

____

Surety's address:

____

Owner or operator:

____

Owner or operator's address:

____

Site:

____

Site address:

____

Penal sum:
$____

The Owner or operator and Surety promise to pay the above penal sum to the Illinois Environmental Protection Agency ("IEPA") unless the Owner or operator provides removal in accordance with the removal plan for the site. To the payment of this obligation the Owner or operator and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

Whereas the Owner or operator is required under 35 Ill. Adm. Code 848.Subpart D to provide financial assurance for removal; and

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

Whereas the Surety is a corporation which owns an interest in the Owner or operator;

The Surety shall pay the penal sum to the IEPA if, during the term of the bond, the Owner or operator fails to provide removal for any site in accordance with the removal plan for that site as guaranteed by this bond. The Owner or operator fails to so provide when the Owner or operator:

a) Abandons the site;

b) Is adjudicated bankrupt;

c) Fails to initiate removal when ordered to do so by the Board or a court of competent jurisdiction; or

d) Notifies the Agency that it has initiated removal, or initiates removal, but fails to remove used and waste tires in accordance with the removal plan.

e) Fails to provide additional or substitute financial assurance when required to do so under this Subpart.

The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails notice to the Surety that the Owner or operator has failed to so provide removal. Payment shall be made by check or draft payable to the State of Illinois.

In Witness Whereof, the Owner or operator and Surety have executed this bond and have affixed their seals on the date set forth above.

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

Owner or operator

Surety

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Title

Corporate seal   Corporate seal

Section 848.Appendix A Financial Assurance Forms
Illustration F Letter From Chief Financial Officer

LETTER FROM CHIEF FINANCIAL OFFICER

Director
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

Dear Sir or Madam:

I am the chief financial officer of______________________________
___________________________.

This letter is in support of this firm's use of financial test to demonstrate financial assurance pursuant to 35 Ill. Adm. Code 848.415.

This letter is to demonstrate financial assurance for the following sites:

Owner or operator:

Name:

Address:

City:

____

Current cost estimate:
$____

Owner or operator:

____

Name:

____

Address:

____

City:

____

Current cost estimate: $

____

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

Attached is an Owner or operator's Bond without Surety or an Owner or operator's Bond with Parent Surety for the current cost estimate for each site. (Strike inapplicable language.)

Financial Test
Alternative I

1. Sum of current cost estimates (total of all cost estimates shown in paragraphs above)
   $ ____

2. Total liabilities (if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4)
   $ ____

3. Tangible net worth
   $____

4. Net worth
   $____

5. Current assets
   $____

6. Current liabilities
   $ ______________________________

7. Net working capital (line 5 minus line 6)
   $ ______________________________

8. The sum of net income plus depreciation, depletion, and amortization
   $ ______________________________

9. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.)
   $ ______________________________

		Yes	No
10.	Is line 3 at least $10 million?		
11.	Is line 3 at least 6 times line 1?		
12.	Is line 7 at least 6 times line 1?		
13.	Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 14.		
14.	Is line 9 at least 6 times line 1?		
15.	Is line 2 divided by line 4 less than 2.0?		
16.	Is line 8 divided by line 2 greater than 0.1?		
17.	Is line 5 divided by line 6 greater than 1.5?		

Signature
____
Typed Name
____
Title
____
Date
____

Financial Test
Alternative II

1. Sum of current cost estimates (total of all cost estimates shown in paragraphs above)
   $ ______________________________

2. Current bond rating of most recent issuance of this firm and name of rating service ______________________________

3. Date of issuance of bond ______________________

4. Date of maturity of bond______________________

5. Tangible net worth (if any portion of the cost estimate is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line) $ ______________________

6. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.) $______________________

Yes No

7. Is line 5 at least $10 million? ______________________

8. Is line 5 at least 6 times line 1? ______________________

9. Are at least 90 percent of firm's assets located in the U.S.? If not complete line 10. ______________________

10. Is line 6 at least 6 times line 1? ______________________

Signature

____

Typed name

____

Title

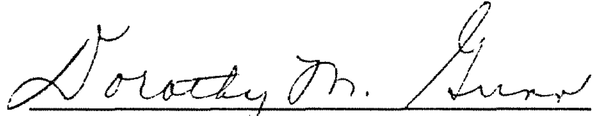
____

Date

____

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 25th day of April, 1991, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board