ILLINOIS POLLUTION CONTROL BOARD
September 15, 1993

IN THE MATTER OF:	)	
	)	R93-10
RCRA SUBTITLE D AMENDMENTS (AMENDMENTS TO 35 ILL. ADM. CODE PART 810, PART 811, AND PART 814)	)	(Identical in Substance Rule)

Adopted Rule. Final Order.

OPINION OF THE BOARD (by J. Anderson):

SUMMARY OF TODAY'S ACTION[1]

The Board today adopts, in accordance with Section 7.2 of the Environmental Protection Act (Act), amendments to the Board's existing nonhazardous solid waste landfill regulations that are identical in substance to USEPA's Subtitle D regulations contained in 40 CFR 258 (1992) (Subtitle D regulations or Subtitle D)[2]. USEPA's Subtitle D regulations implement Sections 4004 and 4010 of the Resource Conservation and Recovery Act (RCRA) of 1976 (P.L. 94-580, codified as 42 U.S.C. para. 6944 & 6950).

[1]In the Illinois Environmental Protection Act, the Board is charged to "determine, define and implement the environmental control standards applicable in the State of Illinois" (415 ILCS 5/5(b)). More generally, the Board's rulemaking charge is based on the system of checks and balances integral to Illinois environmental governance: the Board bears responsibility for the rulemaking and principal adjudicatory functions, whereas the Illinois Environmental Protection Agency (Agency) is responsible for carrying out the principal administrative duties. The latter's duties include administering any regulation that may stem from today's action.

[2]The Board expresses its appreciation to Anand Rao of the Board's technical support staff for his special assistance in drafting the opinion and crafting the order so as to blend the RCRA Subtitle D language into the Board's existing landfill regulations. The Board also appreciates the assistance of Board attorney Michael McCambridge for his assistance in drafting and formatting the opinion and order, particularly as regards financial assurance.

The Board adopts these identical in substance amendments as mandated pursuant to Section 22.40(a) of the Act[3], which provides in pertinent part:

> Where the federal regulations authorize the State to adopt alternative standards, schedules, or procedures to the standards, schedules, or procedures contained in the federal regulations, the Board may .... retain existing Board rules that establish alternative standards, schedules, or procedures that are not inconsistent with the federal regulations.

The instant amendments are contained in the Board's nonhazardous solid waste landfill regulations at 35 Ill. Adm. Code 810, 811, and 814. The text of the adopted rules appears in a separate order, adopted this same day. As is customary in identical in substance rulemakings, the Board is providing for a post-adoption comment period of 15 days, to allow for review, particularly by those involved in the federal authorization process, prior to filing with the Secretary of State.

Section 22.40(a) provides that there be quick adoption of the federal Subtitle D landfill regulations, and that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) (5 ILCS 100/5-1 et seq.) shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to First Notice and Second Notice review by the Joint Committee on Administrative Rules (JCAR)[4]. The Board nevertheless appreciates JCAR's comments during the 45-day public comment period in any identical in substance proceeding.

Today's amendments correspond to USEPA's regulatory program concerning municipal solid waste landfills (MSWLFs). MSWLFs fall under the putrescible waste landfill category of the Board regulations. The Board's landfill regulations also regulate chemical and inert waste landfills, which are not affected by these amendments. The adopted amendments prescribe additional requirements for MSWLF units concerning location, facility

[3]This past July, the Illinois General Assembly, in HB 300, adopted a number of amendments, among them the addition to the Act of new Section 22.40. These amendments were signed into law on September 13, 1993 as Public Act 88-496, effective immediately.

[4]The Board notes that non-identical in substance amendments cannot be considered in this rulemaking. Such amendments must be adopted in a "regular" rulemaking proceeding in accordance with Title VII of the Act and Section 5 of the APA. See Section 22.40(b). Identical in substance rulemaking constraints are more fully discussed in this opinion.

design, operation, groundwater monitoring, closure and postclosure care, and financial assurance.

BACKGROUND

Prior to discussing the substantive aspects of today's regulations, the regulatory history and the approach taken by the Board in adopting the federal rules is discussed below.

RCRA Subtitle D Program

On October 9, 1991, the USEPA promulgated the final municipal solid waste landfill regulations pursuant to the requirements of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580, codified as 42 U.S.C §§ 6944 & 6950) (Subtitle D landfill regulations). Section 4005(c)(1) of RCRA requires all RCRA authorized states, including Illinois, to adopt and implement a permit program or other system of approval that complies with the performance standards of the Subtitle D regulations. The Subtitle D regulations provide flexibility to the states in choosing any design standards that will secure compliance with the federal rule's performance standards. Within two years of the effective date of the Subtitle D regulations, i.e. October 9, 1993[5], the states are required to seek a determination by the USEPA that their state programs comply with the minimum standards of the Subtitle D regulations.

The Subtitle D regulations prescribe minimum standards for municipal solid waste landfill (MSWLF) units including: location restrictions; facility design and operating criteria; and requirements for groundwater monitoring, corrective action, closure and postclosure care, and financial assurance. The regulations establish differing requirements for existing and new units.

Regulatory Format

The Board has chosen to weave the Subtitle D amendments directly into its existing landfill regulations, rather than treating the Subtitle D amendments as a separate "add-on" with back-and-forth cross-references. This chosen approach most clearly identifies both a) where the existing, not inconsistent,

[5]The USEPA has proposed amendments at 40 CFR 258 (58 FR 40568, July 28, 1993) that extend the compliance dates for certain small landfills and also delay the effective date of the financial assurance requirements. The implications of the proposed extensions on the Board's instant regulations are discussed later in this opinion.

Board requirements apply to MSWLF units, and b) where the new federal requirements apply to MSWLF units.

We note that the comprehensive standards in the Board's existing nonhazardous solid waste landfill regulations address all elements covered by the Subtitle D regulations. Moreover, extensive changes are not required, in that the existing Board landfill regulations in large measure are not inconsistent with the Subtitle D requirements. The Board's regulations are found at 35 Ill. Adm. Code 807 and 810 through 815. Among the significant requirements are:

Interrelated systems of checks and balances to control transport of contaminants, including a stringent groundwater assessment program;

Liners of compacted earth, or compacted earth and geomembrane;

Leachate collection systems;

State of the art leachate treatment and disposal requirements;

Landfill gas monitoring and management;

Detailed construction and operating oversight requirements;

Postclosure care for as many years as is necessary at each landfill to demonstrate that contamination is no longer a problem;

A groundwater monitoring system designed to quickly detect potential problems, and to trigger prompt remedial action where indicated;

Built-in provisions to avoid sensitive areas ranging from airports to nature preserves;

More intensive permitting and reporting requirements; and

Phase-out of existing landfills timed to the level of compliance with the new regulations.

Finally, we believe that this approach will minimize administrative and interpretive difficulties for the Illinois Environmental Protection Agency (Agency) and the regulated community alike.

Identical in Substance Constraints

As it does with all of its determinations where identical in substance rulemakings have been mandated, the Board has followed the provisions in Section 7.2 of the Act, which articulate what constitutes "identical in substance". Such mandated rulemakings, as is the case here, usually flow from a State legislative statement of intent and directive to do what is necessary to secure federal approval of a program. The RCRA Subtitle D legislative statement (as well as that for RCRA Subtitle C) is found in Section 20(a) of the Act.

We emphasize that the Board is not authorized in this type of proceeding to review the substantive merits per se of the federal regulations or, for that matter, of the existing Board regulations. All of the Board's earlier regulations adopted on the merits pursuant to its "regular" procedures under Title VII of the Act and Section 5 of the APA - including those that are more stringent - remain, as long as there is not a problem of inconsistency. In like manner, the Board would not use a "regular" rulemaking to itself review the merits of federally-derived provisions, where merits have already been pre-determined by the USEPA and the Board is mandated to adopt them anyway. We do, however, attempt to amend the federal/state language for clarity of intent and compatibility with Illinois administrative law.

Several of the commenters either asked the Board to visit the merits of the federal rules themselves or to amend more stringent Illinois requirements. Those comments requested that the Board improve the regulations for one technical reason or another, but they did not provide the stringency-consistency rationale for such a change. The Board has declined to make these changes. Without the justification that the pre-existing Illinois regulation is inconsistent with the federal regulations, we lack the authority to amend the rules using the identical in substance procedures.

In examining these comments, however, we noted that several of the comments might potentially produce useful changes in the existing Illinois landfill rules. Since such changes are certainly within the scope of our general rulemaking authority under Title VII of the Act, we would suggest that any person wanting to have the Board make those changes should file an appropriate rulemaking petition in a separate docket. In that way the Board may use the Title VII rulemaking procedure for making those changes.

Equivalency Determination and the Agency's Application

At the outset, the Board notes that it has attempted to make the instant amendments consistent with the equivalency

determination made by the Agency as part of its application to the USEPA. The Agency filed its solid waste management permit program application with the USEPA for determination of adequacy, pursuant to Section 4005(c) of Subtitle D of RCRA, on March 31, 1993 (PC #1). A significant portion of the application consists of a demonstration of compliance of the Board's existing landfill regulations with the Subtitle D regulations. The demonstration includes a detailed section-by-section evaluation of the Subtitle D regulations and the corresponding requirements in the Board's existing nonhazardous solid waste landfill regulations. The Agency's analysis shows that the Board's existing regulations are substantially equivalent to the Subtitle D regulations contained in 40 CFR 258. However, the analysis identified a number of deficiencies in the Board's existing nonhazardous solid waste landfill regulations. The deficiencies were minor in nature, except for a few items such as interpretation of existing units/lateral expansions, corrective action procedures, and financial assurance requirements.

The Board addressed the deficiencies identified by the Agency in the proposal for public comments adopted on May 20, 1993. Since then, the Agency's comments (PC #9) indicate that other deficiencies have come to light upon the USEPA's review of the Agency's application. The Board has made changes in today's regulations to address these shortcomings.

As noted in the May 20 proposed opinion, the Board relied significantly on the Agency's application in this rulemaking. The Board does not discuss the details of the equivalency determination in this opinion. Instead, the Board has incorporated the Agency's application by reference. We note that the Agency's application was marked as Public Comment #1 (PC #1). The Board will limit its discussion to the major issues raised by the public comments regarding the proposed amendments, and the actual changes in today's rules.

FEDERAL ACTIONS COVERED BY THIS RULEMAKING

The RCRA Subtitle D regulations were drawn from 40 CFR 258 (1992) (Solid waste disposal facility criteria). The following USEPA actions are covered in this rulemaking:

56 Fed. Reg. 50978, October 9, 1991	(Subtitle D Regulations)
57 Fed. Reg. 28626, June 26, 1992	(Subtitle D Regulations: corrections)
58 Fed. Reg. _____	(Extension of Compliance dates)

PERMITTING SCHEME

Under the instant regulations, the MSWLFs will be regulated as a subset of the putrescible waste landfill category. The MSWLF units will be subject to putrescible waste landfill requirements, and the additional requirements adopted pursuant to this rulemaking. The framework for regulating the nonhazardous landfills will remain the same, i.e. new MSWLFs will be subject to the requirements of Part 811 and existing MSWLFs and lateral expansions will be subject to the requirements of Part 814. Further, MSWLF units will be subject to the informational requirements of Part 812 and the permitting requirements of Part 813.

The Subtitle D regulations require the State to implement a permit program to regulate all MSWLFs, including on-site facilities, which were exempted from the landfill permit program pursuant to Section 21 (d) of the Act. The legislative amendments (HB 300) at Sections 21(d), 21(t), 22.42, and 22.43 of the Act provide for the implementation of the permit requirements applicable to MSWLFs. The statutory changes are reflected in proposed amendments to Part 814 relating to the permit requirements for MSWLF units. The permitting procedures under the instant proposal are explained below.

Permitting Requirements for New MSWLF Units

In the case of new MSWLFs, the owner or operator, prior to waste disposal, will have to comply with all the requirements of Part 811 and obtain a permit in accordance with Parts 812 and 813.

Permitting Requirements for Existing MSWLF Units

The implementation of the permit program in the case of existing units is more complicated due to the existing transition rules of Part 814. The Board's existing regulations at Sections 814.104 allow the owners or operators of existing facilities until September, 1994 to file an application for a permit modification, unless the Agency notifies the owners or operators to file the application at an earlier date. Such facilities are allowed to operate under their Part 807 permit until the approval of the permit modifications under Part 814. Thus, a facility may continue operation under a Part 807 permit until September 1994 and still be in compliance with Part 814.

In order to bring existing MSWLFs under compliance with the permitting requirements of the Subtitle D Regulations before October 9, 1993, the Act was amended to include a new section (Section 22.42) dealing with the interim permit requirements for existing MSWLF units. Section 22.42 requires the owners or operators of all existing MSWLF units to submit a written

application to the Agency for a permit (if no permit has been issued for the MSWLF unit under Section 21(d) of the Act[6]) or a permit modification (if a permit has been issued under Section 21(d) of the Act. Such applications must be filed within 30 days of the effective date of Public Act 88-496, or September 1, 1993, whichever occurs first. The owners or operators who file such applications are deemed to have an interim permit on October 9, 1993 or 30 days after the Agency receives the application, whichever occurs first.

Section 22.42 allows the Agency to impose conditions to ensure compliance with the requirements of the MSWLF interim rules of Section 22.41 of the Act. The interim regulations are essentially a combination of the most stringent requirements of the Subtitle D Regulations and the Board regulations, which ensures the compliance of the state program with the Subtitle D Regulations. The Board notes that these interim rules will take effect on the effective date of Public Act 88-496. The statutory interim "rules" will expire and be replaced by the Board regulations when: (i) the State receives full approval of its MSWLF program by the USEPA; and (ii) the rules adopted by the Board in the instant rulemaking have been reviewed and authorized by the USEPA.

Also, according to Section 22.42, no interim permit or interim permit modification is deemed issued if the Agency provides a written notification that the application is incomplete or the applicant must file an application for a lateral expansion. The Board notes that the deemed issued permits are intended mainly to ensure compliance with the Subtitle D Regulations. The owners or operators of existing MSWLF units are still required to submit applications for significant modification of their permits in accordance with Section 814.104 by September 9, 1994.

Finally, Section 22.42 sets forth the terms for the termination of the interim permits.

Permitting Requirements for Lateral Expansions

Section 21(t) of the Act prohibits a lateral expansion of a MSWLF unit on or after October 9, 1993 without a permit modification granted by the Agency. The statutes do not prescribe any specific permitting requirements for lateral expansions other than granting authority to the Agency to issue such permit modifications (Section 22.43 of the Act). Also, the Board notes that the interim permit requirements of Section 22.42 do not apply to lateral expansions. Since for the most part,

[6]Refers to the landfills that have been operating without permits under prior exemptions.

lateral expansions are treated as new MSWLF units under the Subtitle D Regulations, the Board has proposed permit modification requirements at Section 814.109.

Section 814.109 requires owners or operators of MSWLFs seeking lateral expansions after October 9, 1993 to file an application for a permit modification with the Agency. The permit application must comply with the requirements and procedures of Parts 811 and 812. The owners or operators may begin lateral expansion of a MSWLF unit only upon the Agency's approval of the permit modification pursuant to the procedures of Part 813.

PUBLIC COMMENTS

The Board started the "public comment" phase of this rulemaking by adopting the proposal for public comments on May 20, 1993. The following public comments (PC) relating to the instant rulemaking were received by the Board:

PC #1	Illinois Environmental Protection Agency's solid waste management permit program application submitted to the USEPA for determination of adequacy, pursuant to Section 4005(c) of Subtitle D of RCRA on March 31, 1993
PC #2	Department of Commerce and Community Affairs
PC #3	Browning-Ferris Industries, Midwest Region (BFI)
PC #4	Village of Winnetka (Winnetka)
PC #5	Waste Management, Inc. (WMI)
PC #6	Envirometrics & Statistics Limited (EnviroStat), on behalf of Laidlaw Waste Systems
PC #7	Secretary of State (Code Unit)
PC #8	USEPA, Region 5, Solid Waste Section (USEPA)
PC #9	Illinois Environmental Protection Agency[7] (Agency)
PC #10	Agency's revised application submitted to the USEPA on August 27, 1993 for a Determination of RCRA Subtitle D Program Adequacy.

The Board notes that seven of the ten public comments (PC #3 through #9) were filed in response to the Board's proposal for public comments. The Board extends its appreciation to all commenters for their thoughtful contributions to today's

[7] All of the public comments were filed prior to August 2, 1993, the general close of the comment period, except for the Agency's filing on August 16, 1993. The Agency had been granted a filing extension by Board order of August 5, 1993 in response to the Agency's plea that its comment had been delayed by the need for its personnel to respond to issues arising out of the record summer floods of 1993.

considerations of the law that underpins Subtitle D to recommendations concerning the form and content of specific provisions of the Illinois solid waste regulations.

The Board has reviewed in detail all of the public comments. In responding to these, the Board today makes a number of changes in the amendments as originally presented in the proposal for public comment. First, the Board will discuss the major issues relating to the compliance dates and the existing MSWLF standards. All other changes are discussed under the following Section-by-Section commentary.

There are also a number of changes offered in the public comments that we cannot address in this identical in substance rulemaking, as explained earlier in this opinion. The largest class of these consists of proposals that would modify the existing landfill regulations in manners not identical in substance to Subtitle D.

MAJOR ISSUES

USEPA's Proposed Extension of Compliance Dates

The Agency and Winnetka called to the Board's attention the USEPA's proposal to amend several Subtitle D compliance dates contained in 40 CFR 258 (1992). (PC #9 at 2 and PC #4 at 1.) The Board notes that the USEPA's proposed rule was published in the Federal Register on July 28, 1993 (58 FR 40568). The USEPA's proposed amendments that affect the instant regulations include the following:

a) Extension of the effective date of the Subtitle D regulations for a period of six months from October 9, 1993 to April 9, 1994 for certain small MSWLF units, if certain specific conditions are met[8].

b) Extension of the effective date of the financial assurance requirements from April 9, 1994 to April 9, 1995 for all MSWLF units.

The Agency states that, if the USEPA's proposal becomes final, as proposed, the problem of accommodating the federal revisions in the state program will be complicated by the

[8] The conditions are: (i) the unit receives less than 100 tons of per day of waste for disposal; (ii) the unit is located in a state that has submitted an application for program approval to the USEPA by October 9, 1993 or is located on tribal lands; and (iii) the unit is not currently listed on the Superfund National Priority List (NPL).

provisions of the of the State legislation (HB 300), now Public Act 88-496. (PC #9 at 2-3.) The Agency notes that several provisions of Public Act 88-496 contain compliance dates reflecting the dates contained in the existing Part 40 CFR 258 (1992).

The Board adopts USEPA's proposed revision of the compliance dates in today's rules in anticipation of the need to be identical in substance to the USEPA's regulations. In this regard, the Board notes that Section 22.40(a) of the Act mandates the Board to adopt regulations that are identical in substance to the federal regulations or amendments of such regulations promulgated by the USEPA to implement Sections 4004 and 4010 of RCRA as those regulations relate to the MSWLF program. The Board anticipates that the USEPA's proposal will become effective before the end of the post-adoption comment period of the instant regulations. If not, or if there are any changes in the final USEPA version, the Board will make appropriate changes to its regulations before filing the same with the Secretary of State.

The Board notes that its actions concerning the compliance dates appear consistent with the intent of the legislature to mirror the federal mandates only as necessary to receive federal authorization. The Board believes that the existing statutory compliance dates were not intended to cause the state program to be more stringent than the federal program would require[9].

[9]We note that the legislative debate in the House before passage of what was then HB 299 (later HB 300) indicates that the intent was that the legislative compliance requirements were added strictly to respond to the Subtitle D federal mandate; e.g., the following statements were made by Representative Novak:

> "....it's going to be concerned with Subtitle D, which is a new federal mandate concerning the solid waste management industry. We're going to be working out language to the agreement as soon as we get over to the Senate, we want to keep it alive"

(State of Illinois, 88th General Assembly, House of Representatives transcription debate, August 23, 1993)

Also, during the Senate debate on then-HB 300, sponsor Senator Mahar specifically addressed why the October 9, 1993 deadline was included:

> "Federal Subtitle D requirements will become effective on October the 9th of this year. Facilities in states that do not have federally approved program by October the 9th must comply with the inflexible federal program;..."

Applicable Standards for Existing Units and Lateral Expansions

The Agency's comments express concern regarding the proposed requirements for existing MSWLF units and lateral expansions under Part 814. Specifically, the Agency's concerns relate to the permit requirements and the applicable standards. The Agency notes that the proposed amendment to Section 814.102 would require all existing MSWLF units and lateral expansions to come into compliance with the applicable standards of Part 814 by October 9, 1993. (PC #9 at 36.) The Agency contends that Section 814.102 would require existing facilities to comply not only with the Subtitle D criteria by October 9, 1993, but also with the more stringent Illinois requirements that would not have been required until the completion of significant modifications in accordance with Section 814.104[10]. The Agency states that the proposed compliance requirements under Section 814.102 would place a substantially greater burden than necessary on existing MSWLF units operating under a permit issued pursuant to Part 807. (PC #9 at 37.)

The Agency's comments also voice concern regarding the proposed permit modification requirements for lateral expansion at Section 814.108. The Agency notes that the regulations must provide for the continued recognition of lateral expansion since applications for lateral expansions may be submitted after the expiration of the statutory interim period. However, the Agency maintains that it is unnecessary for such applications to be reviewed under the existing significant modification procedures, as proposed by the Board. The Agency suggests that the proposed review procedure be replaced with a much more limited review, primarily of the design criteria. (PC #9 at 45.) Finally, the Agency suggests the addition of a new section containing standards that are applicable to lateral expansions at units operating under permits issued pursuant to Part 807 until such permits are modified in accordance with Part 814. (PC #9 at 45-46.)

The Board has made a number of changes in today's regulations under Section 814.Subpart A in order to address the Agency's concerns and clarify the applicable requirements for the existing MSWLF units and lateral expansions. The Board has

(State of Illinois, 88th General Assembly, Regular Session Senate Transcript (first proof), July 13, 1993.)

[10]The Board's nonhazardous landfill regulations require existing landfills operating under permits issued pursuant to Part 807 to come into compliance with Part 814 standards by applying for a significant modification of the Part 807 permits. The regulations allow such landfills until September 1994 to file an application for significant modification.

amended Section 814.101 to clarify the applicable standards for existing MSWLF units and lateral expansions based on the current status of such units in terms of their operating permits.

An existing MSWLF unit operating under a permit modified pursuant to Part 814 or an existing unit that is newly required to obtain a permit under Section 21(d) of the Act is required to comply with the applicable standards of Subpart C or D of Part 814, which include the additional requirements relating to existing MSWLF units and lateral expansions. Similarly, an existing unit operating under a permit issued pursuant to Part 813 is required to comply with the standards of Part 811, as amended in this rulemaking. An existing MSWLF unit operating under a permit issued pursuant Part 807 is required to comply with the terms of its permit and the more stringent requirements of the Subtitle D regulations.

The Subtitle D requirements applicable to the existing units operating under Part 807 permits are prescribed in an appendix to Part 814 (Section 814.Appendix A). These requirements mirror the interim permit requirements (PC #10) specified by the Agency pursuant to Section 22.42 of the Act. The Board chose this approach to address the existing MSWLF units operating under Part 807 permits in order to maintain continuity with the Agency's action during the interim period, which expires upon the approval of the instant regulations by the USEPA.

Regarding the Agency's concern relating to the review process of the permit modification applications, the Board notes that it is reluctant to prescribe any limited review criteria at this time. Further, the Agency's comments do not provide adequate guidance to craft specific review criteria for permit modifications for lateral expansions. However, in today's regulations the Board has amended the permit modification requirements for lateral expansions to clarify the informational requirements. The amended requirements are specified in section 814.109 (previously numbered as 814.108).

Today's amendments essentially require an owner or operator of an existing MSWLF unit seeking a lateral expansion to obtain a permit modification prior to such expansion. Section 814.109 clearly specifies the informational requirements for a permit modification application based on the current status of the existing units in terms of their operating permits. Only information required to demonstrate compliance with the additional requirements prescribed for MSWLF would be required under the instant regulations. The Board envisions that the informational requirements for existing units operating under permits issued pursuant to Part 813 or Part 814 will be minimal, since most of the information would have been submitted to the Agency along with the application for a new permit or a significant modification of an existing permit.

Finally, the Board notes that the instant regulations under Part 814 include a new section that specifies the compliance dates for existing MSWLF units. As discussed above, the compliance dates specified in Section 814.107 reflect the revised effective dates proposed by the USEPA in the Federal Register published on July 28, 1993.

Agency or Board Action?

The Board had requested comments regarding certain specific requirements applicable to MSWLF units that require Agency determination, as proposed. Specifically, the Board wanted to know whether the Agency determination required by subsections 811.110(e) and (f), 811.111(d)(3), and 811.303(d) might be addressed through a variance, provisional variance, or an adjusted standard proceeding. These requirements specify conditions for extension of closure schedule, cover disturbance, and postclosure care period. The Agency has stated that the determinations identified by the Board are appropriate subjects for permit applications and review pursuant to Part 813, Subpart B. (PC #9 at 2.) The Agency maintains that if an applicant disagrees with the Agency's decision, the appeal mechanism is available for resolution. WMI's comments also note that the Agency determination is more appropriate when it comes to extension of closure schedule and cover disturbance. However, regarding the reduction of postclosure care period itself, WMI states that the Board must make such decisions under an adjusted standard procedure due to the financial implications, and the need for consistent determination. (PC #5 at 5.)

The Board notes that its main concern regarding the determinations identified above is the lack of adequate guidance for the Agency to evaluate the required demonstrations. The Board notes that the federal Subtitle D criterion included in the above requirements is nebulous. Essentially, the federal language requires an owner or operator to demonstrate that the deviations from the applicable requirements relating to the closure requirements and postclosure care period are "sufficient to protect human health and environment." However, the Board notes that it will retain the federal standard in the instant regulations without specifying any additional criteria, since today's rulemaking involves an identical in substance regulation.

Regarding the appropriate procedure for addressing changes from the closure schedule and postclosure care period, the Board agrees, in part, with WMI's comments. The Board believes that the implementation of closure schedule and cover disturbance during postclosure can be handled through permit modifications. However, regarding the postclosure care period, the Board concludes that an adjusted standard procedure must be used only if an operator seeks an over-all reduction of the postclosure

care period[11]. The Board believes that reduction of individual elements of postclosure care monitoring requirements may be handled through permit modification. The Board notes that this approach ensures Board's oversight in making decisions regarding the over-all postclosure activities of a MSWLF unit. At the same time, it allows the Agency to make determinations regarding the individual elements of postclosure care. In this regard, the Board notes that an Agency determination is appealable to the Board. The changes to Section 811.303 are discussed later under the Section-by-Section discussion.

Groundwater Impact Assessment (Section 811.317)

The Agency recommended the inclusion of allowable levels specified in 40 CFR 258.Table 1 for certain constituents as the applicable standards for groundwater impact assessment. The Agency's comments note that although the applicable groundwater quality standards in the Board's existing regulations are at least as stringent as current MCLs, they are less stringent than the values of 40 CFR 258.Table 1 for five constituents: barium; chromium (hexavalent); endrin; selenium; and 2,4,5-trichlorophenoxy acetic acid. (PC #9 at 4-5.)

The Board notes that the federal regulations at 40 CFR 258.40(a) prescribe a performance standard, which requires the liner design to ensure that the Table 1 levels[12] are not exceeded at the compliance point. This performance standard is similar to the groundwater impact assessment requirement at Section 811.317. The groundwater impact assessment requires an operator to utilize a groundwater contaminant transport model and show that the concentrations of all constituents of leachate are less than the applicable groundwater quality standards of Section 811.320 at the zone of attenuation[13] (compliance point).

The applicable groundwater quality standards are the background concentrations of the monitored constituents.

[11]Over-all reduction of the postclosure care period involves the reduction of monitoring period relating to inspection and maintenance, leachate collection, gas monitoring, and groundwater monitoring.

[12]40 CFR 258.Table 1 includes all those compounds for which the USEPA had established maximum contaminant levels (MCLs) as of October 9, 1991.

[13]The zone of attenuation is a volume bounded by a vertical plane at the property boundary or 100 feet from the edge of the unit, whichever is less, extending from the ground surface to the bottom of the uppermost aquifer and excluding the volume occupied by the waste.

Further, Section 811.320 requires the groundwater quality to be maintained at each constituent's background concentrations at or beyond the zone of attenuation for a period of 100 years after closure of the last unit accepting waste within a landfill facility. The Section 811.320 standard is based on the concept of "nondegradation" and requires the application of statistical methods and procedures to ensure that increases above an established standard are shown to be statistically significant increases.

The Board notes that it is not clear from the Agency's comments as to why the Agency is referring to the Illinois standards as "MCLs," and comparing the current MCLs with the 40 CFR 258.Table 1 values. (PC #9 at 4-5.) The "MCLs" are not the applicable standards under the Board's existing landfill rules. Part 811 requires the applicable groundwater quality standards to be established on a site-specific basis based on the background concentrations of the monitored constituents. In this regard, the Board notes that the groundwater quality standards at 35 Ill. Adm. Code 620.301(d)[14] recognize the nondegradation standards promulgated by the Board for landfill facilities.

The Board notes that in evaluating the adequacy of the Board regulations, the Agency must consider the existing nondegradation standards based on the background concentrations, and not the state MCLs. In this regard, the Board believes that the existing standards applicable to landfills at Section 811.320 are more stringent than the federal levels specified in 40 CFR 258.Table 1, since the nondegradation standard does not permit contamination up to an MCL. Also, the Board notes that it has no authority under the identical in substance mandate to change or modify more stringent state requirements. In view of this, the Board will not make any changes to include the Table 1 values for specific constituents, as suggested by the Agency.

Financial Assurance Requirements

The Agency submitted numerous comments on the financial assurance requirements. A number of the Agency comments prompted a number of changes to the text of the proposal for public comment. Other of the Agency comments relate to changes the Agency desires that are beyond the scope of this rulemaking. Since the structure of the landfill regulations and the nature of the Agency's comments would otherwise lead to burdensome repetition if discussed on a Section-by-Section basis, the Board

[14]The groundwater quality standards under 35 Ill. Adm. Code 620 prescribe numerical standards based on federal "MCLs" for the State's groundwaters classified as potable resource groundwater or Class I groundwater. However, in the case of nonhazardous waste landfills, the more stringent nondegradation standard controls.

will deal with the comments on a topical basis before the Section-by-Section analysis.

The first major group of Agency comments suggest incorporating corrective action into the financial assurance requirements. Key among these is that the Board failed to include revisions to various of the financial assurance forms of Appendices A through I in the proposal for public comment. The Board has made a number of revisions in the text based on these comments, but for various reasons, we have not followed all the Agency-recommended language.

Prescribed Cost of Living Adjustments:

The Agency recommended the addition at Section 811.701(c) of a prescribed format for owners and operators to adjust closure, post-closure care, and corrective action plan cost estimates for increases in the cost of living. Basically, the Agency would have the Board require the owner or operator to make the adjustments at a fixed time before the anniversary date of the establishment of the financial assurance instrument. The Agency would also have the Board impose a specific index for the adjustments.

Section 258.71(a)(1) requires an owner or operator to "annually adjust the closure cost estimate for inflation". Similarly, Section 258.72(a)(2) requires an adjustment for inflation to the postclosure care cost estimate and Section 258.73(a)(1) requires such an adjustment to the corrective action cost estimate in similar terms. The Board followed the federal language at Sections 811.704(k)(2) and 811.705(d), requiring annual adjustments based on inflation.

Essentially, the Agency-recommended provision adds requirements not included in the federal rules. Without addressing the merits of the Agency's recommended language, the Board concludes that this suggestion is beyond the scope of this proceeding.

Exclusion of MSWLF Cost Estimate from Reduction to Present Value:

The Agency recommends that the Board exclude the cost estimates for MSWLF units from the Section 811.704(g)(2) provision that allows for a reduction of the post-closure care estimate to present value. 40 CFR 258.72 does not allow such a reduction to present value. Instead, section 258.72 is structured in such a way that closure and the commencement of post-closure care is possible at any time during the operating life of the unit. The Agency is correct, and the Board has added "Except to a MSWLF unit" to the beginning of the subsection (g) preamble.

Submittal of Financial Assurance Estimates to the Agency:

The Agency has requested that the Board amend Section 811.704(k)(1) so that owner or operator must include any revision of the corrective action cost estimate in an application for significant modification and submit it to the Agency. The Agency states that the proposed provision that would require an owner or operator to notify the Agency that the estimate for corrective action has been placed in the operating record is insufficient.

The Board followed the federal requirements in drafting the proposal for public comments. Sections 258.71(a), 258.72(a), and 258.73(a) require placement of the revised closure, post-closure care, and corrective action cost estimates in the operating record and notice of the placements to the state. The additional actions requested by the Agency go beyond the basic federal requirements, and the Agency has provided nothing that would help the Board conclude that they would not go beyond the scope of the proceeding.

Requirements for Entities Providing Financial Assurance:

The Agency notes that the federal regulations require at sections 258.74(a)(1), (c)(1), and (d)(1) that a person providing financial assurance by acting as trustee, issuing a letter of credit or issuing a policy of insurance must be regulated and examined by a federal or state agency. The original Illinois landfill regulations require at Section 811.710 that a person acting as a trustee be subject to examination under the Illinois Banking Act and comply with the Corporate Fiduciary Act. The rules require at Section 811.713(b) that a person issuing a letter of credit be regulated by the Commissioner of Banks and Trust Companies (under the Illinois Banking Act) and be insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. Similarly, an insurer must be regulated under the Illinois Insurance Code.

To the extent the Illinois regulations specify the persons who must regulate the trustee, issuer of a letter of credit, or the insurer, without more the Board perceives that the Illinois regulations go beyond the scope of the federal regulations. Without regard to the Agency's assertions that most Illinois sites have provided financial assurance that does not comply with the requirement, the Board cannot amend these provisions in the way requested without a proposal from the Agency that would initiate a "regular" rulemaking on the merits.

In examining the text of the financial assurance requirements to address these Agency comments, the Board observed a number of Illinois Administrative Code format corrections that are necessary. The Board corrects the citations at Sections 811.710(b), 811.711(b), 811.712(b), 811.713(b), and 811.714(b) to

include both the citations to the Illinois Revised Statutes and the Illinois Compiled Statutes. The Board repeats certain of the citations in second appearances in subsequent Sections because we believe this adds clarity and avoids back-searching the text to a previous Section for the citation.

Examination of the text revealed another problem with the proposed text that the Agency did not mention in its comments. 40 CFR 258.74(b)(1) very specifically requires that a person issuing a surety bond must be among those listed as acceptable sureties in U.S. Department of the Treasury Circular 570. The Board believes that we must add this more stringent minimum federal requirement to Sections 811.712(b) and 811.713(b). To avoid problems of incorporation by reference of Circular 570, the Board renders the requirement as approval as an acceptable surety. We indicate the fact that the Department of the Treasury lists the acceptable sureties in Circular 570.

Addition of "Corrective Action" to Various Provisions:

The Agency suggests that the Board add references to corrective action at various segments of the financial assurance provisions. We did so in many locations in the proposal for public comment. We now add such references at Sections 811.710(h), 811.711(e), 811.712(e), and 811.713(e) for trusts, letters of credit and surety bonds. The federal rules allow each of these mechanisms for corrective action cost financial assurance. We did not similarly add such references as suggested at Sections 811.714 and 811.715 because careful examination of federal section 258.74(d) indicates that USEPA does not expressly allow insurance for corrective action cost financial assurance.

The effect of many of these added references to corrective action is to provide for reimbursement to the Agency for the owner or operator's failure to undertake and complete corrective action. The Agency proposed an alternative structure for these provisions, which essentially repeated in parallel the language for closure and post-closure care cost reimbursement, but the Board felt that a simpler structure was possible by merely adding these references without repeating blocks of very similar language. The Board has added the only condition not repeated, at Sections 811.711(e)(2)(E), 811.712(e)(2)(E), and 811.713(e)(2)(E) with a limitation that it applies only to corrective action.

The Agency also recommended similar changes to Sections 811.711(e)(1) and 811.712(e)(1) to clarify that the same bond is not required to provide for all of closure, post-closure care, and corrective action cost financial assurance, since the regulations allow for the use of multiple instruments. The Board did not use the Agency-suggested language for this clarification, but we did change these subsections in response to the comment by

adding "a corrective action" before "bond" in the instant regulations.

Payment into the Landfill Closure and Post-Closure Fund:

The Agency has recommended that the Board provide that all funds be made payable into the Closure and Post-Closure Fund, rather than to the Agency. The Agency recommends this change at Sections 811.711(h)(2), 811.712(h)(2), and 811.713(h)(2). The Board has made this change in these locations. Further, we have made these changes where appropriate in the financial assurance forms, discussed below.

Agency Authority to Enter into Contracts:

The Agency has requested that the Board add language at Section 811.710(h) that gives the Agency the authority to enter into contracts for corrective action at a site. The Board does not add such a provision because any authority the Agency must possess to enter into contracts must derive from the statute. (See Section 4(s) of the Act.)

Elimination of Surety Bond Guaranteeing Payment, Required Penal Sum in the Full Amount of the Current Cost Estimate, and Duplicate Language for Term of Bond:

The Agency has requested that the Board eliminate the surety bond guaranteeing payment. The Agency asserts that a bond guaranteeing performance allows the surety to elect payment instead of performance. The Agency concludes that the bond guaranteeing payment is not necessary. Alternatively, the Agency recommends elimination of the references to the Appendix D and H forms for performance and surety bonds. This elimination would also negate these bonds.

The Agency also recommends amendment of Sections 811.711(f), 811.712(f), and 811.713(f) to eliminate the requirement that the penal sum of a bond or letter of credit be in the amount of the current cost estimate. The Agency states that the allowed conjunctive use of multiple financial assurance instruments supports this elimination. Thus, Illinois regulations could appear to require the bond in the full amount of the current cost estimate despite the existence of multiple financial assurance mechanisms.

The Agency further comments that the Board should eliminate the language of Section 811.711(g)(3), relating to the required term of a bond, because it duplicates language of subsection (h)(1), which relates to release of the surety. (We note the dual function of the adjoining identical language.) The parallel, independent use of the same language without cross-reference is a state regulatory style issue.

The Board did not make these Agency-suggested amendments to Sections 811.711 and 811.712. These are beyond the scope of an identical in substance rulemaking. The merits of the Agency's position on these issues can be addressed in a "regular" rulemaking.

Date of Issuance and Name, Address, and Telephone Number of Issuing Institution for a Letter of Credit:

The Agency suggested that the Board should revise the text proposed for Section 811.713(c)(2) so that the letter of credit must indicate the date of issuance and name, address, and telephone number of the issuing institution. Examination of 40 CFR 258.74(c)(2) indicates that the date of issuance and name and address of the issuing institution are federally-required information. The Board has made these revisions. However, we do not similarly include the telephone number requirement because this would be a new additional state requirement.

Agency-Suggested Minor Corrections:

The Agency highlights that the Board did not substitute the appropriate state cross-reference for the federal cross references found in the source text at 40 CFR 258.73(a)(2) and (a)(3). The Board has corrected these to reference "subsections (k)(5) and (k)(6) below" at Section 811.704(k)(3) and (k)(4).

The Agency recommends that the Board change the phrase "closure, post-closure, and corrective action" to "closure, post-closure, or corrective action" at Section 811.706(b) and (b)(1). The Agency does not justify the change with any supporting statements. Examination of the context reveals that the provisions involved refer to the chosen financial assurance mechanisms collectively. Since, in the aggregate, the chosen mechanisms must collectively assure all of closure, post-closure, and corrective action, the Board does not follow the Agency recommendation. If the Agency's concern is that the provision could imply that each instrument must cover all types of financial assurance, we direct attention to Section 811.707, which clearly allows the use of multiple mechanisms, with the use of "any or all of the mechanisms to provide for closure and postclosure care of the site or corrective action". We note that the addition of "or corrective action" is an addition made by the Board.

Financial Assurance Forms Revisions:

The Board did not include proposed amendments to the financial assurance forms in the proposal for public comment. This was due to inadvertent oversight in the rush to rapidly assemble the proposal. The financial assurance forms are an integral portion of the financial assurance requirements, and the

amendments involve the same subject matter as the proposed amendments. Further, forms that conform with the federal requirements are necessary for federal authorization. For these reasons, the Board includes amendments to the forms in the adopted rule.

The Agency submitted edited financial assurance forms as an appendix to its public comments. The Agency-recommended revisions to the forms correlate with the Agency's recommendations as to the text of the rules. As with the rules text suggestions, the Board has accepted and made those Agency suggestions that are necessary to conform the forms to the federal regulations. Similarly, the Board has included other suggested changes that are not required by USEPA as elements of a state program. As for the regulatory text suggestions, the Board suggests that the Agency might wish to pursue these changes in a "regular" rulemaking. As with the regulatory revisions, the amendments are limited to the trust, surety, and letter of credit forms of Appendix A, Illustrations A, C, D, and E. The federal rules do not provide for insurance or self-insurance for corrective action financial assurance, so the Board does not include Illustrations F, G, and I. Further, the Board does not include Illustration H because the federal rules do not provide for a corporate guarantee or parent surety. Rather, the federal regulations require that the surety be a regulated entity.

SECTION-BY-SECTION DESCRIPTION OF THE AMENDMENTS TO PARTS 810, 811, AND 814

Part 810

Definitions (Section 810.103)

The Subtitle D amendments to Part 810 include the addition of the following statutory definitions relating to municipal solid waste landfill (MSWLF) units to Section 810.103: "Existing MSWLF unit", "Household waste", "Lateral expansion", "Municipal solid waste landfill unit" or "MSWLF unit", "New MSWLF unit", and "Resource conservation and recovery Act". These definitions are substantially similar to the definitions contained in 40 CFR 258.2 (1992).

An "Existing MSWLF unit" is defined as any municipal solid waste landfill unit that has received household waste before October 9, 1993. This statutory definition does not provide any limitation on waste placement similar to the federal definition of "Existing MSWLF unit". However, the intent of the Subtitle D Regulations is maintained by the modified statutory definition of "lateral expansion".

A "Household waste" is defined as any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

A "lateral expansion" is defined as a horizontal expansion of the actual waste boundaries of an existing MSWLF unit occurring on or after October 9, 1993, where a horizontal expansion is considered as any area where solid waste is placed for the first time directly upon the bottom liner of the unit on or after october 9, 1993. According to this definition, the waste boundary is the actual foot-print of the waste and not the originally permitted area. Thus, any horizontal expansion beyond the actual foot-print of the waste on or after October 9, 1993 will be considered as a lateral expansion, which is consistent with the USEPA's interpretation.

A "Municipal solid waste landfill unit" or "MSWLF unit" is defined as a contiguous area of land or an excavation that receives household waste, and that is not a land application, surface impoundment, injection well, or any pile of noncontainerized accumulations of solid, nonflowing waste that is used for treatment or storage. The definition notes that a MSWLF unit may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned or operated. A MSWLF unit may be a new MSWLF unit, an existing mswlf unit or a lateral expansion. A sanitary landfill is subject to regulation as a MSWLF if it receives household waste.

"New MSWLF unit" is defined as any municipal solid waste landfill unit that receives household waste on or after october 9, 1993 for the first time.

In addition to the above statutory definitions, the Board has the defined the term "owner" in Section 810.103 for purposes of clarity. The Board notes that the terms "owner" and "operator" have been used interchangeably, and sometimes together in various Sections of the existing landfill regulations at Parts 810 through 815. However, in the Subtitle D Regulations, both the terms "owner" and "operator" are used together consistently. The Board notes that its intent has always been that the owner is the operator if there is no other person operating the disposal facility operator, as indicated by the definition of "owner" at 35 Ill. Adm. Code 807.104. Therefore, the definition of "owner" is included in order to avoid any confusion regarding the applicability of the regulations to MSWLF units and other nonhazardous solid waste landfills. The Board notes that this definition is essentially the same as the definition of "owner" found at 35 Ill. Adm Code 807.104.

"Owner" is defined as a person who has an interest, directly or indirectly, in land, including a leasehold interest, on which a person operates and maintains a solid waste disposal facility. Further, the "owner" is the "operator" if there is no other person who is operating and maintaining a solid waste disposal facility.

Finally, the Subtitle D amendments include the statutory definition of RCRA, which means the Resource Conservation and Recovery Act of 1976 (P.L. 94-580, codified as 42 USC. §§ 6901 et seq.), as amended.

Incorporation by Reference (Section 810.104)

The amendments to Section 810.104 includes the incorporation by reference to two additional documents. The first document is entitled "Test Methods for Evaluating Solid Waste, Physical/Chemical methods, EPA Publication SW-846", which contains test methods for evaluating solid waste. The second document is a list of hazardous organic and inorganic constituents found at 40 CFR 258.Appendix II (1992).

The Agency suggested that the federal regulations incorporated by reference under Section 810.104 be included as separate appendices to Part 811. (PC #9 at 8.) In this regard, the Agency notes that it receives frequent complaints from the regulated community regarding the lack of availability of the referenced documents. The Board agrees with the Agency that including the federal incorporations in appendices to Part 811 would assist the regulated community. However, the Board notes that it will not be able to make any changes in this proceeding regarding the incorporations at this time due to the limited time available. In this regard, the Board notes that a considerable amount of Board's limited resources that would be needed to specifically list and proof the incorporated federal regulations, which include the names of over 300 chemical compounds along with the chemical abstract service (CAS) numbers, the analytical method numbers and the practical quantitation limits (PQLs).

Part 811

Purpose, Scope and Applicability (Section 811.101)

The scope of the Board's nonhazardous solid waste landfill regulations is significantly broader than the Subtitle D Regulations, since its scope is not limited to only MSWLF units. The Board's existing regulations cover all existing and new landfills in the State that accept nonhazardous solid waste including wastes that are characterized as inert, putrescible and chemical waste. However, in order to incorporate the federal requirements in the State's existing landfill program, the statutes created a new category of landfills, which is based on

the federal definition of municipal solid waste landfill (MSWLF) unit. Under the Board's existing regulations, the MSWLF category is a subset of putrescible waste landfills.

The amendments to Section 811.101 reflect the inclusion of MSWLF units under the Board's existing landfill regulations. The amendment at Section 811.101(d) specifies that the standards applicable to new MSWLF units include: (i) the standards applicable to putrescible waste landfills under Part 811; and (ii) the standards adopted pursuant to this rulemaking, which are identical in substance to the Subtitle D Regulations. In addition, Section 811.101(d)(2) notes the inclusion of a new appendix to Part 811, which provides a section-by-section correlation between the federal MSWLF regulations and the Board's nonhazardous solid waste landfill regulations.

Operating Standards (Section 811.107)

The Subtitle D landfill amendments add a new Section 811.107(m) that prohibits the disposal of bulk or noncontainerized liquid waste in MSWLF units, except for the following exceptions: (i) household waste other than septic wastes; and (ii) leachate and gas condensate derived form the MSWLF unit where the unit is equipped with a composite liner and leachate collection system designed and constructed to maintain less than 30 centimeters of head above the liner. Subsection 811.107(m), which is derived from 40 CFR 258.28 (1992) also defines the terms "liquid wastes" and "gas condensate."

The Agency's comments recommended the addition of a reference to Section 811.309 under the liquid restriction requirements proposed at Section 811.107(m)(1)(B). (PC #9 at 9.) Section 811.309 contains standards for leachate recycling systems and conditions for suspension of leachate collection. An examination of the Subtitle D regulations at 40 CFR 258.28 indicates that the liquid restriction requirements apply to leachate recycling systems. In view of this, the Board accepts the Agency's suggestion. The instant regulations at Section 811.107(m(1)(B) includes a reference to Section 811.309.

Closure and Postclosure Care (Sections 811.110 and 811.110)

The instant regulations prescribe additional requirements for MSWLF units concerning closure and post closure care. The closure requirements for MSWLF units are specified at Sections 811.110(e) through 811.110(h). Mainly, the amendments to closure requirements specify the deadlines for initiating and completing closure, and require a deed notation to be made regarding the property.

An owner or operator is required to initiate closure within 30 days of the final receipt of waste, but no later than one year

if the unit has remaining capacity and there is reasonable likelihood of receiving additional waste. The amendments allow the Agency to grant extensions beyond the 1-year deadlines if the owner or operator of the affected unit demonstrates that the unit does not pose a threat to human health and environment.

The amendment at Section 811.110(f) requires the completion of closure within 180 days of beginning of closure. The Agency is allowed to grant extensions beyond the 180-day deadlines under limited circumstances.

Section 811.110 (g) requires the owner or operator, upon closure, to record a notation on deed to the property that notifies any potential buyer of the property that the land has been used as a landfill and that its use is restricted. The notation from the deed may be removed only if the owner or operator demonstrates that all wastes are removed from the facility.

The Agency's comments suggest that the Board add the closure plan requirements at 40 CFR 258.60 (c)(2) and (c)(3), since comparable requirements are not contained in the existing regulations under Part 811. (PC #9 at 7.) The federal criteria require the written closure plan to include the largest area of the MSWLF unit ever requiring a final cover at any time during the active life, and the maximum inventory of wastes ever on the site over the active life. In order to satisfy the federal requirements, the Board has added the federal closure plan requirements under Section 811.110(d)(3).

Additional postclosure care requirements for MSWLF units are specified at Sections 811.111(c) and 811.111(d). Section 811.111 (c) extends the minimum postclosure care period to 30 years from 15 years for MSWLF units to comply with the minimum federal requirement at 40 CFR 258.61 (1992). The Board notes that a similar change has been included in Section 811.303, which specifies the requirements for establishing the design period for chemical and putrescible waste landfills.

The Agency recommended that the Board revise Section 811.111(c)(1)(C) to allow the reduction of the inspection and maintenance period provided that the owner or operator demonstrates that the reduced period will be sufficient to protect human health or environment. (PC #9 at 10.) The Agency notes that this revision will make the postclosure maintenance period for MSWLF units consistent with the design period criteria specified at Section 811.303. We accept the Agency's recommendation. Today's amendments include revised language that addresses the reduction of the inspection and maintenance period under Sections 811.111(c)(1)(C) and 811.111(c)(1)(D). (see discussion relating to "Agency or Board action?" under major issue 5)

Section 811.111(d)(1) requires the owner or operator of MSWLF unit to provide a description of the planned uses of the property during the postclosure care period. Further, Section 811.111(d)(2) specifies that such uses must not disturb the integrity of the final cover, liner, or any other components of the containment system, unless such uses are necessary to comply with the requirements of Part 811. Section 811.111(d)(3) requires the Agency to approve any other disturbances if the owner or operator demonstrates the disturbance will not increase the potential threat to human health or the environment.

Recordkeeping Requirements (Section 811.112)

The recordkeeping requirements applicable to MSWLF units are prescribed in Section 811.112. The Board notes that these requirements are in addition to the existing recordkeeping requirements of Parts 812 and 813. Section 811.112 requires the owner or operator to maintain an operating record at the site or in a location specified by the Agency. Further, the amendments specify the type of information that must be retained in the operating record, which includes location restriction demonstrations, inspection records, gas monitoring results, groundwater monitoring, financial assurance documentation, etc.

The Agency noted that all of the information requested in Section 811.112 (a) through (g) are not requested in Parts 812 and 813. In order to avoid any confusion, the Agency suggested that the Board clarify the informational requirement under Section 811.112. (PC #9 at 11.) Also, the Agency's noted that the informational requirements relating to location restrictions at subsection 811.112(a) must include the FAA notification required by Section 811.302(e) to satisfy the federal requirement at 40 CFR 258.10(c). (PC #9 at 13.) Finally, the Agency suggested the addition of certain specific references to Parts 812 and 813 for the purposes of clarity. (PC #9 at 13.) The Board agrees that certain changes are required to clarify the informational requirements at Section 811.112. Today's regulations under Section 811.112 reflect the changes suggested by the Agency.

Location Standards (Section 811.302)

Today's regulations include an additional Section 311.302(f), which requires an owner or operator of a MSWLF unit to submit to the Agency a copy of the Federal Aviation Administration's approval obtained pursuant to Section 811.302(e). The Board added the notification requirement in response to the Agency's comments, which note that the proposed amendment to Section 811.302 does not satisfy the federal notification requirement at 40 CFR 258.10(c). Also, the Board notes that the requirement at Section 811.302(f) in the proposal

for public comment has been re-numbered as Section 811.302(g) in the today's rules.

Design period (Section 811.303)

The amendments at Section 811.303 reflect the minimum 30-year postclosure care period required for MSWLF units under the Subtitle D Regulations. Section 811.303(a) clarifies that the minimum postclosure care period for putrescible waste landfills is 30 years. The Board notes that it had requested comments on the proposed Section 811.303(d), which allowed a reduction of the minimum postclosure care period upon an Agency determination. The Board wanted to know whether such a determination should be addressed through an adjusted standard procedure. As noted earlier (see discussion relating "Agency or Board Action?" under major issues), the Board concludes that an adjusted procedure is an appropriate procedure to address requests for the reduction of the postclosure care period at a MSWLF unit, whenever such reduction involves all the elements of postclosure care, i.e. inspection and maintenance, leachate collection, gas monitoring, and groundwater monitoring.

The adjusted standard requirements prescribed in the regulations at Section 811.303(d) allow an owner or operator of a MSWLF unit to petition the Board for a reduction of the minimum postclosure care period in accordance with Section 28.1 of the act and 35 Ill. Adm. Code 106.Subpart G.

Leachate Treatment and Disposal system (Section 811.309)

Today's regulations at Section 811.309(h) includes an additional provision comparable to the federal requirement at 40 CFR 258.61(a)(2) in response to the Agency's comments. The Agency noted that the existing requirement at Section 811.309(h), which specifies the requirements for the time of operation of leachate management system does not satisfy the federal requirement at 40 CFR 258.61 (a)(2). (PC #9 at 7.) Even though the Board regulations require a demonstration that treatment is no longer required to terminate leachate collection, the Agency states that additional evidence would be required to satisfy the federal requirement. The Agency suggested the inclusion of a provision comparable to the federal requirement. The instant regulations at Section 811.309(h) reflect the Agency's recommendations, and also includes the adjusted standard provision for reduction of postclosure care period. (see discussion relating to "Agency or Board Action?" under major issues)

Landfill Gas Monitoring (Section 811.310)

Today's regulations at subsection 811.310(c) includes an additional provision comparable to the federal requirement at 40

CFR 258.61(a)(4). The Board notes that the addition under subsection (c)(4) requires gas monitoring to be continued for a minimum period of thirty years after closure at MSWLF to be consistent with federal requirement at 40 CFR 258.61(a). The Board notes that the minimum gas monitoring period for MSWLF units was not specified in the proposed regulations due to an oversight. In addition, today's regulations also prescribe conditions for reducing the thirty year minimum monitoring period, which are comparable to the federal criteria. These conditions are similar to the ones specified for the reduction of the monitoring period for other elements of postclosure.

Landfill Gas Management System (Section 811.311)

The instant regulations include an additional requirement relating to gas management at Section 811.311(b). Essentially, the amendment prescribes the actions to be taken by an owner or operator of a MSWLF unit in the event of an exceedance of the allowable methane gas levels. The Board made this change in response to Agency's comments that the existing requirements do not satisfy the federal requirement at 40 CFR 258.23(c)(1). (PC #9 at 4.)

Groundwater Monitoring Program (Section 811.319)

The amendments to Section 811.319 include a number of additional requirements applicable to MSWLF units. The amendments are described below.

Detection Monitoring:

Section 811.319(a)(1)(A) requires groundwater monitoring to be continued for a minimum period of 30 years after closure at MSWLF units. This change reflects the 30-year minimum postclosure care period required by the Subtitle D Regulations. A similar change is included at Section 811.319(a)(1)(C).

Today's regulations also include additional clarifying language at Section 811.319 (a)(1)(A) and (a)(1)(C). The new language at Section 811.319(a)(1)(A) notes that the minimum postclosure care period may be reduced in accordance with Section 811.319(a)(1)(C). The changes to Section 811.319(a)(1)(C) reflect that groundwater monitoring at a MSWLF unit may be discontinued after thirty years if certain conditions of Section 811.319(a)(1)(C) are met. The Board made these changes in response to the Agency's comments, which notes that the reduction of groundwater monitoring period is consistent with the federal requirement at 40 CFR 258.61(b)(1). (PC #9 at 13-14). (see also, the discussion relating to "Agency or Board Action?" under major issues)

Section 811.319(a)(3)(C) requires an operator of a MSWLF unit to monitor each monitoring well for the organic chemicals listed in Section 811.319(a)(3)(A) on an annual basis, which is the minimum monitoring frequency under the Subtitle D Regulations.

The Agency's comments also suggest that the citation to Section 811.319(a)(1)(A) at Sections 811.319(a)(3)(B) and 811.319(a)(3)(C) must be changed to Section 811.319(a)(3)(A). The Agency contends that Section 811.319(a)(3)(A) is the appropriate reference, since the organic constituents that need to be monitored are listed in this Section. The Board disagrees. The citation to Section 811.319(a)(1)(A) is intended to ensure that the monitoring will begin as soon as waste is placed at a new unit or within one year of the effective date at an existing unit, and continue for a period of at least thirty years after closure. Further, the Board notes that Section 811.319(a)(3) clearly states that organic chemical monitoring must be conducted in accordance with Sections 811.319(a)(3)(A) through 811.319(a)(3)(C), which includes the list of constituents to be monitored under organic chemical monitoring. Therefore, the Board will not make any additional changes.

Assessment Monitoring:

The additional requirements applicable to MSWLF units have been proposed at Section 811.319(b)(5). Essentially, an owner or operator of a MSWLF unit is required to monitor the groundwater for the constituents listed in 40 CFR 258.Appendix II during assessment monitoring (Section 811.319(b)(5)(A)). The list contains approximately 300 inorganic and organic constituents. If any constituent is detected, within 14 days obtaining the sampling results, the owner or operator must place a notice identifying the such constituents in the operating record, and notify the Agency (Section 811.319(b)(5)(B)). The owner or operator is required to establish background concentrations for the detected constituents (section 811.319(b)(5)(C)).

If any constituent concentration exceeds an applicable groundwater quality standard, the owner or operator must place a notice in the operating record identifying such constituents, and notify the Agency, officials of the local municipality or county, and all persons who own land or reside on land that directly overlies any part of the plume of contamination if the plume has migrated off-site.

Today's regulations also include two additional provisions relating to assessment monitoring under Section 811.319(b)(5). First, Section 811.319(b)(5)(D) requires an owner or operator to monitor the constituents listed in 40 CFR 258.Appendix II on a semi-annual basis. Second, Section 811.319(b)(5)(E) allows an owner or operator of a MSWLF unit to request the Agency to delete

any of the of the 40 CFR 258.Appendix II constituents by demonstrating to the Agency that the deleted constituents are not reasonably expected to be in, or derived from, the waste contained in the leachate. The Board included these additions in response to WMI's comments. WMI noted that 40 CFR 258.Appendix II allowed for deletion of constituents that are not expected to be in, or derived from, the waste contained in the unit. WMI stated that the inclusion of the federal requirement eliminates wasteful groundwater monitoring practices. (PC #5 at 3.)

The Agency also suggested some clarifying changes to the assessment monitoring requirements. Essentially, the Agency recommended that Section 811.319(b)(5)(A) must be referenced in the appropriate subsections dealing with the additional requirements for MSWLF units. Today's regulations reflect the Agency's suggestions.

Remedial/Corrective Action:

At the outset, the Board notes that the term "remedial action" used in the Board's existing regulations has the same meaning as the term "corrective action" used in the Subtitle D Regulations. However, the term "corrective action" has been used in the instant proposal in relation to the MSWLFs since the same terminology has been used in the Act.

Since the remedial action requirements under the existing landfill regulations at Section 811.319(d) do not prescribe detailed requirements for the corrective action procedures, the Board has added the requirements of the Subtitle D Regulations relating to assessment of corrective action measures (40 CFR 258.56), selection of remedy (40 CFR 258.57), and implementation of corrective action (40 CFR 258.58) in the new Sections 811.324, 811.325, and 811.326.

Assessment of corrective action measures (Section 811.324):

The assessment of corrective action measures is triggered when the groundwater impact assessment, performed in accordance with Section 811.319(c), indicates that corrective action is needed or if the assessment monitoring indicates that a confirmed exceedance above the applicable groundwater quality standard is attributable to the facility. The Board notes that these triggers for assessment of corrective action measures, specified at Section 811.324(a) are the same as those specified for remedial action under Section 811.319(d). Further, the Board concludes that the corrective action trigger specified in Section 811.324 are consistent with the triggers specified in the Subtitle D Regulations.

Today's regulations at Section 811.324(a) require the owner or operator to initiate the assessment of corrective action

within 14 days of a determination that remedial action is needed at the site, instead of 90 days as proposed. Also, Section 811.324(b) requires the assessment of corrective action to be completed within 90 days of initiating the assessment, instead of a reasonable time period as proposed. The Board made these changes to address Agency's comments. The Agency noted that the proposed 90 day period to initiate the assessment of corrective action would result in unnecessary delay. (PC #9 at 16.) Also, the Agency suggested that the Board require an owner or operator to complete the assessment within a specified number of days. The Agency recommended 90 days. (PC #9 at 16.)

Section 811.324(c) requires the owner or operator to continue monitoring in accordance with the assessment monitoring program.

Section 811.324(d) requires the evaluation of corrective action measure to meet the requirements and objectives of Section 811.325 and specifies a list of items that the owner or operator must address in the assessment. The items include time required to complete the remedy, cost of implementation, reliability, ease of implementation, and institutional requirements.

Finally, Section 811.324(e) requires the owner or operator to hold a public meeting, prior to the selection of a remedy, to discuss the results of the assessment of corrective measures. Today's amendments at Section 811.324(e) require an owner or operator to submit to the Agency a report describing the results of the assessment of corrective action measures. The Board notes that additional provision was added in response to Agency comments. The Agency noted that even though it will not be involved with the public meeting, a report of the assessment would assist the Agency in tracking the progress of remedial action and also respond to public inquiries. (PC #9 at 17.) Further, the Agency maintains that submittal of a copy to the Agency would require only minimal burden.

Selection of Remedy (Section 811.325):

The owner or operator is required to select one or more remedies based on the results of the assessment of corrective measures. Today's regulations include an additional provision at Section 811.325(a)(2) that requires the owner or operator to submit to the Agency an application for significant modification of the permit describing the selected remedy. The instant regulations also specify that the application must be submitted within 90 days of completion of the assessment of corrective actin measures. The Board included the additional requirement to address the Agency's comments. The Agency noted that the changes are necessary to bring the corrective action procedures within the significant modification requirement. (PC #9 at 18.) The Board agrees that the Agency should make the final determination

as to the appropriateness of the selected remedy subject to an appeal to the Board.

The selected remedy must meet the objectives specified in Section 811.325(b), which require that the remedy must be protective of human health and environment, attain groundwater quality standards, control the sources of release, and comply with the standards of waste management during the implementation phase. Section 811.325(c) specifies the criteria that must be considered in selecting the remedy.

Section 811.325(d) requires the owner or operator to specify the time schedules for initiating and completing the selected remedy. The Agency is required by Section 811.325(d)(2) to specify the time schedules in the facility's permit. The factors that must considered by the owner or operator to specify the time schedules are prescribed in Section 811.325(d)(3).

Section 811.325(e) requires the Agency to determine that remediation of a release is not required upon a demonstration by the owner or operator that: (i) groundwater is contaminated by multiple sources and cleanup of the contamination resulting from the MSWLF will not result in significant reduction in risk; (ii) contaminated groundwater is not a source currently or reasonably expected to be used as source of drinking water and is not hydraulically connected to other sources of drinking water; (iii) remediation is not technically feasible; or (iv) unacceptable cross media impact would result from remediation. However, an Agency determination will not affect the State's authority to require the owner or operator to undertake source control or other measures. The Board also corrects a typographical oversight at Section 811.325(f).

Implementation of Corrective Action (Section 811.326):

The requirements relating to the implementation of the corrective action at MSWLF units are set forth in this Section. Section 811.326(a)(1) requires the owner or operator to establish a corrective action groundwater monitoring program, which at a minimum meets the assessment monitoring requirements, indicates the effectiveness of the remedy, and demonstrates compliance with the groundwater quality standards. The owner or operator is required by Section 811.326(a)(3) to take any necessary interim measures to protect human health and environment. Section 811.326(b) requires the owner or operator to implement alternative methods to achieve compliance if the selected remedy fails to achieve compliance. The Agency must be notified prior to the implementation of any alternative methods.

If the owner or operator determines that compliance cannot be achieved by currently available methods, the owner or operator is required by Section 811.326(c) to obtain a certification to

that effect, by a qualified groundwater scientist or a determination by the Agency. The owner or operator is required to implement alternate measures to control the source of contamination or for removal of equipment, units, devices, or structures.

The instant regulations require an owner or operator to submit to the Agency an application for significant modification of the permit: in order to implement alternative measures in accordance with requirements at Sections 811.326(b) and 811.326(c); and upon the completion of the remedy in accordance with requirements of Section 811.326(f). As discussed under the selection of remedy, the Board included these requirements to ensure the Agency's oversight during the implementation of the corrective action. Today's regulations at Section 811.326(c) also include a definition of the term "qualified groundwater scientist," which is derived from 40 CFR 258.50(f).

The remedy or corrective action is considered to be complete when compliance is achieved with the groundwater quality standards over a period of three years. Section 811.326(e) allows the Agency to specify an alternative time period by giving consideration to the factors listed under Section 811.326(e)(2), which include extent and concentration of release, contaminant characteristics, groundwater flow, etc. Upon completion of the remedy, the owner or operator is required to obtain a certification by a qualified groundwater scientist or a determination by the Agency that the remedy is completed.

Load checking (Section 811.323)

The amendments at section 811.323 require the load checking program at MSWLF units to include the inspection of incoming waste loads for polychlorinated biphenyl (PCB) wastes in addition to checking for hazardous wastes. Today's regulations include clarifying changes at Section 811.323(b), which reflect that unacceptable wastes include PCBs.

Financial Assurance Requirements (Section 811.Subpart G)

Applicability (Section 811.700):

The amendments to Section 811.700 remove the exemption applicable to units of local governments from providing financial assurance for MSWLF units. Section 811.700(f) requires the owners or operators of MSWLF units to provide financial assurance for closure, postclosure, and corrective action. The Board notes that the existing regulations do not require financial assurance for corrective action. Finally, today's regulations at Sections 811.700(f) and 811.700(g) reflect the delayed compliance date for financial assurance requirements, as proposed by the USEPA. (see discussion relating to "compliance dates" under major issues)

Upgrading Financial Assurance (811.701):

Today's regulations include an additional provision at Section 811.701(c) that requires an owner or operator a MSWLF unit to make annual adjustments for inflations if required pursuant to Section 811.704(k)(2) or 811.705(d).

Written Cost estimate (Section 811.704):

The instant regulations include additional language at Section 811.704(g) that clarifies that the requirements for preparing the postclosure monitoring and maintenance cost do not apply to MSWLF units.

The amendments at Section 811.704(k) specify the requirements for the written cost estimate for corrective action at MSWLFs. Essentially, the owner or operator of a MSWLF unit is required to prepare a detailed cost estimate, in current dollars, of the cost hiring a third party to perform the corrective action. The owner or operator is required to adjust the cost estimate annually for inflation. The cost estimate must be increased if changes in the corrective action program increases the maximum cost of corrective action. Requirements are also prescribed to allow the owner or operator to reduce the corrective action cost estimate if such estimate exceeds the maximum remaining costs of the corrective action. Lastly, the owner or operator is required to provide coverage until released from the financial assurance requirements.

Revision of Cost Estimate (Section 811.705):

The instant amendments at Section 811.705(d) require an owner or operator of a MSWLF unit to adjust the cost estimates of closure, postclosure, and corrective action for inflation on an annual basis. Section 811.705(d) also specifies the time period during which such adjustments must be made.

Mechanisms for Financial Assurance (Section 811.706):

The amendments clarify the applicability of the various mechanisms for providing financial assurance for corrective action at MSWLF units. In addition, Section 811.706(b) requires an owner or operator to ensure that: (i) the amount assured is sufficient to cover the costs of closure, postclosure care, and corrective action sufficient funds; and (ii) the funds will be available in a timely and fashion when needed. Section 811.706(c) specifies the dates at which the owner or operator must provide financial assurance.

The amendments to Sections 811.710 (trust fund), 811.711(surety bond guaranteeing payment), 811.712 (surety bond performance), and 811.713 (letter of credit) clarify the

applicability of the different mechanisms for providing financial assurance for closure, postclosure care and corrective action at MSWLFs. The substantive requirements of the mechanisms have not been changed.

Editorial Changes:

The existing regulations under Section 811.Subpart G prescribe requirements applicable to the operator of a facility. However, the Subtitle D Regulations refer to "owner and operator." The Board notes that its intent has always been that the owner is the operator if there is no other person operating the disposal facility operator, as indicated by the definition of "owner" at 35 Ill. Adm. Code 807.104 (see discussion under Definitions-Section 810.103). Today's amendments under Subpart G include the terms "owner and operator" at all locations of the text where the term "operator " has been used in order to avoid any confusion regarding the applicability of the regulations. The Board also notes that it has defined the term "owner" under Section 810.103 to clarify its intent.

Part 814

General Requirements (Sections 814.101, 814.107, 814.108, and 814.109)

The amendments to the existing landfill regulations of Part 814.Subpart A prescribe additional requirements for existing MSWLF units and lateral expansions. These additional requirements are A are discussed in detail under major issues.

Applicability (Section 814.101)

Section 814.101 clarifies the applicability of the Part 814 regulations to existing MSWLF units and lateral expansions. The existing MSWLF units are required to comply with the interim permit requirements in addition to complying with permitting requirements under the existing regulations (see discussion under permitting scheme).

Compliance Date (Section 814.107)

The instant regulations specify compliance dates for existing MSWLF units and lateral expansions. The compliance dates are consistent with the USEPA's proposed compliance dates (58 FR 40568). The issues relating to compliance dates are discussed in greater detail under major issues.

Permit Requirements for Existing MSWLF Units and Lateral expansions (Sections 814.107 and 814.108)

The Board notes that a detailed discussion regarding the permitting requirements has been provided in the section addressing the permitting scheme in today's opinion.

Standards for Existing landfills that Remain Open for more than Seven Years (814.Subpart C, Section 814.302)

Today's regulations at Section 814.302(c) prescribe additional location restrictions derived from the federal Subtitle D regulations (40 CFR 258.10) for existing MSWLF units and lateral expansions pertaining to airports. The Board notes that under the proposed regulations, the existing MSWLF units and lateral expansions were required to comply with the airport location restriction under the Board's existing regulations at 35 Ill. Adm. code 811.302(e).

The changes to the proposed regulations relating to the airport location restriction were made in response to the WMI's comments, which noted certain inconsistencies in the proposed regulations. (PC #5 at 4.) Upon further review, the Board concludes that it would be inappropriate to require existing MSWLF units and lateral expansions to comply with the Board's existing airport location restrictions at Section 811.302(e). This is because the Board's existing airport location restriction is more stringent than that required under Subtitle D, particularly in that the Board requires written permission from the FAA to go within certain distances and Subtitle D does not. Moreover, the existing Board regulations exempts existing landfill facilities from the airport safety requirements.

Section 814.302(c)(1) requires the owner or operator of an existing MSWLF unit or a lateral expansion locatted within certain distances of a airport runaway to demonstrate that the unit is designed and operated so that the unit does not pose a bird hazard to aicraft. Section 814.302(c)(2) requires an owner or operator seeking a lateral expansion within a five-mile radius of an airport to notify the affected airport and the FAA.

The existing MSWLF units are also subject to the foundation mass stability standards at Sections 811.304 and 811.305.

The amendments at Section 814.302(e) prescribe additional requirements for lateral expansions. The lateral expansions are subject to foundation mass stability standards (Sections 811.304 and 811.305), liner and leachate collection system (Sections 811.306, 811.307, and 811.308), and groundwater impact assessment requirements (Section 811.317).

Today's regulations also include the closure requirement for existing MSWLF units and lateral expansions that are unable to demonstrate compliance with the location standards relating to floodplains and airports. Section 814.302(f) requires the closure of existing MSWLF units that are unable to comply with the location restrictions by October 9, 1996. Section 814.302(g) sets forth conditions under which the Agency may grant an extension of an additional two years for noncomplying units. The Board added the closure provisions in response to comments from WMI and the Agency. (PC #5 at 4 and PC #9 at 47.)

Standards for Existing landfills that must Initiate closure Within Seven Years (Section 814.Subpart D, Section 814.402)

Today's regulations at Section 814.402(c) prescribe additional location restrictions derived from the federal Subtitle D regulations (40 CFR 258.10) for existing MSWLF units and lateral expansions pertaining to airports. The Board notes that under the proposed regulations, the existing MSWLF units and lateral expansions were required to comply with the airport location restriction under the Board's existing regulations at 35 Ill. Adm. code 811.302(e). The rationale for the changes to proposed airport location restriction is explained above under Section 814.302.

Section 814.402(c)(1) requires the owner or operator of an existing MSWLF unit or a lateral expansion locatted within certain distances of a airport runaway to demonstrate that the unit is designed and operated so that the unit does not pose a bird hazard to aicraft. Section 814.402(c)(2) requires an owner or operator seeking a lateral expansion within a five-mile radius of an airport to notify the affected airport and the FAA.

The existing MSWLF units are also subject to the foundation mass stability standards at Sections 811.304 and 811.305.

The amendments at Section 814.402(e) prescribe additional requirements for lateral expansions. The lateral expansions are subject to foundation mass stability standards (Section 811.304 and 811.305), liner and leachate collection system (Sections 811.306, 811.307, and 811.308), and groundwater impact assessment requirements (811.317), groundwater monitoring system requirements (Section 811.318), and groundwater quality standards (Section 811.320).

Today's regulations include some minor changes and additions made in response to comments from the Agency and WMI. First, the Board added Section 814.402(b)(3)(I) to address Agency's concerns relating to zone of compliance. The Agency noted that the alternate compliance boundary requirements under Section 814.402(b)(3) must be limited to 150 meters beyond the edge a

MSWLF unit in order to be consistent with federal requirement at 40 CFR 258.51(a)(2). (PC #9 at 5.)

Second, Section 814.402(e)(4) has been clarified to require a groundwater impact assessment only if a unit is equipped with a compacted earth liner in accordance with Section 811.306(d). The Board clarified this requirement in response to comments from the Agency and WMI, which noted that under Subtitle D regulations only units equipped with a liner other than a composite liner must comply with the groundwater impact assessment. (PC #5 at 4 and PC #9 at 49.)

The final addition to Section 814.402 addresses the closure requirement for existing MSWLF units that are unable to demonstrate compliance with the location standards relating to floodplains and airports. Section 814.402(f) requires the closure of existing MSWLF units that are in compliance with location restrictions by October 9, 1996. Section 814.402(g) sets forth conditions under which the Agency may grant an additional two years extension for noncomplying units. The Board added the closure provisions in response to comments from WMI and the Agency. (PC #5 at 4 and PC #9 at 47.)

This opinion accompanies the order of this same day in this matter.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion was adopted on the 14th day of October, 1993, by a vote of 5-0.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board